

EXPLANATORY MEMORANDUM TO
THE CUSTOMS (NORTHERN IRELAND) (EU EXIT) (AMENDMENT)
REGULATIONS 2023

2023 No. 958

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) on behalf of HM 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. Purpose of the instrument

- 2.1 The instrument amends the Customs (Northern Ireland) (EU Exit) Regulations 2020 to implement the arrangements for goods entering Northern Ireland provided for by the Windsor Framework. The instrument updates customs duty rules to support the smooth flow of goods within the UK Internal Market. The instrument also updates the arrangements by which customs duty can be waived, in applicable circumstances.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 This instrument makes provision by reference to things to be specified in a notice published by HMRC. The need for explicit vires to sub-delegate and the consideration that the Joint Committee on Statutory Instruments gave to the draft Higher Education (Transparency Condition and Financial Support) (England) Regulations 2018 (in the 30th report of session 2017 – 2019) are noted. The Taxation (Cross-border Trade) Act 2018 (TCTA) includes the express power to sub-delegate and in making this provision this instrument relies on section 32(8) of TCTA, which provides that any power to make regulations under Part 1 of TCTA includes a power conferring a discretion on any specified person to do anything by or under, or for the purposes of, the regulations, and a power to make provision by reference to things specified in a notice published in accordance with the regulations. The notices made under this instrument will be published at <https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021> no later than the date on which the relevant provisions of the instrument come into force.
- 3.2 These regulations are being issued free of charge to anyone who purchased S.I. 2003/3113, S.I. 2019/385, S.I. 2020/1605 and S.I. 2020/1629. Regulations 12(c), 19(2)(a) and 20(2)(a) correct defects identified in those instruments. The Treasury have complied with the requirement to consult the S.I. Registrar on this matter.

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

6. Legislative Context

6.1 The Windsor Framework is an international agreement between the UK and EU. As outlined in the Government's Command Paper 'The Windsor Framework: a new way forward' (published in February 2023), it restores the smooth flow of trade within the UK internal market and safeguards Northern Ireland's place in the UK. The Windsor Framework agreement was announced on 27 February 2023, with the international law instruments giving it legal effect adopted on 24 March 2023.

6.2 Under Article 5(2) of the Windsor Framework where goods brought into Northern Ireland are not "at risk" and are domestic goods moved within the UK, they are not subject to any duties. Where they are not "at risk" and imported from a country outside of the UK and EU, they are subject to the applicable UK duty. Whether a good is not "at risk" is determined by factors such as the final destination of the good and whether the person moving the good is a member of the trusted trader scheme.

6.3 The definitions used to determine whether goods are not "at risk" were previously set out in Decision No 4/2020 of the Joint Committee established by the UK's Withdrawal Agreement with the EU (JCD4/2020). Following the agreement of the Windsor Framework, JCD4/2020 will be repealed and replaced by Decision No 1/2023 of the Joint Committee (JCD1/2023).

6.4 The Taxation (Cross-border Trade) Act 2018 and regulations made under that Act, including the Customs (Northern Ireland) (EU Exit) Regulations 2020 (SI 2020/1605) (Northern Ireland Regulations) set out in domestic legislation the customs duty rules that apply in Northern Ireland, by virtue of the Windsor Framework.

6.5 The Northern Ireland Regulations currently include various references to JCD4/2020. This instrument updates those references to JCD1/2023, as a series of elements are due to come into force on 30 September 2023, subject to a series of declarations which are due to be made by the UK and EU in advance.

6.6 The Northern Ireland Regulations also make provision for relief and repayment arrangements to be available to UK and Crown Dependency traders in respect of customs duty chargeable under the TCTA and Northern Ireland Regulations. This has been implemented through the Customs Duty Waiver Scheme. Provisions which update relief and repayment arrangements will come into force on 30 September 2023.

6.7 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.

6.8 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.

7. Policy background

What is being done and why?

