

**Taxation (Post-transition Period) Bill: Clauses with powers to make secondary legislation**

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## **Glossary of statutory references and other terms:**

### *Statutory references*

EUWA 2018	European Union (Withdrawal) Act 2018
FA, followed by year	Finance Act of that year
TCTA 2018	Taxation (Cross-border Trade) Act 2018
TIOPA 2010	Taxation (International and Other Provisions) Act 2010
VATA 1994	Value Added Tax Act 1994

### *Other terms*

EU	European Union
HMRC	Her Majesty's Revenue and Customs
IPT	Insurance Premium Tax
VAT	Value Added Tax
UK	United Kingdom

## **Introduction**

This note sets out the secondary legislation making powers being taken in the Taxation (Post-transition Period) Bill.

The vast majority of the Bill concerns the re-enactment of existing provision (including powers) relating to VAT in Northern Ireland. That existing provision applies to the whole of the UK, but as re-enacted will only apply in relation to Northern Ireland (and the scope of any powers are narrowed accordingly).

Clauses 1 and 2 (along with Schedule 1) make provision about import duty and other customs duties in connection with the implementation of the Northern Ireland Protocol. Those clauses contain powers to apply, or modify the application of, provisions of existing domestic and EU customs legislation as appropriate to make the system work effectively. Clause 1 contains a power to define the meaning of “at risk of subsequently being moved into the European Union”, which will ensure that for goods moving from Great Britain to Northern Ireland, any customs duty applicable will be charged at the correct tariff.

Clause 3 and Schedule 2 make amendments to VATA 1994 (and other legislation relating to VAT). Those amendments preserve provision about acquisition VAT, which is being abolished in Great Britain but must be retained for Northern Ireland. They also contain provision mirroring existing provision about imports that are applied to certain movements of goods between Northern Ireland and Great Britain. Powers are being taken to apply, or modify the application of, provision relating to VAT and customs to make the VAT system work.

Clause 4 makes provision for excise duty to be charged on excise goods (e.g. alcohol or tobacco) moving from Great Britain to Northern Ireland. Clause 5 contains a power to apply, disapply or modify the application of, provisions of domestic legislation relating to excise duty to duty charged as a result of section 4 or to goods that are or may be subject to that duty.

Clause 7 makes provision in relation to online sales. The powers being taken will allow regulations to be made to vary the value of consignments; specify details that must be provided; amend definitions; make provision about record-keeping, and specify the form and manner in which notifications must be given.

Clause 8 amends section 65 of FA 1994 (which makes provision about regulations) to ensure that after the end of the transition period HMRC can recover IPT regardless of whether the insurer is based in an EU member state or not.

Clause 9 provides for the recovery of State aid in respect of the UK’s controlled foreign company regime. The powers being taken will allow regulations to be made to extend the period within which a charging notice can be issued and to deal with the consequences if the Commission Decision is annulled, revoked or varied.

Clause 11 provides for the commencement of the Act.

## **Clause 1: Duty on goods removed to Northern Ireland**

Clause 1 inserts new sections 40A and 40B into TCTA 2018. These new sections, which are charging provisions, support the practical application of provisions in Article 5 and Article 6 of the Northern Ireland Protocol.

Section 40A(1) provides that goods removed to Northern Ireland from Great Britain that are not domestic goods or at risk of being subsequently moved into the European Union will be chargeable to customs duty. Section 40A(3) provides that the customs duty is chargeable in accordance with EU customs legislation. Section 40A(2) allows the Treasury by regulations to define the meaning of “at risk of being subsequently moved into the European Union”. The Treasury intend to exercise this power before 1 January 2021. Where appropriate the power will be exercised with reference to the position agreed under arrangements set out in the Northern Ireland Protocol. The regulations will be subject to negative procedure.

Section 40B(1) allows the Treasury by regulations to provide that, for goods of a specified description, certain matters relating to the charging of duty can be determined in accordance with TCTA 2018, rather than EU customs legislation. The Treasury intend to exercise this power before 1 January 2021. Where appropriate the power will be exercised with reference to the position agreed under arrangements set out in the Northern Ireland Protocol. The regulations will be subject to negative procedure.

