This Statutory Instrument has been made in consequence of a defect in S.I. 2023/64 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2024 No. 941

EXCISE

The Excise Duties (Northern Ireland Miscellaneous Modifications and Amendments) (EU Exit) (Amendment) Regulations 2024

Made - - - -	*6th September 2024*
Laid before the House of Commons	*10th September 2024*
Coming into force - -	*1st October 2024*

The Commissioners for His Majesty's Revenue and Customs make these Regulations in exercise of the powers conferred by sections 45(1) and (2) and 48(10) and (11) of the Taxation (Cross-border Trade) Act 2018(**a**).

Citation and commencement

1. These Regulations may be cited as the Excise Duties (Northern Ireland Miscellaneous Modifications and Amendments) (EU Exit) (Amendment) Regulations 2024 and come into force on 1st October 2024.

Amendment of the Excise Duties (Northern Ireland Miscellaneous Modifications and Amendments) (EU Exit) Regulations 2020

2. The Excise Duties (Northern Ireland Miscellaneous Modifications and Amendments) (EU Exit) Regulations 2020(**b**) are amended as follows.

3. In regulation 5—

(a) after paragraph (d) insert—

"(dza)after the definition of "distance selling arrangement" insert—

""draft electronic administrative document" means the document referred to in Article 20(2) of the Directive(**c**);";";

(b) for paragraph (db) substitute—

(**a**) 2018 c. 22.

(**b**) S.I. 2020/1559 ("NIMMA"), relevantly amended by S.I. 2023/64. Part 1 of NIMMA preserved the Excise Duties (Holding, Movement and Duty Point) Regulations 2010 (S.I. 2010/593) as they had effect immediately before IP completion day ("the Northern Ireland Regulations"). "IP completion day", for these purposes, is defined in Schedule 1 to the Interpretation Act 1978 (c. 30).

(**c**) "The Directive" is defined in regulation 3(1) of the Northern Ireland Regulations, as modified by regulation 5(cb) of NIMMA, as amended by S.I. 2023/64.

"(db) for the definition of "electronic administrative document" substitute—

""electronic administrative document" means the document referred to in Article 20(1) of the Directive;";";

(c) for paragraph (m) substitute—

"(m)for the definition of "report of export" substitute—

""report of export" means a report made using the EU computerised system(**a**) certifying that excise goods(**b**) have left the territory of the EU or Northern Ireland, which is completed by—

(a) where the export declaration(**c**) is lodged in Northern Ireland, the Commissioners(**d**), or

(b) where the export declaration is lodged in an EU Member State(**e**), the competent authorities of that Member State;";".

4. In regulation 18, before paragraph (a) insert—

"(za) in paragraph (2)(a), for "in accordance with regulation 69(1)" substitute "referred to in regulation 63C(1)(a)";".

5. In regulation 36, in the substituted regulation 40—

(a) in paragraph (1), for "paragraph (2)" substitute "paragraphs (2) and (3)";

(b) after paragraph (2) insert—

"(3) Regulations 46(7) and 48(3) apply to, and regulation 48(2) also applies to, the movement of excise goods dispatched from an EU Member State where, in relation to those goods, an export declaration is lodged in Northern Ireland in accordance with Article 221(2) of Implementing Regulation (EU) 2015/2447(**f**).".

6. In regulation 37—

(a) in paragraph (b) for "paragraphs (6) and (7)" substitute "paragraph (6)";

(b) after paragraph (b) insert—

"(ba) for paragraph (7) substitute—

"(7) In a case where—

(a) an export declaration in respect of excise goods is lodged, in accordance with Article 263 of the Union Customs Code Regulation(**g**), at the competent customs office in an EU Member State, as determined by Article 221(2) of Implementing Regulation (EU) 2015/2447, and

(b) the goods are dispatched to—

(i) a place from where they will leave the territory of the EU or Northern Ireland, or

(ii) the customs office of exit(**h**), where provided for in Article 329(5) of Implementing Regulation (EU) 2015/2447, which is at the same time