- 7.1 The Windsor Framework establishes a new set of arrangements for the movement of goods into Northern Ireland. This includes an expanded trusted trader scheme which as of 30 September 2023 will enable a much broader range of businesses to declare goods not “at risk” and be relieved of customs duties for internal UK movements. When the “green lane” is fully implemented from 30 September 2024, those businesses will also be able to benefit from a streamlined set of information requirements, relieving them of full international customs processes such as the requirement for traders to provide customs commodity codes for each movement, and to provide supplementary declarations.
- 7.2 JCD 1/2023, agreed as part of the Windsor Framework, expands the number of goods movements that can be declared as not “at risk” in several ways, including:
- Businesses joining the trusted trader scheme can be established anywhere in the UK (JCD1/2023), rather than just in Northern Ireland (JCD4/2020).
 - The annual turnover threshold below which businesses who move goods into Northern Ireland for the purpose of commercial processing can move goods not “at risk” has quadrupled from £500,000 (JCD4/2020) to £2m (JCD1/2023).
 - Where businesses have turnover above that threshold, they will nonetheless be eligible to move goods not “at risk” if those goods are for use in the animal feed, healthcare, construction and not-for-profit sectors, provided that they are for end use in Northern Ireland by the importer or one subsequent entity (JCD1/2023). Input goods into food production for end use in the UK will continue to be eligible (JCD4/2020).
- 7.3 JCD1/2023 also ensures that movements of consumer parcels from Great Britain to individuals in Northern Ireland are always classified as not “at risk”. This means that consumer parcels will be able to move with no customs duty required as now, which will sit alongside a broader set of arrangements to safeguard parcel flows to take effect from 30 September 2024.
- 7.4 The instrument amends the Northern Ireland Regulations to remove references to JCD 4/2020 and insert references to its replacement, JCD1/2023, to ensure that these new, beneficial arrangements are implemented in domestic law and the expanded range of goods movements that are considered not “at risk” are not subject to customs duty chargeable in accordance with the EU tariff.
- 7.5 For goods movements that cannot be made by the trusted trader scheme, there are a range of alternative options for moving goods at zero duty. This includes using preferential rates in the UK/EU Trade and Cooperation Agreement, making use of existing customs duty reliefs or customs special procedures. Where duty is due, businesses also have the option of claiming a waiver or, if they can show that their goods have not entered the EU, claiming a reimbursement of all duty paid (for Great Britain to Northern Ireland movements) or the difference between the EU and UK tariff (for rest of world to Northern Ireland movements).
- 7.6 Most businesses can currently claim duty waivers up to a maximum of €200,000 every three years, although this threshold is increasing to €275,000 in January 2024. This is an important benefit for businesses; however, it has previously required businesses to

print and post a physical form to HMRC on a quarterly basis to report their claims and keep evidence of these.

7.7 HMRC has now launched a digital platform for businesses to report their claims online, which makes this process more straightforward for businesses. This will become the only means by which claims will be reported. The instrument makes various amendments to the relief and repayment arrangements in the Northern Ireland regulations to facilitate the development of this digital platform and ensure that HMRC can oversee the scheme effectively. This will also minimise the risk that businesses claim waivers in excess of the waiver limit and become liable to repay duty to HMRC. As part of digitising the scheme it will also:

- Establish a new ‘undertaking lead’ function: To apply the existing rules of the scheme across related businesses (such as parent companies and subsidiaries) in a simpler and more consistent way, it will require an undertaking lead (a member of the business authorised to deal with claims on its behalf) to be appointed, representing a ‘single undertaking’ (a sole trader, a company, a partnership, or any combination of these that is part of the same business). Any eligible members of the undertaking will retain the ability to make claims. This is consistent with current arrangements, which treat related businesses as a single undertaking for de minimis aid purposes.
- The instrument enables provision to be made in an HMRC notice concerning appointing an undertaking lead and notifying HMRC of that appointment. An HMRC notice will also set out rules for when such an appointment ceases to have effect, for example on the resignation of the undertaking lead or when an appointment as an undertaking lead is cancelled.
- Information requirements for undertaking leads: An undertaking lead will be required to provide information concerning claims made by the single undertaking it represents. This includes amounts of aid claimed by the undertaking under other de minimis State aid schemes. This will ensure that there is appropriate monitoring of the overall aid claimed to avoid breaching relevant limits.
- This information must be provided in the form and manner specified in an HMRC notice and the intention is that information should be submitted via the new HMRC digital platform. The information provided by the undertaking lead will be used by HMRC to help ensure that a single undertaking does not exceed the maximum amount that it is eligible to claim. The undertaking lead will also be required to notify HMRC where relief or repayment amounts have been granted that were not due, and to retain certain records in relation to claims made by the single undertaking.

