

# **EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND NORTHERN IRELAND PROTOCOL**

**C(2022)4494**

**COMMISSION DELEGATED REGULATION (EU) .../... of 5.7.2022 supplementing Council Directive (EU) 2020/262 by establishing the structure and content of the documents exchanged in the context of movement of excise goods, and establishing a threshold for the losses due to the nature of the goods**

**C(2022)4497**

**COMMISSION IMPLEMENTING REGULATION (EU) .../... of 5.7.2022 laying down the rules for the application of Council Directive (EU) 2020/262 as regards the use of documents in the context of movement of excise goods under a duty suspension arrangement and of movement of excise goods after release for consumption, and establishing the form to be used for the exemption certificate**

Submitted by HM Revenue & Customs

7 October 2022

## **SUBJECT MATTER**

1. Commission Delegated Regulation (C(2022)4494), supplements Council Directive (EU) 2020/262. Directive 2020/262 is a recast of Directive 2008/118/EC (the 'Horizontal Excise Directive'); the main Directive governing the holding and movement of excise goods in the EU.
2. Directive 2020/262, the Delegated Regulation and the Implementing Regulation are all to apply from 13 February 2023.
3. EU excise rules for goods apply to and in the UK only in respect of Northern Ireland under Article 8 of the Northern Ireland Protocol. Directive 2020/262 has a transposition date of 31 December 2021, but it was not transposed at that time given the wider Government position, discussed with the EU, of maintaining the operation of the Protocol on its current basis. In July 2022, the EU commenced infringement proceedings against the UK for a failure to communicate the transposition of the Directive. The UK Ambassador to the EU responded to the EU Commission on this and other infringement proceedings on 22 September 2022. The letter requests an extension of time to respond to the Letters of Formal Notice (to 22 November 2022). This will enable the response to reflect progress in wider discussions with the EU on the current operation of the Protocol. The EU have responded to our request and agreed to an extension until 22 November.
4. Council Directive 2020/262 aims to support trade facilitation and assist in preventing fraud by increasing the transparency of excise movements using IT solutions. The

main improvements are better alignment of customs and excise procedures, and expansion of the Excise Movement and Control System (EMCS) to include the supervision of movements of goods that have been released for consumption (duty-paid movements) for commercial purposes.

5. The Delegated Regulation (C(2022)4494) and its annex address these aims by setting new data elements and formats of messages exchanged in EMCS and applying these to duty paid movements as well as movements in duty suspension. The 'fallback' documents (applicable when EMCS is unavailable) are also updated.
6. The Regulation also applies a 'common partial loss threshold'. This is the amount of loss that, due to the nature of the goods, can occur during a movement in duty suspension and which, under these provisions, will not be considered a release for consumption (otherwise requiring duty to be paid). The common partial loss threshold is limited to manufactured tobacco products and is set at 0%.
7. Commission Implementing Regulation C(2022)4497 further supports the changes of Directive 2020/262 by updating certain requirements in connection with the electronic documents generated by, and messages within, EMCS. These include changes to do with the cancellation of movements, changes in destination or consignee, and the splitting of movements of energy products.
8. The annex to the Implementing Regulation updates the certificate used in connection with goods that are exempt from excise duty. This includes an update to reflect a new exemption (recast in 2020/262) for goods used by the armed forces of a Member State taking part in an EU activity of the Common Security and Defence Policy (CSDP).

## **SCRUTINY HISTORY**

9. Council Directive 2020/262 was subject to scrutiny as EU documents 9571/18, Com (28)346 on which HMRC submitted an Explanatory Memorandum (EM) dated 16 June 2018. The House of Commons European Scrutiny Committee reported on the EM on three occasions in reports 33 and 50, 17/19 and in report 23, 19/21 as raising issues of legal and/or political importance. The EM was sifted to the then House of Lords European Union Committee's Financial Affairs sub-committee which did not have follow up questions for the Government.
10. Council Directive 2019/2235 (introducing the CSDP forces exemption) was subject to scrutiny as EU document 8940/19, COM(19)192. HM Treasury submitted an EM dated 20 May 2019. The Commons European Scrutiny completed scrutiny on 5 June 2019 without requiring a substantive report to the House. The proposal completed scrutiny by the then House of Lords European Union Committee at the Chair's sift on 5 June 2019 (Sift 1743).

