EXPLANATORY MEMORANDUM TO

THE EXCISE DUTIES (REMOVAL OF ALCOHOLIC LIQUOR TO NORTHERN IRELAND AND MISCELLANEOUS AMENDMENTS) REGULATIONS 2021

2021 No. 1282

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument implements certain requirements for the movement of duty-free spirits and alcohol for denaturing from Great Britain (GB) to Northern Ireland (NI), as to allow such movements to go direct from GB suppliers to authorised users in NI, without having to first be consigned to an excise warehouse in NI. This will provide for the liability to excise duty for these movements to be returned broadly to a level that existed before the end of the transition period.

2.2 This instrument also makes minor corrections and amendment to existing excise legislation in order to align terminology used across United Kingdom (UK) law.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 Provisions of these Regulations are made using the powers conferred by section 77 of the Alcoholic Liquor Duties Act 1979 and section 93 of the Customs and Excise Management Act 1979. A statutory instrument containing regulations made under those provisions is normally subject to annulment in pursuance of a resolution of either House of Parliament. This instrument also contains provisions made under section 45 of the Taxation (Cross-border Trade) Act 2018. Section 48(7) of that Act provides that for an instrument containing such provision, as well as provision relating to excise duty under another enactment that is subject to annulment in pursuance of either House of Parliament, the only parliamentary procedure that is to apply is the procedure given by section 48. The result is that this instrument is subject to annulment in pursuance of a resolution of the House of Commons only.

3.2 This instrument is being issued free of charge to anyone who purchased the Excise Duties (Northern Ireland Miscellaneous Modifications and Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1559). This is because this instrument amends a provision of those regulations to address an error. HMRC has complied with the requirement to consult the SI Registrar on this matter.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

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 This instrument will be made using the powers within;

- sections 45(1) and (2) and 48(10) of the Taxation (Cross-border Trade) Act 2018
- section 5(2) of the Taxation (Post-transition Period) Act 2020
- section 77(1) of the Alcoholic Liquor Duties Act 1979
- section 93(1), (2) and (5A) of the Customs and Excise Management Act 1979

6.2 This instrument provides that duty charged as a result of section 4(1) of the Taxation (Post-transition Period) Act 2020 is not payable on the removal to NI from GB of certain alcoholic liquor.

6.3 This instrument also amends the Excise Duties (Northern Ireland Miscellaneous Modifications and Amendments) (EU Exit) Regulations 2020.

6.4 A breach of the requirements relating to documentation in regulations 4 and 6 renders the goods to which the requirements relate liable to forfeiture. This is expressly set out in regulation 4(3) in relation to spirits, but not in regulation 6 in relation to alcohol for denaturing, because s. 77(5) of the Alcoholic Liquor Duties Act 1979 provides for liability to forfeiture to always apply in relation to a contravention or failure to comply with regulations relating to alcohol for denaturing, but s. 93 (5A) of the Customs and Excise Management Act 1979, which governs the position on forfeiture for duty free spirits, allows for regulations to impose liability to forfeiture. Goods which are liable to forfeiture can be seized by UK Border Force and HMRC, along with any vehicles used to transport them and goods mixed or found with them.

7. Policy background

What is being done and why?

7.1 As a result of European Union (EU) exit, the UK's excise duty regime had to change the way it operates, especially in relation to the movement of goods from GB to NI. Legislation introduced for the end of the transition period, in order to comply with the NI Protocol to the Withdrawal Agreement, has changed the legal position in relation to these movements from GB to NI in an unintended way. This instrument makes changes to three specific areas of the excise regime to restore certain requirements for such movements to broadly the way they were prior to the end of the transition period and to align terminology used across UK law. These areas are – duty-free spirits, alcohol for denaturing and duty stamps.

Duty free spirits

7.2 UK law provides for a relief from UK excise duty for spirits used for scientific purposes or to manufacture or prepare any article for medical purposes as well as for some manufacturing uses. This is controlled under the UK's duty-free spirits scheme which allows UK businesses to receive duty-free spirits for allowable uses where they hold an authorisation to do so from HMRC.