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(**a**) "EU computerised system" is defined in regulation 3(1) of the Northern Ireland Regulations, as modified by regulation 5(b) of NIMMA.
(**b**) "Excise goods" is defined in regulation 3(1) of the Northern Ireland Regulations, as modified by regulation 5(f) of NIMMA.
(**c**) "Export declaration" is defined in regulation 3(1) of the Northern Ireland Regulations, as modified by regulation 5(v) of NIMMA.
(**d**) "The Commissioners" are defined in regulation 3(1) of the Northern Ireland Regulations as the Commissioners for His Majesty's Revenue and Customs.
(**e**) "EU Member State" is defined in regulation 3(1) of the Northern Ireland Regulations, as modified by regulation 5(g) of NIMMA.
(**f**) OJ No. L 343 29.12.2015, p. 558, to which there are amendments not relevant to these Regulations.
(**g**) "Union Customs Code Regulation" is defined in regulation 3(1) of the Northern Ireland Regulations, as modified by regulation 5(v) of NIMMA.
(**h**) "Customs office of exit" is defined in regulation 3(1) of the Northern Ireland Regulations, as modified by regulation 5(c) of NIMMA.

the customs office of departure for the external transit procedure(**a**), where provided for in Article 189(4) of Delegated Regulation (EU) 2015/2446(**b**),

the Commissioners must send the electronic administrative document to the competent authorities of the EU Member State where the export declaration was lodged.";".

7. In regulation 38—

(a) after paragraph (b)(ii) insert—

"(iia) omit the "or" after subparagraph (c);";

(b) after paragraph (b)(iii) insert—

"(iv) after subparagraph (d) insert—

"or

(e) the customs office of exit, where provided for in Article 329(5) of Implementing Regulation (EU) 2015/2447, which is at the same time the customs office of departure for the external transit procedure, where provided for in Article 189(4) of Delegated Regulation (EU) 2015/2446.";".

8. For regulation 43 substitute—

"**43.** For regulation 46 substitute—

"Report of export from territory of the EU or Northern Ireland

46.—(1) Subject to regulation 48, this regulation applies where an export declaration is lodged in Northern Ireland in relation to excise goods.

(2) When the Commissioners receive information from the customs office of exit certifying that the excise goods have left the territory of the EU or Northern Ireland, they must carry out an electronic verification of that information.

(3) When the information referred to in paragraph (2) has been verified, the Commissioners must complete a report of export(**c**) that complies with the EU requirements(**d**) using the EU computerised system.

(4) Paragraph (5) applies where the excise goods have been dispatched from a place in Northern Ireland to a place from where they will leave Northern Ireland or the territory of the EU.

(5) The Commissioners must send the report referred to in paragraph (3) to the consignor of the goods.

(6) Paragraph (7) applies where the excise goods have been dispatched from an EU Member State of dispatch.

(7) The Commissioners must send the report referred to in paragraph (3) to the competent authorities in the EU Member State of dispatch.".".

9. For regulation 44 substitute—

"**44.** For regulation 47 substitute—

(**a**) "External transit procedure" is defined in regulation 3(1) of the Northern Ireland Regulations, as modified by regulation 5(v) of NIMMA.

(**b**) OJ No. L 343 29.12.2015. Article 189 was substituted by Regulation (EU) 2018/1063 of 16 May 2018 amending and correcting Delegated Regulation (EU) 2015/2446 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning provisions of the Union Customs Code (OJ No. L 192, 30.7.2018, p. 1).

(**c**) "Report of export" is defined in regulation 3(1) of the Northern Ireland Regulations, as modified by regulation 5(m) of NIMMA.

(**d**) "EU requirements", in relation to, inter alia, a report of export, is defined in regulation 3(1) of the Northern Ireland Regulations, as modified by regulation 5(dc) of NIMMA.