Section 40B(2) allows the Treasury by regulations to make provision generally for the purposes of the duty under section 40A TCTA 2018. The Treasury intend to exercise this power before 1 January 2021 to provide reliefs and waivers and reimbursements in cases where an EU tariff has been applied under section 40A. Regulations will also modify domestic customs legislation - on matters such as enforcement and penalties - to ensure that this customs legislation can operate effectively for the purposes of this charge, alongside the EU customs legislation that will continue to apply in Northern Ireland. The regulations will be subject to negative procedure.

## **Clause 2: Duty on goods imported into or removed from Northern Ireland and Schedule 1: Further amendments relating to the Northern Ireland Protocol**

Clause 2 inserts new sections 30A, 30B and 30C into TCTA 2018. Sections 30A and 30B TCTA 2018 support the practical application of provisions in Articles 5 of the Northern Ireland Protocol. Section 30C supports the practical application of Article 6 of the Northern Ireland Protocol.

Section 30A concerns imports into Northern Ireland from the EU and rest of the world. It provides that EU goods imported into the UK as a result of entering Northern Ireland (union goods) will not be chargeable to import duty. Non-EU goods imported into Northern Ireland (non-union goods) will be subject to duty in accordance with EU customs legislation, and not to import duty under TCTA 2018. However, section 30A(4) allows the Treasury to provide by regulations that goods imported into the UK as a result of their entry into Northern Ireland, will be chargeable goods for the purposes of provisions made by or under Part 1 of TCTA. The Treasury intend to exercise this power before 1 January 2021. The regulations will be subject to negative procedure.

Section 30B(1) allows the Treasury to provide by regulations that for goods of a specified description, that are imported into the UK by entry into Northern Ireland, certain matters relating to the charging of duty can be determined in accordance with TCTA 2018, rather than EU customs legislation. The Treasury intend to exercise this power before 1 January 2021. The regulations will be subject to negative procedure.

Section 30B(3) TCTA 2018 allows the Treasury by regulations to make provision generally for the purposes of duty under section 30A(3). The Treasury intend to exercise this power before 1 January 2021, to provide reliefs and waivers and reimbursements in cases where an EU tariff has been applied. Regulations will also modify domestic customs legislation - on matters such as enforcement and penalties - to ensure that this legislation can operate for the purposes of this charge, alongside the EU customs legislation that will continue to apply in Northern Ireland. The regulations will be subject to negative procedure.

Section 30C provides that goods removed to Great Britain from Northern Ireland will be chargeable to UK import duty where the goods are not qualifying Northern Ireland goods, or where the removal of the goods is for an avoidance purpose. Qualifying Northern Ireland goods are those goods that will qualify for measures facilitating access to the market within Great Britain; and will be defined in regulations to be made under section 8C of EUWA 2018.

Section 30C(5) allows the Treasury to make regulations generally, for the purposes of the duty chargeable under section 30C. The Treasury intend to

exercise this power before 1 January 2021, to specify goods that will not be subject to the charge. The regulations will be subject to negative procedure.

Clause 2(5) introduces Schedule 1, which (in paragraph 4(5)) inserts new subsections (4A) and (4B) into section 33 TCTA 2018. Subsection (4A) provides that goods cease to be domestic goods if they are exported from the UK as a result of their removal from Northern Ireland and are not of a description specified in regulations made by the Treasury. The Treasury intend to exercise this power before 1 January 2021 to specify goods that do not cease to be domestic goods when exported from the UK as a result of their removal from Northern Ireland. The regulations will be subject to the negative procedure.



## **Clause 3 and Schedule 2: Value added tax in Northern Ireland**

Clause 3 introduces Schedule 2 which makes amendments to VATA 1994 and to other enactments relating to VAT in Northern Ireland. Schedule 2 inserts new Schedules 9ZA and 9ZB into VATA 1994.

New Schedule 9ZA deals with VAT on acquisitions in Northern Ireland from EU member States. VATA 1994 contains existing rules in relation to acquisitions into the UK from the EU. Those rules are being omitted under TCTA 2018. Schedule 9ZA reinstates those rules (modified as necessary) in relation to Northern Ireland as required under the Northern Ireland Protocol.

New Schedule 9ZB deals with the rules in relation to goods moved into and out of Northern Ireland and relevant supply rules.

Schedule 9ZA largely reinstates existing powers, modified as required, in relation to acquisitions from the EU to Northern Ireland.

Paragraph 1(5) of Schedule 9ZA allows the Commissioners for HMRC to make regulations that make provisions (including modifications to existing rules) in relation to goods acquired in Northern Ireland from a member State. There are no plans to use this power to implement legislation required for the end of the transition period. Any regulations would be subject to negative procedure.