## **MINISTERIAL RESPONSIBILITY**

11. The Chancellor of the Exchequer has responsibility for UK policy on European Union monetary and economic issues.
12. The Economic Secretary to the Treasury has responsibility for tax policy and customs.
13. The Exchequer Secretary to the Treasury has responsibility for excise duties (alcohol, tobacco, fuel and gambling), including excise fraud and law enforcement.
14. The Secretary of State for Foreign, Commonwealth and Development Affairs is responsible for overall UK policy towards the EU.

## **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

15. Excise Duties are a reserved matter under the UK's devolution settlements.
16. Under the Northern Ireland Protocol to the Withdrawal Agreement, EU Excise law applies to and in the United Kingdom in respect of Northern Ireland. Northern Ireland Executive Ministers have an interest in any amendment that concerns legislation applicable in Northern Ireland under the Protocol.
17. The Northern Ireland Civil Service has been consulted in the preparation of this Explanatory Memorandum and were interested in the impact on businesses.

## **LEGAL AND PROCEDURAL ISSUES**

18. The legal basis of the Delegated Regulation is Articles 6(10), 29(1) and 43(1) of Directive 2020/262. Article 6(10) empowers the Commission to adopt delegated acts establishing the common partial loss thresholds. Article 29(1) empowers the Commission to adopt delegated acts establishing the structure and content of the electronic administrative documents exchanged through the computerised system. Article 43(1) empowers the Commission to adopt delegated acts establishing the structure and content of the electronic administrative documents exchanged through the computerised system.
19. The legal basis of the Implementing Regulation is Articles 12(3), 29(2) and 43(2) of Directive 2020/262. Article 12(3) empowers the Commission to adopt implementing acts establishing the form to be used for the exemption certificate. Article 29(2) empowers the Commission to adopt implementing acts establishing the rules and procedures for the exchanges of the electronic administrative documents through the computerised system. Article 43(2) empowers the Commission to adopt implementing acts establishing the rules and procedures to be followed for the exchange of the electronic administrative documents through the computerised system.
20. There are no procedural issues. The UK has withdrawn from the EU. Following the terms of the Withdrawal Agreement, as of 1 January 2021, EU law no longer applies

to the UK. However, under the terms of the Northern Ireland Protocol, the provisions of EU law listed in Annex 3 concerning excise goods (including those provisions supplementing or implementing those provisions) are to continue to apply to, and in, the UK in respect of Northern Ireland.

21. The Delegated and Implementing Regulations will enter into force on the twentieth day following that of their respective publications in the *Official Journal of the European Union*. They will apply from 13 February 2023.

## **POLICY IMPLICATIONS**

22. The UK, when a member of the EU, supported the objectives of Directive 2020/262 to improve processes and procedures to manage risks while minimising burdens on legitimate business. The changes covered here are broadly welcomed as very technical, but logical, changes in line with the aims of the Directive, and are necessary to support movements of excise goods between Northern Ireland and EU Member States; in particular Ireland.
23. We estimate around 200 businesses will be affected by the new processes required under the Directive (which these acts supplement). Although new processes create burdens for businesses, we anticipate these burdens will be offset by the reduced administrative burden in replacing the current paper-based process.
24. The UK has not transposed the new requirements of Directive 2020/262 and this is now the subject of EU infringement proceedings. As explained above, the UK Ambassador to the European Union has responded to the Letters of Formal Notice requesting a two-month extension until 22 November 2022 while discussions progress. The EU have responded to our request and agreed to an extension until 22 November.

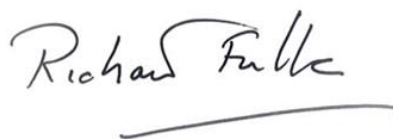
## **CONSULTATION**

25. The Commission carried out a consultation in the context of the revision of Council Directive 2008/118/EC with Member States' administrations, economic operators and citizens between April and July 2017.
26. There has been no UK consultation on this change.

## **FINANCIAL IMPLICATIONS**

27. These Regulations are not expected to have any significant economic impacts or business impacts (paragraph 23). There are some additional costs for HMRC in implementing these changes, for example, updating EMCS.

**MINISTERIAL NAME AND SIGNATURE**

A handwritten signature in black ink that reads "Richard Fuller". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Richard Fuller MP

Economic Secretary to the Treasury

HM Treasury