"**47.**—(1) This regulation applies where—

(a) an export declaration is lodged in an EU Member State in relation to excise goods, and

(b) the goods have been dispatched from a place in Northern Ireland to a place from where they will leave Northern Ireland or the territory of the EU.

(2) When the Commissioners receive a report of export relating to the goods, they must send it to the consignor of the goods using the EU computerised system.".".

10. For regulation 45 substitute—

"**45.** For regulation 48 substitute—

"Report of export from territory of the EU or Northern Ireland when EU computerised system unavailable

48.—(1) Where, due to the unavailability of the EU computerised system—

(a) a report of export in relation to excise goods cannot be completed in accordance with regulation 46(3) (report of export from territory of the EU or Northern Ireland), or

(b) a notification in relation to excise goods cannot be given in accordance with regulation 42A(5) (verification of electronic administrative documents and export declarations),

the Commissioners must comply with paragraphs (2) to (6) of this regulation.

(2) When they receive information from the customs office of exit certifying that the excise goods have left the territory of the EU or Northern Ireland, the Commissioners must carry out a verification of the data resulting from that information.

(3) The Commissioners must, except in cases which they consider are duly justified, send a fallback report of export(**a**) that complies with the EU requirements, or a fallback notification(**b**), to the competent authorities in the EU Member State of dispatch.

(4) As soon as the EU computerised system is restored, or the draft electronic document is submitted by the consignor of the goods in respect of those excise goods, the Commissioners must complete—

(a) a report of export that complies with the EU requirements, or

(b) a notification in accordance with regulation 42A(5).

(5) Where a report of export has been completed under paragraph (4)(a), the Commissioners must use the EU computerised system to send the report to—

(a) the consignor of the goods, where regulation 46(5) applies to the excise goods, or

(b) the competent authorities in the EU Member State of dispatch, where regulation 46(7) applies to the excise goods.

(6) Where regulation 47 applies to the excise goods, if the Commissioners receive a fallback report of export, they must—

(a) send a copy of that report to the consignor of the goods using the EU computerised system if requested to do so by the consignor, or

(b) keep a copy available for the consignor of the goods.".".

11. After regulation 45 insert—

(**a**) "Fallback report of export" is defined in regulation 3(1) of the Northern Ireland Regulations.
(**b**) "Fallback notification", for these purposes, is defined in regulation 42A(10) of the Northern Ireland Regulations.

"**45A.** After regulation 48 insert—

"**Report of export from territory of the EU or Northern Ireland – supplementary provision**

48A. For the purposes of regulations 46, 47 and 48, a report of export constitutes proof that the movement of the excise goods referred to in the report has ended.".".

12. For regulation 68 substitute—

"**68.** In regulation 77—

(a) for paragraph (1) substitute—

"(1) This regulation applies where—

(a) excise goods are consigned by a consignor in an EU Member State to an address in Northern Ireland under a distance selling arrangement(**a**), and

(b) a NI tax representative(**b**) has been appointed by the consignor.";

(b) in paragraph (2), for "A tax representative" substitute "The NI tax representative". ".

13. After regulation 68 insert—

"**68A.** After regulation 77 insert—

"**EU consignors – procedure, accounting and payment**

77A.—(1) This regulation applies where—

(a) excise goods are consigned by a consignor in an EU Member State to an address in Northern Ireland under a distance selling arrangement, and

(b) a NI tax representative has not been appointed by the consignor.

(2) The consignor must—

(a) before the goods are dispatched—

(i) inform the Commissioners of the expected dispatch in such form and manner as the Commissioners may specify in a notice published by them,

(ii) supply to the Commissioners such further particulars about the consignment as the Commissioners may specify in a notice published by them, and

(iii) account for and pay the excise duty payable on those goods in such manner as the Commissioners may specify in a notice published by them, or provide a guarantee satisfactory to the Commissioners securing payment of the duty;

(b) immediately after the goods have been received—

(i) inform the Commissioners of the arrival of the goods, and

(ii) pay any duty that has not been paid in such manner as the Commissioners may specify in a notice published by them.".".

