FINANCIAL SECRETARY TO THE TREASURY

HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

Simon Hoare MP
Chair, Northern Ireland Affairs Committee
House of Commons
London
SW1A 0AA

23 December 2020

Dear Simon,

CUSTOMS, VAT AND EXCISE EU EXIT STATUTORY INSTRUMENTS FOR NORTHERN IRELAND

I am writing to provide additional information about eight statutory instruments which have been, or will be, laid in Parliament this month. The instruments legislate for post-EU exit arrangements for customs, VAT and excise. They are all required to implement the Northern Ireland Protocol. All but the last of these statutory instruments support and add detail to legislation contained in the Taxation (Post Transition Period) Act (hereafter, the TPTP Act). I include more detail on each instrument below.

(1) The Customs (Northern Ireland) (EU Exit) Regulations 2020

This statutory instrument (SI) will set out the technical elements relating to the operation of the United Kingdom's collection of customs duties, including legislation on enforcement and penalties.

It will also contain provisions to distinguish goods that are deemed 'at risk' of entering the EU via Northern Ireland, so that where any customs duty is chargeable, the correct tariff is applied. This will provide clarity to UK businesses on how the customs regime will work in practice – whether they are importing goods to Northern Ireland from outside the UK, or moving goods from Great Britain to Northern Ireland. Domestic goods moving from Great Britain to Northern Ireland will only be chargeable to customs duty where they are 'at risk'. The criteria for goods 'not at risk' will be set out by the Withdrawal Agreement Joint Committee; this SI will give that decision legislative effect.

This SI also makes provisions for the application of a charge, legislated for in the TPTP Act, on goods entering Great Britain from Northern Ireland that do not qualify for unfettered access ('non-qualifying goods'). The SI ensures that the UK

Government can protect the UK market against goods coming from the EU via Northern Ireland, while honouring the Government's commitment to offer unfettered access to qualifying NI goods.

Further provisions relating to waivers and reimbursement of the charge will be contained in a separate SI, 'The Customs (Modification and Amendment) (EU Exit) Regulations 2020'. These further provisions will enable a person to claim a relief when they make a declaration of goods in Northern Ireland, or in due course, to claim a repayment of duty that has been paid. The new tariff waiver scheme will allow traders to claim a waiver when their goods are "at risk".

This SI also refers to notices that will be published subsequently by HMRC. The notices made under this instrument will be published no later than the date on which the relevant provisions of the instrument come into force.

(2) The Customs Miscellaneous Non-fiscal Provisions and Amendments etc. (EU Exit) Regulations 2020

This instrument will support the legislation being inserted into the Taxation (Cross-border Trade) Act 2018 (TCTA) by the TPTP Act, with necessary non-duty customs related provisions. The SI will make essential amendments to retained EU law applicable to customs safety and security declaration requirements and to Economic Operator Registration Identification to ensure that these apply appropriately in Great Britain and Northern Ireland. This change will allow the Government to maintain safety and security standards for goods that do not qualify for unfettered access to Great Britain, whilst allowing Northern Ireland traders to maintain unfettered access to the internal market.

This SI will also make minor amendments to other non-duty areas such as trade statistics in order to take account of the Northern Ireland Protocol, and will alter or disapply UK domestic legislation which would otherwise conflict with EU legislation that continues to apply in Northern Ireland as a result of the Protocol.

(3) The Value Added Tax (Miscellaneous Amendments to the Value Added Tax Act 1994 and Revocation) (EU Exit) Regulations 2020

In addition to the changes made to the Value Added Tax Act 1994 (VATA) in the TPTP Act this SI contains further amendments to VATA that are necessary in relation to Northern Ireland. This SI reinstates rules in relation to existing obligations under EU rules that were removed by the TCTA but are still required in relation to Northern Ireland.

It also introduces regulations to ensure that, given the wider changes made by the TPTP Act, the legislation achieves the correct result in terms of VAT payable, for example, through amendments to the rules on the recovery of input tax.

(4) The Value Added Tax (Northern Ireland) (EU Exit) Regulations 2020

This instrument introduces additional provisions required in relation to the movement of goods between Great Britain and Northern Ireland. This includes the introduction of necessary exceptions to the new Schedule 9ZB of the VAT Act 1994 introduced by the TPTP Act. It also provides for accounting and invoicing rules required for these movements. The provisions in this SI make use of flexibilities under EU rules to retain the current VAT treatment of these goods in so far as is possible. For example, under Schedule 9ZB the supplier will be accountable for the import VAT and account for it on their VAT return in the same way that the supplier currently accounts for VAT on supplies.

(5) The Value Added Tax (Miscellaneous Amendments, Northern Ireland Protocol and Savings and Transitional Provisions) (EU Exit) Regulations 2020

This SI makes necessary amendments to existing secondary legislation in consequence of provisions made in the TPTP Act. This will, for example, reinstate existing rules that were omitted by earlier EU exit legislation in relation to acquisitions of goods from the European Union to Northern Ireland. The reinstated rules have been slightly modified for application post- EU exit. The SI will also ensure that, where necessary, relevant provisions in the Union Customs Code continue to apply to imports into Northern Ireland as required under the Protocol.

(6) The Travellers' Allowances and Miscellaneous Provisions (Northern Ireland) (EU Exit) Regulations 2020

This SI sets out the detail for reliefs of excise duty on goods transported by travellers to or from Northern Ireland for personal use. Whilst movements between Northern Ireland and the EU / the rest of the world continue to be covered by existing processes, this SI makes provisions for movements between Great Britain and Northern Ireland in both directions. For travellers carrying goods from Northern Ireland to Great Britain for their personal use, the SI keeps the process as close as possible to its current form by removing the need for them to pay excise duty on those goods. For movement of goods in the opposite direction, from Great Britain to Northern Ireland, excise duty will be chargeable but this SI will offset that duty with the excise duty that has already been paid in Great Britain.

This SI will also ensure that existing allowances contained in the Travellers Allowances Order (S.I.1994/955) will continue to apply in relation to goods carried by individuals from Great Britain to Northern Ireland, in line with the Protocol.

(7) The Excise Duties Miscellaneous Provisions (Northern Ireland) (EU Exit) Regulations 2020.

This SI will make amendments to the existing Holding, Movement & Duty Point Regulations 2010 (HMDP) required by the Protocol. The 2010 HMDP regulations will be updated to reflect the Protocol and the need to follow EU rules in Northern Ireland. As such, most of the changes serve to make it clear that these rules only apply in Northern Ireland, by referring to 'Northern Ireland' instead of 'United Kingdom'. However, because Northern Ireland will be the only part of the UK that continues to apply the EU rules, this SI also adds some new rules into HMDP to cover the movement of goods between Northern Ireland and the rest of the UK.

(8) The Tobacco Products (Traceability System and Security Features) (Amendments) (EU Exit) Regulations 2020

These regulations reflect the Government's commitment to the World Health Organization's Framework Convention on Tobacco Control and the Protocol to Eliminate Illicit Trade in Tobacco Products, which requires Parties to implement a system to track tobacco products through their supply chain.

This SI provides for the UK to continue to operate a security features scheme and tobacco traceability system at the end of the transition period, when access to the current EU-wide system for Great Britain will end. In addition, it implements obligations under the Protocol, which requires Northern Ireland to remain connected to the EU-wide system. This means that tobacco products manufactured in or, imported into, Northern Ireland will be tracked under both the UK and EU systems from 1 January 2021.

As ever,

Jesse Norman

RT HON JESSE NORMAN MP