Paragraph 7(4) of Schedule 9ZA allows the Commissioners for HMRC to make regulations in relation of the identification of businesses for the purposes of VAT in Northern Ireland. There are no plans to use this power to implement legislation required for the end of the transition period. Any regulations would be subject to negative procedure.

The table in Annex A sets out other powers being taken in Schedule 9ZA; the corresponding existing power (where relevant), and whether the power is exercisable by the Treasury or the Commissioners for HMRC. There are no plans to use these powers to implement legislation required for the end of the transition period. Any regulations or order would be subject to the same procedure as existing corresponding powers. Provision required for the end of the transition period to reinstate acquisition rules in relation to Northern Ireland and provision regarding identification of business for the purposes of the Northern Ireland Protocol will be implemented using the power in section 51 of TCTA 2018, where that is not done by this Bill.

Paragraph 1(7) of Schedule 9ZB allows the Commissioners for HMRC to make regulations to supplement or modify existing rules in relation to VAT charged on importations of goods into the UK as a result of their entry into Northern Ireland. It also allows for the Treasury to supplement or modify the application of Union customs legislation, in so far as it relates to VAT charged on such importations.

There are no plans to use these powers. Any regulations would be subject to negative procedure.

Paragraph 3(7) of Schedule 9ZB allows the Treasury to make regulations to supplement or modify rules in relation to goods covered by paragraphs 3(2) and 3(4) of Schedule 9ZB (goods removed from Northern Ireland to Great Britain and from Great Britain to Northern Ireland). It also allows for the Treasury to supplement or modify the application of Union customs legislation, in so far as it relates to VAT charged on movement of goods from Great Britain to Northern Ireland. There are no plans to use these powers. Any regulations would be subject to negative procedure.

Paragraph 4(6) of Schedule 9ZB allows the Commissioners for HMRC to make regulations that make provisions that determine who will be treated as importing goods that are removed from Great Britain to Northern Ireland and vice versa. It also provides for regulations about the enforcement, accounting, notification and payment of VAT in relation to those removals. There are no plans to use these powers. Any regulations would be subject to negative procedure. Further implementation of provisions required for the end of the transition period in relation to Northern Ireland will be implemented using the power in section 51 of TCTA 2018.

In addition to the powers outlined above, certain provisions within Parts 1 and 3 of Schedule 9ZB modify existing VATA provisions in relation to their application in Northern Ireland. Where those existing provisions contain a power, the table in Annex B lists those provisions, the existing power, and whether the power is exercisable by the Treasury or the Commissioners for HMRC.

Part 4 of Schedule 9ZB deals with the rules in relation to warehouses and fiscal warehouses. Current rules are contained in VATA 1994. Those rules are amended by TCTA 2018 to reflect the UK's exit from the EU. Under the Northern Ireland Protocol, it is necessary to retain existing rules (modified as required) in relation to movements between the EU and Northern Ireland.

Part 5 of Schedule 9ZB deals with rules in relation to Northern Ireland supplies. It reinstates existing powers that are removed by TCTA 2018 but are still required in relation to movements between Northern Ireland and the EU.

The table in Annex C sets out the powers being taken in Parts 4 and 5 of Schedule 9ZB; the corresponding existing power, and whether the power is exercisable by the Treasury or the Commissioners for HMRC. There are no plans to use these powers. Any regulations would be subject to negative procedure. Further reinstatement of provisions in relation to Northern Ireland for the end of the transition period will be under the power contained in section 51 of TCTA 2018.

### **Clause 5: Duty under section 4: supplementary**

Clause 5(1) modifies the application of provision made by or under the customs and excise Acts in consequence of the clause 4 extension of the circumstances in which a charge to excise duty arises to the removal of excise goods to Northern Ireland from Great Britain.

Clause 5(2) allows the Treasury by regulations to make provision about (including modifying) the application of the customs and excise Acts to excise duty charged as a result of clause 4 of the Bill on goods moved from Great Britain to Northern Ireland or to goods that are or may be subject to that duty. Any such regulations would be made after the end of the transition period. Any such regulations would be subject to negative procedure.

### **Clause 7 and Schedule 3: Value added tax: online sales by overseas persons and low value importations**

Clause 7 introduces Schedule 3 which makes amendments to VATA 1994 and to other enactments relating to VAT to provide for the VAT treatment of certain supplies of goods from overseas suppliers and imported goods.