7.8 Elsewhere, the instrument makes various other updates to the rules concerning relief and repayments, including in relation to the following matters:

- *Recovery of relief and repayment amounts that were not due:* In cases where traders have erroneously claimed duty waivers in excess of their individual allowance, the instrument enables HMRC to recover these amounts (including, if relevant, from other linked businesses within the same undertaking). It also clarifies other linked elements (such as arrangements concerning any interest that may be chargeable).
- *Update registration requirement for claimants:* The instrument’s eligibility requirements are that a person must have subscribed with HMRC’s online

service so that an undertaking can be registered before they can make a claim to be waived in certain circumstances (which are to be specified in an HMRC notice).

- *Clarify process for claiming a relief:* These provisions clarify the process that applies where a claim for relief is made in a customs declaration.
- *Update time limits for claims:* The instrument provides HMRC an additional 30 days in which to consider claims, where this extended period is necessary.

7.9 The instrument also includes consequential changes, such as those that will allow penalties to be chargeable in cases of abuse, and those which treat persons established in the Crown Dependencies in the same way as UK-established persons for the purposes of various eligibility conditions. The instrument also ensures that customs duty waiver claims are accounted for using the Joint Committee Decision in force at the time the goods moved.

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 UK from the EU because it concerns the operation of the UK's customs regime following the UK's withdrawal from the EU, and amends customs duty provisions that implement the Windsor Framework.

9. Consolidation

9.1 No consolidation of existing legislation is considered appropriate at this time, but this will be kept under review.

10. Consultation outcome

10.1 No formal consultation regarding this instrument has taken place. However, HMRC is in regular discussions with a wide range of businesses and representative groups on the rules that apply for goods entering Northern Ireland and has consulted with a wide range of businesses and representatives' bodies on the detail of the new digital platform and certain other measures in this instrument.

11. Guidance

11.1 There is existing guidance on customs matters associated with moving goods into and out of Northern Ireland at <https://www.gov.uk/government/collections/moving-goods-into-out-of-or-through-northern-ireland>.

11.2 Businesses are able to learn more about and register for the expanded trusted trader scheme (the UK Internal Market Scheme) at: <https://www.gov.uk/guidance/apply-for-authorisation-for-the-uk-internal-market-scheme-if-you-bring-goods-into-northern-ireland>.

11.3 Guidance on the relevant duty waiver is also available at: <https://www.gov.uk/guidance/claim-a-waiver-for-duty-on-goods-that-you-bring-to-northern-ireland-from-great-britain>.

11.4 This guidance will be updated where necessary to take account of changes within this instrument before these changes take effect.

12. Impact

- 12.1 The impact on businesses, charities and voluntary bodies is expected to be positive as the instrument expands the range of goods movements that will not be subject to customs duty and reduces the administrative burden of processes associated with claiming a duty waiver.
- 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 additional action is proposed to minimise the impact of the requirements on small businesses (employing up to 50 people).
- 13.3 The basis for the final decision on what action to take is that the provisions in this instrument are facilitative for small business and therefore the impact is expected to be positive. In particular, amending customs legislation to refer to JCD1/2023, will mean that more small businesses will be able to move goods into Northern Ireland without paying EU customs duty. This is because the annual turnover threshold below which businesses who move goods into Northern Ireland for the purpose of commercial processing can move goods not “at risk” has quadrupled, from £500,000 to £2m.
- 13.4 The vast majority of businesses will be able to access the Trader Support Service (TSS). The TSS has been set up by the government and has been helping traders, regardless of size and at no additional cost, to move their goods between GB and NI, and to import goods into NI from the rest of the world.

14. Monitoring & review

- 14.1 HMRC will keep the instrument under review to ensure that it meets the policy objectives set out in section 7.
- 14.2 A statutory review provision is not included within this instrument 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 Zachary Azim and Jack Cooper, at HMRC. Emails: zachary.azim@hmrc.gov.uk and jack.cooper@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Alexander Pienaar, Deputy Director for Northern Ireland Customs Policy, at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Victoria Atkins, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.