

EXPLANATORY MEMORANDUM TO
THE TAXATION (CROSS-BORDER TRADE) (MISCELLANEOUS
AMENDMENTS) REGULATIONS 2024

2024 No. 12

1. Introduction

- 1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) on behalf of His Majesty's 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 changes the customs arrangements for goods arriving in Great Britain (GB) from the Republic of Ireland (RoI). It removes a temporary customs easement for goods which are imported into GB from RoI, so that in future, the customs requirements will be the same as those for goods imported from other European Union (EU) countries.
- 2.2 In line with the Government's commitment to provide unfettered access for Northern Ireland businesses to the rest of the UK market, the instrument removes existing customs declaration and notification requirements for the vast majority of qualifying Northern Ireland (NI) goods which move from NI to GB, via RoI.
- 2.3 The instrument makes further technical changes to customs requirements and updates the arrangements for excise goods so that they are consistent with the new customs arrangements.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 This instrument makes provision for certain matters to be specified in a notice published by HMRC under the Customs (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1605) (Northern Ireland Regulations).
- 3.2 The Taxation (Cross-border Trade) Act 2018 (TCTA) includes the express power to sub-delegate and certain provisions of this instrument rely on sections 32(8) of TCTA. The effect of this provision is 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 notice made under this instrument will be published at <https://www.gov.uk/government/collections/customs-vat-and-excise-uktransition-legislation-from-1-january-2021> no later than the date on which the relevant provisions of the instrument come into force.
- 3.3 References in the Import Duty Regulations to the transitional Entry in Declarant's Records (EIDR) simplified customs declaration process referenced in paragraph 6.6 have not been removed in this instrument. This process will remain available for

goods that departed Ireland prior to 31 January 2024, including goods that moved from Ireland and were placed in temporary storage or a customs procedure in Great Britain prior to 31 January 2024. These references will be removed in a future instrument.

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 main provisions in relation to customs duty that apply when goods are imported to the United Kingdom (UK) are set out in TCTA and regulations made under that Act. This includes the Customs (Import Duty) (EU Exit) Regulations 2018 (S.I. 2018/1248) (Import Duty Regulations) which contain provisions in relation to customs declaration of imported goods and the requirement to notify HMRC when goods are imported.
- 6.2 These TCTA provisions apply in GB where chargeable goods are imported to the UK from RoI. TCTA provides that goods are chargeable goods for this purpose unless they are domestic goods, as defined in and under section 33 TCTA.
- 6.3 Under the Northern Ireland Regulations, no import duty is chargeable on the movement of domestic goods from NI to GB, passing through RoI in the course of that movement. However, the Northern Ireland Regulations currently provide that these goods are subject to specific TCTA provisions concerning customs declarations and notification requirements, which will be removed in this SI.
- 6.4 The Northern Ireland Regulations further provide that ‘relevant import duty provisions’ (as defined at section 30C TCTA) apply in GB where a very limited category of goods are removed to GB from NI. This includes goods which are not qualifying NI goods under the Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020 (S.I. 2020/1454), goods which are moved via NI to avoid customs requirements that would be applicable if they were moved via RoI, and excise goods moved NI to GB having previously been moved to NI from the EU.
- 6.5 Where declarations are required, the Import Duty Regulations currently provide for a transitional easement available in respect of such declarations. Therefore, rather than having to complete a full customs declaration for goods arriving in GB, under the transitional EIDR simplified customs declaration process a declaration can be made in a trader’s own records when goods arrive in GB, and a supplementary declaration can be provided to HMRC up to 175 days after.
- 6.6 For excise goods, the legislation used to align excise rules to the extension of transitional easements has been drafted and laid using the powers conferred by section 45(1) and (2) and 48(10) and (11) of the TCTA so we consider that these provide the most appropriate vires.

6.7 This instrument comes within the scope of section 46(2) of the United Kingdom Internal Market Act 2020. Special regard has been given to Northern Ireland's place in the UK internal market and customs territory in accordance with subsection (1) of that section.

7. Policy background

What is being done and why?