14. In regulation 72, after paragraph (c) insert—

(**a**) "Distance selling arrangement" is defined in regulation 3(1) of the Northern Ireland Regulations, as modified by regulation 5(d) of NIMMA.

(**b**) "NI tax representative" is defined in regulation 3(1) of the Northern Ireland Regulations, as modified by regulation 5(o) of NIMMA.

"(ca) in paragraph (6)(i), for "fallback electronic administrative document" substitute "fallback accompanying document"(**a**);".

15. In regulation 80, in paragraph (c)—

(a) in the entry for 63E(3), for "63E(3)" substitute "63E(3) and (9)";

(b) in the entry for 63K, for "63K" substitute "63K(3)".

Jim Harra
Myrtle Lloyd

6th September 2024 Two of the Commissioners for His Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Excise Duties (Northern Ireland Miscellaneous Modifications and Amendments) (EU Exit) Regulations 2020 ("NIMMA") for the purposes of the Windsor Framework in the EU withdrawal agreement ("Windsor Framework"). These Regulations amend NIMMA in order to comply with the UK's obligations under the Windsor Framework in relation to Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty ("the 2020 Excise Directive"), by correcting various transposition errors made by the Excise Duties and Value Added Tax (Northern Ireland) (Miscellaneous Modifications and Amendments) Regulations 2023 (S.I. 2023/64) ("the 2023 Regulations"). These Regulations also correct minor textual errors in NIMMA.

Excise provision under the Windsor Framework

Following the adoption of Decision No 1/2023 of the Joint Committee, the Protocol on Ireland/Northern Ireland in the EU Withdrawal Agreement, as amended by that Decision, is now referred to as the Windsor Framework. Decision No 1/2023 and other documents comprising the Windsor Framework can be found here: https://www.gov.uk/government/publications/the-windsor-framework.

Article 8 of the Windsor Framework provides that EU law concerning goods listed in Annex 3 of the Windsor Framework will apply to and in the United Kingdom in respect of Northern Ireland. Annex 3 includes Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC ("the 2008 Excise Directive").

Article 13(3) of the Windsor Framework provides that references in the Windsor Framework to EU legislation shall be read as referring to that EU legislation as amended or replaced. The 2008 Excise Directive has been repealed and replaced by the 2020 Excise Directive, with effect from 13th February 2023. The 2023 Regulations amended UK legislation to implement the Windsor Framework in relation to the 2020 Excise Directive.

Amendments made by these Regulations

The 2008 Excise Directive was transposed in the UK by the Excise Goods (Holding, Movement and Duty Point) Regulations 2010 (S.I. 2010/593) ("the 2010 Regulations"), along with related excise legislation.

Regulation 2 of NIMMA preserves the 2010 Regulations as they had effect immediately before the end of the transitional arrangements provided for by the Withdrawal Agreement ("the Northern Ireland Regulations"). The Northern Ireland Regulations are applied in relation to the holding, movement and taxation of excise goods in Northern Ireland subject to the modifications provided for in Part 1 of NIMMA. The Northern Ireland Regulations preserved by regulation 2 of NIMMA are available from the legislation.gov.uk website at: https://www.legislation.gov.uk/uksi/2010/593/2020-12-30.

(**a**) "Fallback accompanying document" is defined in regulation 3(1) of the Northern Ireland Regulations.

Regulation 1 deals with citation and commencement.

Regulation 3 amends regulation 5 of NIMMA. Various modifications are made to regulation 3 (interpretation) of the Northern Ireland Regulations, to substitute new definitions of "electronic administrative document" and "report of export", and to insert a new definition of "draft electronic administrative document".

Regulation 4 amends regulation 18 of NIMMA. A modification is made to regulation 17 of the Northern Ireland Regulations, to substitute a cross reference in that provision to regulation 69(1) of those Regulations for a reference to regulation 63C(1) of those Regulations, in relation to the provision of a guarantee.