Schedule 3 inserts new sections 5A, 7(9A) and 7AA into VATA 1994. Sections 5A(5), 7(9A) and 7AA(3) allow the Commissioners for HMRC by regulations to substitute a different figure for the intrinsic value of a consignment specified in subsections 5A(3)(b), 7(5B)(c) and 7AA(1)(d) of VATA 1994, respectively. The intrinsic value of a consignment forms part of the conditions that must be satisfied for sections 5A(3), 7(5B) and 7AA VATA 1994 to apply. There are no plans to use this power. Any regulations would be subject to negative procedure.

Paragraph 3 of Schedule 3 inserts new section 5A(5)(a) which allows the Commissioners for HMRC by regulations to specify the details that an operator of an online marketplace must provide to the supplier of the goods, in subsection 5(1A)(c), so the operator is not deemed to have received or made a supply of those goods pursuant to section 5A of VATA 1994. There are no plans to use this power. Any regulations would be subject to negative procedure.

Paragraph 14 of Schedule 3 inserts new section 95A into VATA 1994. Section 95A(3) allows the Treasury by regulations to amend the definitions of “online marketplace” and “operator”. There are no plans to use this power. Any regulations would be subject to negative procedure.

Paragraph 17(3) of Schedule 3 amends paragraph 6(5) of Schedule 11 to VATA 1994 to allow the Commissioners for HMRC to make further provision about the form in, and the means by, which records are to be kept. There are no plans to use this power. Any regulations would be subject to negative procedure.

Paragraph 26 of Schedule 3 amends section 40A of VATA 1994 to insert new Schedule 9ZC (Online sales by overseas persons and low value importations: modifications relating to the Northern Ireland Protocol) into VATA 1994.

Paragraph 4(5) of Schedule 9ZC allows the Commissioners for HMRC by regulations to substitute a different figure for the intrinsic value of a consignment specified in paragraph 4(1)(c) of Schedule 9ZC. The intrinsic value of a consignment forms part of the conditions that must be satisfied for paragraph 4(2) of Schedule 9ZC to apply. There are no plans to use this power. Any regulations would be subject to negative procedure.

Paragraph 12 of Schedule 9ZC allows the Commissioners for HMRC by regulations to specify the form and manner in which notifications under Part 3 (Registration) of the Schedule are to be given. There are no plans to use this power. Any regulations would be subject to negative procedure.

Paragraph 29 of Schedule 3 inserts new paragraph 4A(5) into Schedule 9ZC which allows the Commissioners for HMRC by regulations to specify the details that an operator of an online marketplace must provide to the supplier of the goods, in subparagraph 4A(3)(c) so the operator is not deemed to be the importer of the goods pursuant to subparagraph 4A(2). There are no plans to use this power. Any regulations would be subject to negative procedure.

### **Clause 8: Liability of insured in certain cases**

Clause 8 amends section 65 of FA 1994 (which makes provision about regulations) to ensure that after the end of the transition period HMRC can recover IPT regardless of whether the insurer is based in an EU member state or not.

## **Clause 9: Recovery of unlawful State aid and Schedule 4: Controlled foreign companies: recovery of unlawful State aid**

Clause 9 and Schedule 4 insert new Section 371UFA and new Schedule 7ZA into TIOPA 2010, and provide for the recovery of State aid and related interest charges in accordance with a European Commission State aid Decision concerning the UK Controlled Foreign Company regime.

Paragraph 3(3) of Schedule 7ZA allows the Treasury by regulations to extend the 12-month period within which any charging notices in relation to the recovery of State aid must be issued. Such regulations can be made if they are considered necessary to give effect to the Commission Decision. There are no plans to use this power. Any regulations would be subject to negative procedure.

Paragraph 10(1) requires the Treasury by regulations to make such provisions as are considered appropriate if the Commission Decision is revoked or annulled, in order to put affected companies back in the position that they would have been had the Commission Decision not been made, and Schedule 7ZA had not had effect. This requirement does not apply if there is, or may be, a further State aid decision which has the same or similar effect as the Commission Decision. The use of this power will be dependent on the outcome of annulment proceedings. Any regulations would be subject to negative procedure.