7.3 Prior to changes to UK excise law made at the end of the transition period to give effect to the NI Protocol, a removal of spirits from UK approved warehouse (by a registered warehousekeeper) for delivery to an authorised duty-free spirits user anywhere in the UK could be carried out without payment of excise duty. As the goods are relieved from payment of UK excise duty upon removal from the warehouse, they could move under commercial arrangements only, instead of entering and being moved under excise duty suspension.

7.4 At the end of the transition period, the legal position in relation to such movements between GB and NI changed and although the goods are still moving wholly within the territory of the UK, the introduction of a duty point and a charge to duty upon entry of the goods into NI means that the law now applies differently to these movements.

7.5 As the relief in UK law only applies upon removal from a UK warehouse, not upon removal of the goods to NI from GB, duty-free supplies from GB to NI are now forced to enter duty suspension to avoid the need to pay UK excise duty upon entry to NI. This means the goods can no longer be delivered direct to the authorised user, but instead must first be consigned to an excise warehouse in NI. The relief can then be applied to those goods upon removal from that NI warehouse, but this increases the administrative burden, and the financial costs, of supplying duty-free spirits from GB to NI. This amendment removes that need and allows the goods to move directly to the authorised user, as before.

Alcohol for denaturing

7.6 Denatured alcohol is alcohol that has been made unsuitable for drinking by the addition of approved substances (denaturants), which makes it no longer liable to excise duty. A denaturer is a person authorised by HMRC to denature dutiable alcoholic liquor. Prior to the end of the transition period, movements of alcohol to a UK licensed or authorised denaturer worked in a very similar way to duty-free spirits. When alcohol was removed from a warehouse, for delivery to a licensed or authorised denaturer, UK excise duty was not payable and it could move under commercial arrangements only direct to the denaturer. Since the end of the transition period, such goods must first be delivered to an excise warehouse in NI before moving on to the denaturer.

7.7 The changes made by this instrument will effectively allow consignments of alcohol for denaturing to be delivered direct from a GB warehouse to an authorised or licensed denaturer in NI. In other words, it will restore the position to broadly that which existed prior to the end of the transition period.

7.8 For both duty-free spirits and alcohol for denaturing, there are existing requirements for accompanying documents, so that businesses can demonstrate that such movements are legitimate. This instrument sets out the details for these requirements and who should provide those documents upon request. This will ensure that such movements can travel with minimum disruption, should any checks be carried out on goods arriving in NI.

Duty stamps

7.9 This instrument also makes minor amendments to the modifications made to the Duty Stamps Regulations 2006 (S.I. 2006/202) by the Excise Duties (Northern Ireland Miscellaneous Modifications and Amendments) (EU Exit) Regulations 2020 in order

to align some of the terminology with that used across UK law. These are as follows;

- the definition of "external territory" is amended to reflect that the UK is no longer a member state of the EU.
- the references to "UK registered consignee" are replaced by references to "NI registered consignee", and a definition of "NI registered consignee" is inserted. This is to reflect that the registered consignee scheme applies only in NI.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it implements changes for movement of certain excise goods moving from GB to NI, which are necessary to enable these movements to be broadly restored to the way they were before the end of the transition period and to make terminology changes relating to withdrawal from the European Union.

9. Consolidation

9.1 As the changes to existing legislation are minor, there are no plans to consolidate the legislation being amended.

10. Consultation outcome

10.1 No formal consultation on the legislation has been carried out due to the minor nature of the changes.

11. Guidance

11.1 Amendments to the guidance covering duty-free spirits and denatured alcohol will be made to cover the procedural changes implemented in this legislation. This guidance is available on GOV.UK.

11.2 Guidance on moving excise goods between GB and NI is available on the GOV.UK website.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

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

12.3 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 to assist small businesses is that although this instrument does implement certain obligations on them, it will overall simplify the process for moving duty-free spirits and alcohol for denaturing from GB to NI.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to be kept under review through communications with key stakeholder groups.

14.2 The instrument does not include a statutory review clause 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 Cesar Yanchev at HMRC, Telephone: 03000 532 030 or 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 Helen Whately MP, Exchequer Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.