HM Revenue & Customs

HM Treasury

Customs duty: Amendment of the Taxation (Cross-border Trade) Act 2018

Who is likely to be affected

Businesses and individuals moving goods:

- to Northern Ireland or
- from Northern Ireland

General description of the measure

The measure introduces targeted legislative changes to implement the Northern Ireland Protocol and allow customs processes to operate effectively at the end of the Transition Period. Specifically, this will include provisions:

- to ensure that European Union (EU) goods imported into Northern Ireland from the European Union are not subject to customs duties or processes
- to introduce a customs duty charge where:
  - goods are moved to Northern Ireland from Great Britain and these are deemed 'at risk' of subsequently being moved into the EU or are non-domestic goods
  - non-EU goods are imported into Northern Ireland
  - goods which are not Qualifying Northern Ireland Goods are moved to Great Britain from Northern Ireland
  - Qualifying Northern Ireland Goods (that would otherwise be eligible for unfettered access) are moved from Northern Ireland to Great Britain for the purpose of avoiding customs duties

The measure also provides for consequential amendments to recognise that different customs rules will apply in Northern Ireland as a result of the Protocol.

Policy objective

The measure supports the practical application of certain provisions in the Northern Ireland Protocol which relate to goods that are potentially chargeable to customs duty. It does not introduce any requirement beyond that which was agreed in the Withdrawal Agreement or is a necessary consequence of the Withdrawal Agreement. The measure will allow the UK Government to make regulations to implement the outcome of Joint Committee negotiations.

Background to the measure

The measure was introduced to impose charges to customs duty, in line with the Northern Ireland Protocol. The Protocol sets out the special arrangements for Northern Ireland that were agreed by the UK and the EU as part of the terms for the UK to leave the EU; and is contained in the Withdrawal Agreement, which was published 19 October 2019.

The Withdrawal Agreement was given legal effect in the UK by The European Union (Withdrawal Agreement) Act 2020 which amends the European Union (Withdrawal) Act 2018 (EUWA).

HMRC has consulted with businesses affected by the new obligations and will continue to do so.

Detailed proposal

Operative date

The measure will amend The Taxation (Cross-border Trade) Act 2018 (TCTA 2018) and apply from the end of the Transition Period, i.e. 11pm on 31 December 2020.

Current law

This measure will introduce new legislation to charge customs duty for certain goods and will amend the TCTA 2018.

Proposed revisions

This measure will insert the following provisions into the TCTA 2018, to support the Northern Ireland Protocol.

Section 40A, which concerns goods moving to Northern Ireland from Great Britain, supports the practical application of the provision in the Northern Ireland Protocol at Article 5(1), first subparagraph. It provides that goods moving to Northern Ireland from Great Britain, that are deemed ‘at risk’ of subsequently being moved to the EU, will be chargeable to customs duty in accordance with European Union customs legislation. HM Treasury (HMT) will be able to specify, by regulation, which goods are considered ‘at risk’ of being subsequently moved into the European Union, and therefore chargeable.

Section 40B introduces new powers to enable the Treasury, by regulation, to provide that for goods which are not at risk of being moved to the EU, matters relating to the charging of duty will be determined in accordance with the TCTA 2018 and not European Union customs legislation. Section 40B introduces other new powers to enable HMT, by regulation, to introduce additional provisions for the purposes of the duty under section 40A; for example, to provide that the charge under section 40A will not be imposed on specific goods as agreed with the Joint Committee, or to waive or reimburse EU duties within the confines of Article 10 of the Northern Ireland Protocol.

Section 30A, which concerns imports into Northern Ireland from the EU and rest of the world (excluding Great Britain), supports the practical application of provisions in the Northern Ireland Protocol in Article 5(1) second subparagraph and Article 5(3). It provides that EU goods imported into the UK as a result of entering Northern Ireland will not be chargeable to UK import duty. Non-EU goods imported into Northern Ireland will be chargeable to customs duty in accordance with European Union customs legislation. However, HMT will be able to specify in regulation that where goods imported into Northern Ireland are not at risk of being moved to the EU, EU customs duty will not apply and instead duty calculated under the TCTA 2018 will apply.

Section 30B introduces new powers to enable the Treasury, by regulation, to provide that for goods which are not at risk of being moved to the EU, matters relating to the charging of duty will be determined in accordance with the TCTA 2018 and not European Union customs legislation, and therefore pay the UK tariff. Section 30B introduces other new powers to enable the Treasury, by regulation, to make provisions generally, for the purposes of the duty under section 30A; for example, to waive or reimburse EU duties within the confines of Article 10 of the Northern Ireland Protocol.

Section 30C provides that goods moving to Great Britain from Northern Ireland will be chargeable with duty where these are not ‘Qualifying Northern Ireland Goods’. The duty will be calculated under the TCTA 2018. ‘Qualifying Northern Ireland Goods’ are those goods that will qualify for duty and declaration free access to the rest of the UK market. Qualifying Northern Ireland Goods are defined in regulations made under section 8C EUWA 2018. Qualifying Northern Ireland Goods that are moved to Great Britain from Northern Ireland for an avoidance purpose will be chargeable to duty calculated under the TCTA 2018.

Section 30C introduces new powers to enable HMT, by regulation, to make provisions generally, for the purposes of the duty that is chargeable under the section; for example, to provide that the charge will not be imposed on goods of a specified description.

The measure also includes a number of modifications to domestic customs legislation that are designed to ensure that this legislation can continue to apply alongside European Union customs legislation in Northern Ireland where required, and to take account of customs rules that may apply when goods are moved between Great Britain and Northern Ireland.

Summary of impacts

Exchequer impact (£m)

2020 to 2021	2021 to 2022	2022 to 2023	2023 to 2024	2024 to 2025	2025 to 2026

The Office for Budget Responsibility included the impact of EU exit in their Economic and fiscal outlook November 2020, this includes the impact of this measure.

Economic impact

This measure is not expected to have any significant macroeconomic impacts.

Impact on individuals, households and families

The measure does not introduce any requirement for individuals beyond what has already been agreed in or is a necessary consequence of the Northern Ireland Protocol.

There is not expected to be any impact on family formation, stability or breakdown.

Equalities impacts

It is not anticipated that there will be any impacts on groups with protected characteristics.

Impact on business including civil society organisations

This measure is not expected to have any additional impact on businesses, including civil society organisations, as it is in line with the implementation of the Northern Ireland Protocol, which is already part of UK law, and as such the impacts have already been considered.

Operational impact (£m) (HMRC or other)

There will be no operational impact as a result of this measure as it does not introduce any new requirement beyond what has already been agreed in the Northern Ireland Protocol or is a necessary consequence of what has been agreed.

Other impacts

Other impacts have been considered and none has been identified.

Monitoring and evaluation

The measure will be kept under review through communication and continuing stakeholder engagement with trade bodies and other representative businesses.

Further advice

If you have any questions about this change, please contact James Bigley, email: james.bigley@hmrc.gov.uk.

Declaration

The Right Honourable Jesse Norman MP, Financial Secretary to the Treasury, has read this tax information and impact note and is satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impacts of the measure.