Paragraph 10(3) allows the Treasury by regulations to make such provisions as are considered appropriate to take account of any variation in the Commission Decision, or any further State aid decision which has the same or similar effect as the Commission Decision. The use of this power will be dependent on the outcome of annulment proceedings. Any regulations would be subject to negative procedure.

## **Clause 11: Commencement**

Clause 11(3) allows the Treasury by regulations to appoint the day on which certain provisions of the Act come into force. Clause 11(4) allows the Treasury to appoint different days for different purposes, or a time on a day if the Treasury considers it appropriate.

Clause 11(5) allows the Treasury by regulations to make such consequential, supplementary, incidental, transitional, transitory or saving provision as the Treasury considers appropriate in connection with the coming into force of any provision of the Act. Clause 11(6) allows the Treasury to make different provision for different purposes or areas.



## **ANNEX A: Powers in Schedule 9ZA to VATA 1994**

<b>Heading</b>	<b>New provision</b>	<b>Existing provision</b>	<b>HMRC or Treasury</b>
	<i>Schedule 9ZA</i>	<i>VATA 1994</i>	
Meaning of acquisition of goods from a member State	3(3)	section 11(4)	Treasury
Time of acquisition	4(2)(b); 4(3)	section 12(1); 12(3)	HMRC
Place of acquisition	5(2)(a); 5(4)	section 13(5)	HMRC
Acquisitions from persons belonging in member States	6(4); 6(5)	section 14(3)	HMRC
Value where goods subject to excise duty etc	10(1)	paragraph 2(1) of Schedule 7	HMRC
Reduced rate	16(1)(b)	section 36A	Treasury
Zero-rating and exempt acquisitions	17(2); 17(3)	section 36A	Treasury; HMRC
Refunds and reliefs	18(2) 18(3)	section 37	Treasury
Refunds in relation to new means of transport supplied to member States	19(3)	section 40(3)	HMRC
Power to vary specified sums by regulations	45	paragraph 9 of Schedule 3	Treasury
Notifications	46	paragraph 10 of Schedule 3	
Power to vary specified sums by regulations	54	paragraph 8 of Schedule 2	Treasury
Notifications	55	paragraph 9 of Schedule 2	HMRC
Accounting for VAT and payment of VAT (Schedule 11)	73	paragraph 2 of Schedule 11	HMRC
Administration, collection and enforcement (Schedule 11)	74	paragraph 6 of Schedule 11 has effect as if sub-paragraph (1A) were inserted	HMRC
Taxation under the laws of other member States etc	81(3); 81(4)	section 92(3); 92(4)	HMRC
Territories included in references to other member States etc	82(1); 82(2)	section 93(1); 93(2)	HMRC
Meaning of new means of transport	83(3); 83(4)	Section 95(4); 95(5)	Treasury; HMRC

**ANNEX B: Modified VATA 1994 provisions in Parts 1 to 3 of Schedule 9ZB containing powers**

<b>Heading</b>	<b>New provision</b>	<b>Existing provision</b>	<b>HMRC or Treasury</b>
	<i>Schedule 9ZB</i>	<i>VATA 1994</i>	
Paragraph 1(6) also incorporates section 16 VATA 1994 which contains a power to disapply or modify customs legislation.	1(6)	section 16	HMRC
Goods exported from Northern Ireland	9	section 30(6)	HMRC
Zero-rating regulations	10	section 30(8)	HMRC
Relief from VAT on importation of goods	13	section 37	Treasury

## **ANNEX C: Powers in Parts 4 and 5 of Schedule 9ZB to VATA 1994**

<b>Heading</b>	<b>New provision</b>	<b>Existing provision</b>	<b>HMRC or Treasury</b>
	<i>Schedule 9ZB</i>	<i>VATA 1994</i>	
Place and time of supply: Northern Ireland warehouses	16(2); 16(9)	section 18(1A); 18(9)	HMRC
Northern Ireland fiscal warehouses: relief	19(2); 19(4); 19(10); 19(11)	section 18B(1)(d); 18B(2)(d); 18B(8); 30(8A)	HMRC
Northern Ireland warehouses and fiscal warehouses: services	21	section 18C	HMRC
Removal from warehousing: accountability	22(3)	section 18D(3)	HMRC
Supplementary provision	25(6)	section 18F(7)	HMRC
Time of supply involving both a supply and an acquisition	28(2)(b)	section 8(6)(b)	HMRC
Distance selling between EU and Northern Ireland: place of supply	29(4)	section 7(9)	HMRC