EXPLANATORY MEMORANDUM TO

THE POSTAL PACKETS (MISCELLANEOUS AMENDMENTS) REGULATIONS 2023

2023 No. 872

1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Postal Services Act 2000 and the Postal Packets (Revenue and Customs) Regulations 2011 (S.I. 2011/3036) and will provide United Kingdom authorities with powers in relation to parcels ('postal packets') moving from Great Britain (GB) to Northern Ireland (NI), where these are required for the purposes of the Windsor Framework, agreed between the United Kingdom (UK) and European Union (EU). The Windsor Framework agreement was announced on 27 February 2023, with the international law instruments giving it legal effect adopted on 24 March 2023.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

5.1 Victoria Atkins MP, Financial Secretary to the Treasury, has made the following statement regarding Human Rights:

"In my view the provisions of the Postal Packets (Miscellaneous Amendments) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 The Windsor Framework is an international arrangement between the UK and the European Union under which the parties commit to binding international legal obligations. Under the Windsor Framework, from 30 September 2024 there will be new arrangements in place for the movement of postal packets from GB to NI. This instrument applies measures present in the Postal Services Act 2000 (including powers set out in the Customs and Excise Management Act 1979) to postal packet movements from GB to NI. This instrument will ensure readiness for these new arrangements and build the capabilities of HMRC and Border Force to deal with the risks of circumvention, by introducing appropriate powers to apply and enforce the

UK's international obligations under the Windsor Framework in respect of postal packets. It will also allow appropriate powers to address any abuse or circumvention of the existing requirements, ahead of the new parcels arrangements being introduced on 30 September 2024.

6.2 This instrument is consistent with Article 2 of the Windsor Framework and does not diminish the rights, safeguards and equality of opportunity provisions set out in that part of the Good Friday Agreement.

6.3 This instrument comes within the scope of section 46(2) of the United Kingdom Internal Market Act 2020. Special regard has been given to the matters listed in subsection (1) of that section.

6.4 Further details on the legal requirements of the Windsor Framework are published here: https://www.gov.uk/government/publications/the-windsor-framework

7. Policy background

What is being done and why?

7.1 When the new parcels arrangements under the Windsor Framework are introduced from 30 September 2024, requirements for customs declarations, pre-notification, presentation of goods and other requirements that were required under the Protocol will be removed for business to consumer (B2C), consumer to business (C2B) and consumer to consumer (C2C) movements. Instead, the UK has agreed that parcel carriers ('postal operators') will manage a process of sharing data with HMRC, in batches, to monitor and manage any risks of smuggling into the European Union market, alongside the introduction of appropriate enforcement powers.

7.2 Movements between GB and NI businesses will be able to use the new green lane, subject to the same conditions as freight movements. Goods moved in the green lane will no longer require the completion of international customs requirements, and instead use a new system based on commercial information. The UK will therefore need to be able, where required (e.g. on goods destined for the EU), to put in place customs processes and collect relevant duty on B2B movements from GB to NI.

7.3 This instrument enables HMRC and Border Force to, seize, detain or inspect goods, both B2B and consumer, sent from GB to NI in order to ensure that they do not circumvent legislative requirements applied under the Windsor Framework that is given effect in domestic law through section 7A of the European Union (Withdrawal) Act 2018. For example, this instrument enables HMRC and Border Force to examine or issue a notice of seizure for goods sent from GB to NI in order to ensure that B2B goods do not use the 'green lane' when they are destined to move onward to the EU, and therefore should be following the customs requirements of the 'red lane'.

7.4 It will also allow appropriate powers to detect where GB to NI postal packets do not meet existing requirements such as those for restricted goods, for example invasive alien species or ozone depleting substances, ahead of the new parcels arrangements being introduced on 30 September 2024.

7.5 The introduction of these powers is therefore an important part of building the capabilities of HMRC and Border Force to manage risks of circumvention of legal requirements, both now and as new parcels arrangements under the Windsor Framework apply from 30 September 2024.

Explanations

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

7.6 Section 105 of the Postal Services Act 2000 enables a series of customs provisions including duty collection and enforcement powers to be applied to postal packets. Certain provisions of this legislation only apply to goods entering or leaving the UK by postal packet. This means that prior to this instrument coming into force, postal packets moving within the UK cannot be searched, seized or intercepted by HMRC or Border Force.

Why is it being changed?

7.7 The Windsor Framework amends processes for B2B goods sent in postal packets from GB to NI, removes customs declarations for B2C, C2C, and C2B postal packets, and introduces some requirements for postal operators. HMRC and Border Force need the ability to detain, inspect, and seize postal packets so the government can enforce these processes and requirements. The changes therefore allow the government to meet the UK's international obligations under the Windsor Framework.

What will it now do?

7.8 Regulation 2 of this instrument amends section 105 of the Postal Services Act 2000 to ensure provisions relating to customs and excise are applied to goods contained in postal packets sent from GB to NI, and to ensure that duties and other charges payable in connection with such postal packets are recoverable by the postal operator concerned.

7.9 Regulation 3 of this instrument makes amendments to the Postal Packets (Revenue and Customs) Regulations 2011 (S.I. 2011/3036). These amendments modify the application of the Customs and Excise Management Act 1979 ("CEMA") so that Act applies in relation to postal packets moved from GB to NI, for example by modifying provisions which relate to the time of importation for the purposes of CEMA. The amendments also modify provisions in S.I. 2011/3036 relating to declarations and examination, amongst other matters, so that they apply to postal packets moved from GB to NI.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made to address a deficiency in retained EU law but relates to the withdrawal of the UK from the EU because it is being made under section 8C(1)(b) and (c) of the European Union (Withdrawal) Act 2018 (c. 16). It amends section 105 of the Postal Services Act 2000 and the Postal Packets (Revenue and Customs) Regulations 2011 (S.I. 2011/3036).

8.2 The amendments are made in connection with the Windsor Framework, and the withdrawal of the UK from the European Union.

9. Consolidation

9.1 There is no consolidation done by this instrument.

10. Consultation outcome

10.1 No consultation took place as this instrument implements requirements under the Windsor Framework.

11. Guidance

11.1 HMRC does not consider it necessary to issue any guidance specifically in relation to this instrument as it does not place any new requirements on external stakeholders.

12. Impact

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

12.2 There is limited impact on the public sector as this instrument does not directly introduce new requirements on HMRC or Border Force.

12.3 A full Impact Assessment has not been prepared for this instrument because impacts on businesses and the public sector are limited and not easily quantified.

13. Regulating small business

13.1 The legislation applies to postal packets sent from GB to NI, including those that are sent by businesses, regardless of their size.

14. Monitoring & review

14.1 There are no plans to monitor or review this instrument as the provisions are necessary to implement the Windsor Framework.

14.2 As this instrument is made under the European Union (Withdrawal) Act, no review clause is required.

15. Contact

15.1 Ewan Nelson at HMRC email: Ewan.Nelson1@HMRC.gov.uk can be contacted with any queries regarding the instrument.

15.2 Rawfiah Choudry, Deputy Director for Post, Parcels, Passengers, Cash and Safety & Security Declarations, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 Victoria Atkins MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.