EXPLANATORY MEMORANDUM TO

THE EXCISE DUTIES (NORTHERN IRELAND MISCELLANEOUS MODIFICATIONS AND AMENDMENTS) (EU EXIT) (AMENDMENT) REGULATIONS 2024

2024 No. 941

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. Declaration

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

2.2 Andrew Higgins, Deputy Director for Excise and Environmental Taxes, at HMRC confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Prerna Sharma at HMRC, email: Prerna.sharma@hmrc.gov.uk, telephone: 03000574882 can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 Under the Windsor Framework (WF), which forms part of the EU Withdrawal Agreement, certain European Union (EU) excise rules concerning goods continue 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. This instrument makes changes to UK excise legislation to ensure that amended EU excise laws are correctly implemented in NI. It also corrects minor, technical errors which were reported by the Statutory Instrument Select Committee (SCSI) (see further paragraph 11.1).

Where does the legislation extend to, and apply?

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

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Northern Ireland.

5. Policy Context

What is being done and why?

5.1 This instrument ensures that UK law applying in NI correctly reflects EU excise rules, for example when goods leave the EU or NI, but with negligible practical impact on the application of those rules. This meets the WF commitments, which protect the Belfast (Good Friday) Agreement and maintain frictionless arrangements for NI businesses trading with the EU.

5.2 The amendments made by this instrument include a number of changes to the wording of the law which have no material impact as HMRC's processes and systems in place for these movements are already based on the rules set out in EU excise law. The only substantive change made by this instrument concerns 'distance sales' of excise goods from an EU business to a private individual (consumer) in NI. This instrument places the excise obligations on the EU consignor, whilst allowing the consignor to delegate responsibility to a tax representative in NI rather than requiring them to do so. The impact of this change will be minimal as there is currently only one tax representative acting in this respect in NI.

What was the previous policy, how is this different?

5.3 The only change in policy achieved by this instrument is that set out in paragraph 5.2 above in relation to distance sales.

6. Legislative and Legal Context

How has the law changed?

6.1 The Excise Goods (Holding, Movement and Duty Point) Regulations 2010 (S.I. 2010/593) (HMDP) sets out the general arrangements for the holding and movement of excise goods for the UK. HMDP, together with other UK legislation, implemented the provisions of Council Directive 2008/118/EEC (the Horizontal Excise Directive). To implement the WF, 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 (S.I. 2020/1559) (NIMMA). NI HMDP is subject to the modifications set out in Part 1 of NIMMA.

6.2 The Horizontal Excise Directive was updated and amended (recast) as Council Directive (EU) 2020/262 (the recast HED). The recast HED continues to govern EU rules for the holding and movement of excise goods and was required to be applied from 13 February 2023. The recast HED is largely the same as the Horizontal Excise Directive which it replaced, but the provisions were updated and new elements were introduced. The Excise Duties and Value Added Tax (Northern Ireland) (Miscellaneous Modifications and Amendments) Regulations 2023 (S.I. 2023/64) (the 2023 Regulations) amended NIMMA in order to implement the WF in relation to the recast HED. However, the 2023 Regulations contained various transposition errors raised by the EU Commission, and two errors reported by the SCSI. This instrument further amends NIMMA to correct these errors and makes various consequential changes.

6.3 This instrument ensures that UK law applying in NI correctly reflects the recast HED, for example when goods leave the EU or NI, even if there will be no practical or policy impact as a result of these changes. It inserts new definitions of "electronic administrative document", "draft electronic administrative document" and "report of

export" into NIMMA, and corrects cross-referencing errors in relation to the provision of a guarantee and 'fallback documents' (i.e. where the EU computerised system is not available). The instrument substitutes existing provisions of NIMMA to better reflect the wording of the recast HED which applies when export declarations are lodged in the UK in respect of NI, and to recognise that excise duty suspended movements can now end when excise goods enter the external transit procedure. Other amendments made by the instrument, relating to 'distance selling', ensure that where an EU consignor does not appoint a NI tax representative, they must follow the prescribed requirements themselves. Finally, NIMMA is amended to ensure that HMRC may impose penalties consistently.

Why was this approach taken to change the law?

6.4 Making these changes by statutory instrument is considered to be the most proportionate legislative approach given the minor and technical nature of these corrections/updates to earlier regulations.

7. Consultation

Summary of consultation outcome and methodology

7.1 No formal consultation has been carried out as the changes are largely technical in nature and are required to be implemented in order to accurately transpose EU excise rules.

8. Applicable Guidance

8.1 This instrument makes procedural changes requiring an amendment to current guidance, which will be published in advance of this instrument being laid.

8.2 Guidance on storing and moving excise goods in NI is available on gov.uk[1]. All public notices made under new powers provided for by 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 HMRC's Excise Helpline on 0300 200 3700.

8.3 Guidance on moving excise goods under the WF is available on the gov.uk website[2].

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 There is no, or no significant, impact on business, charities or voluntary bodies because the changes correct or clarify minor errors in the existing legislation.

[1] Guidance on storing and moving excise goods: https://www.gov.uk/government/collections/holdings-and-movement-notices

[2] Guidance on moving excise goods under the WF 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

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

9.3 The legislation does impact small or micro businesses.

9.4 No exemptions are made for small or micro businesses as the impact on these businesses is expected to be negligible and the recast HED makes no provision for such exemptions.

9.5 There is no, or no significant, impact on the public sector because the legislation corrects or clarifies minor errors in existing legislation.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that we will not be monitoring or evaluating as its impact on businesses is negligible. The changes made by this legislation are of a minor nature and correct or clarify minor errors in existing legislation.

10.2 As this instrument is not made by a Minister of the Crown, no review clause is required.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 Provisions of 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 of that Act includes power to make provision by reference to things specified in a notice published in accordance with the regulations. This instrument also corrects errors in S.I. 2023/64 reported by the Select Committee on Statutory Instruments[4].

12. European Convention on Human Rights

12.1 As the instrument is subject to negative resolution 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"). It does however relate to the withdrawal of the United Kingdom from the European Union because it makes changes to UK legislation which transposes EU law that remains applicable in Northern Ireland following the UK's withdrawal from the EU as a result of the Windsor Framework.

[4] Select Committee on Statutory Instruments: https://publications.parliament.uk/pa/cm5803/cmselect/cmstatin/5-xiii/report.html