- 7.1 Full customs controls were introduced from 1 January 2022 for goods entering GB from EU countries. They were not introduced for goods entering GB from RoI to maintain continuity for Northern Ireland businesses (who routinely move goods using this route) while discussions between the UK and EU on the operation of the old Northern Ireland Protocol were continuing.
- 7.2 Following agreement of the Windsor Framework, the Government announced in the Border Target Operating Model (BTOM) that full customs controls would be introduced for goods arriving from RoI from 31 January 2024 and that legal protections for unfettered access would be further strengthened, to avoid burdens on both direct NI to GB movements and indirect movements via RoI.
- 7.3 From that date, transitional customs easements will no longer be available for goods being imported from RoI and existing customs import requirements will be removed for the vast majority of qualifying NI goods which pass through RoI on the way to GB, to further reduce the burden for Northern Ireland businesses using this route.
- 7.4 This instrument, alongside the Ship's Report, Importation and Exportation by Sea (Amendment) Regulations 2024, implements these arrangements.
- 7.5 Specifically, the instrument removes the option to use the transitional EIDR simplified customs declaration process for any goods which require a declaration and depart RoI or NI for GB on or after 31 January 2024. These goods will be subject to the same customs declaration requirements as most other goods arriving in GB. This means that in many cases a full electronic customs declaration will have to be submitted to HMRC within 90 days of the goods being presented in GB or, in certain cases, before the goods arrive in GB.
- 7.6 Where the Import Duty Regulations require a customs declaration to be submitted to HMRC before goods arrive in GB from RoI, this instrument replaces the current requirement to notify HMRC that the goods have arrived in GB with a requirement for the person carrying the goods to notify HMRC that the goods are on their way to GB.
- 7.7 In addition to the changes described above, the instrument removes the current requirement for a customs declaration and notification of arrival for qualifying NI goods which pass through RoI on the way to GB, except in an exceptional subset of cases.
- 7.8 Declaration and notification requirements will remain in place for a highly limited range of goods moved from Northern Ireland, which will be specified in a HMRC public notice. This will continue to include goods subject to excise duty, in order to ensure the current domestic duty has been paid, as well as certain goods where customs controls are necessary to uphold the UK's international obligations (e.g. such as in relation to the movement of endangered species).
- 7.9 The instrument will deem the requirement to give HMRC a supplementary declaration to be met where the transitional EIDR simplified customs declaration process has been

used for goods entering GB before 31 January 2024. This will apply to any supplementary declarations due under the transitional EIDR simplified customs declaration process after 31 January for domestic qualifying NI goods which moved to GB from NI and passed through RoI in the course of that movement, providing the time limit for submitting the supplementary declaration has not expired. This means that traders will not need to provide any further information to HMRC on those movements.

- 7.10 For goods arriving in GB from RoI, the instrument removes the ability to delay entering excise goods into an excise duty suspension arrangement (the Excise Movement and Control System (EMCS)) until the time that their arrival is notified to HMRC. Delayed entry into the excise duty suspension system in line with customs arrival notification will remain for those NI to GB excise movements where import declarations are required. The time of excise duty payment rules will also be aligned with the new customs arrangements on these routes.
- 7.11 Elsewhere, the instrument includes minor updates to the Northern Ireland Regulations to clarify the application of certain requirements in relation to presentation of goods arriving in GB.

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.

9. Consolidation

- 9.1 No consolidation of the legislation amended by this instrument is considered appropriate at this time, but this will be kept under review.

10. Consultation outcome

- 10.1 The Government undertook engagement with businesses in Northern Ireland and the Devolved Administrations on the border arrangements announced in the BTOM. Further engagement and communications activities are also being undertaken with stakeholders ahead of the new customs arrangements taking effect from 31 January 2024, including representative bodies and crown dependencies.
- 10.2 The effect of measures in this instrument is to align the rules for goods imported to the UK from RoI with those which apply for imports from other EU countries. Elsewhere, the instrument removes customs declaration requirements for certain goods, in line with the commitment to provide unfettered access for qualifying NI goods moved into GB.

11. Guidance

- 11.1 All GOV.UK guidance relevant to this policy will be updated before this instrument comes into force.
- 11.2 Guidance on trading and moving goods in and out of NI can be found at <https://www.gov.uk/guidance/trading-and-moving-goods-in-and-out-of-northern-ireland>. Additional guidance on qualifying NI goods moving from NI to GB and passing through RoI will be published before this instrument takes effect on 31 January 2024.

11.3 Further guidance on VAT will be published before this instrument comes into effect.

12. Impact

12.1 There is no significant impact on business, charities, or voluntary bodies. These measures align the rules for goods imported to the UK from RoI with those which apply for imports from other EU countries.

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 (employing up to 50 people).

13.3 The basis for the final decision on what action to take to assist small businesses is that the measure in this instrument removes a transitional easement that was always intended to be temporary and ensures the customs requirements for imports from RoI are the same as those goods imported from other EU countries.

14. Monitoring & review

14.1 HMRC will keep the instrument under review through ongoing stakeholder engagement to ensure that it meets the Government's policy objectives.

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 Marcia Harris (marcia.harris@hmrc.gov.uk) and Ben Dudley (benjamin.dudley@hmrc.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Alex Pienaar, Deputy Director for Northern Ireland Customs Policy and Phil Bower, Deputy Director for Customs Coordination, Controls and Declarations at HMRC can confirm that this Explanatory Memorandum meets the required standard.

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