Regulation 5 amends regulation 36 of NIMMA. A modification is made to regulation 40 of the Northern Ireland Regulations, to insert a new paragraph (3) into that provision, and to make a consequential amendment to paragraph (1), which clarifies the scope of the application of Part 6 of the Northern Ireland Regulations as a result of other amendments made to that Part by these Regulations.

Regulation 6 amends regulation 37 of NIMMA. A modification is made to regulation 41 of the Northern Ireland Regulations to substitute a new paragraph (7) into that provision. New paragraph (7) places an obligation on the Commissioners for His Majesty's Revenue and Customs (HMRC) ("the Commissioners") to send the electronic administrative document to the competent authorities of the EU Member State where an export declaration for excise goods is lodged, in cases where those goods are consigned to the external transit procedure, or are dispatched to a place from where they will leave the customs territory of the EU or Northern Ireland. Regulation 6 also makes a consequential amendment to regulation 37(b) of NIMMA to remove a redundant cross-reference in that provision.

Regulation 7 amends regulation 38 of NIMMA. A modification is made to regulation 42 of the Northern Ireland Regulations, by inserting a new paragraph (4)(e) into that provision. This amendment means that, in future, a consignor of excise goods will be permitted to change the destination shown on an electronic administrative document in order to consign goods to the customs office of exit which is also the customs office of departure for the external transit procedure.

Regulation 8 amends regulation 43 of NIMMA. A modification is made to substitute a new regulation 46 into the Northern Ireland Regulations. New regulation 46 provides for the procedure to be followed by the Commissioners in all cases where an export declaration has been lodged in Northern Ireland in relation to excise goods.

Regulation 9 amends regulation 44 of NIMMA. A modification is made to substitute a new regulation 47 into the Northern Ireland Regulations. New regulation 47 provides for a requirement for the Commissioners to forward a report of export to the consignor using the EU computerised system in cases where an export declaration in relation to excise goods has been lodged in an EU Member State, but the goods have been dispatched from a place in Northern Ireland.

Regulation 10 amends regulation 45 of NIMMA. A modification is made to substitute a new regulation 48 into the Northern Ireland Regulations. New regulation 48 provides for an alternative procedure where a report of export under regulation 46(3), or a notification under regulation 42A(5), of the Northern Ireland Regulations cannot be made or given by the Commissioners due to the unavailability of the EU computerised system.

Regulation 11 inserts a new regulation 45A into NIMMA. A modification is made to substitute a new regulation 48A into the Northern Ireland Regulations. New regulation 48A provides that, for the purposes of regulations 46, 47 and 48 of the Northern Ireland Regulations, a report of export constitutes proof that a movement of excise goods has ended.

Regulation 12 substitutes regulation 68 of NIMMA. A modification is made to substitute a new paragraph (1) into regulation 77 of the Northern Ireland Regulations. Regulation 12 also makes a consequential amendment to regulation 77(2). Regulation 13 inserts a new regulation 68A into NIMMA. A modification is made to insert a new regulation 77A into the Northern Ireland

Regulations. These amendments clarify that regulation 77 now only applies to distance selling arrangements where a NI tax representative has been appointed by a consignor in an EU Member State. Alternatively, where a consignor in an EU Member State does not appoint a NI tax representative, they must follow the requirements specified in regulation 77A.

Regulation 14 amends regulation 72 of NIMMA. A modification is made to regulation 81(6)(i) of the Northern Ireland Regulations to substitute an incorrect cross-reference to a "fallback electronic administrative document" with a reference to a "fallback accompanying document".

Regulation 15 amends regulation 80 of NIMMA. This makes various modifications to Schedule 1 (civil penalties) of the Northern Ireland Regulations in order to ensure that penalties may be consistently imposed in connection with breaches of various provisions of those Regulations.

Any published notices referred to in these Regulations will be published at: https://www.gov.uk/government/collections/holdings-and-movement-notices. A hard copy will be available for inspection free of charge at HMRC, 100 Parliament Street, London SW1A 2BQ.

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/.

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