

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Second Delegated Legislation Committee

CUSTOMS (AMENDMENT) (EU EXIT)  
REGULATIONS 2022

*Monday 14 March 2022*

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**The Committee consisted of the following Members:**

*Chair:* MR VIRENDRA SHARMA

- |   |  |
|---|--|
| † Baker, Mr Steve ( <i>Wycombe</i> ) (Con)                                | † Mak, Alan ( <i>Lord Commissioner of Her Majesty's Treasury</i> ) |
| † Baron, Mr John ( <i>Basildon and Billericay</i> ) (Con)                 | † Neill, Sir Robert ( <i>Bromley and Chislehurst</i> ) (Con)       |
| † Coutinho, Claire ( <i>East Surrey</i> ) (Con)                           | † Oppong-Asare, Abena ( <i>Erith and Thamesmead</i> ) (Lab)        |
| Davies, Geraint ( <i>Swansea West</i> ) (Lab/Co-op)                       | † Twigg, Derek ( <i>Halton</i> ) (Lab)                             |
| † Efford, Clive ( <i>Eltham</i> ) (Lab)                                   | † Twist, Liz ( <i>Blaydon</i> ) (Lab)                              |
| † Frazer, Lucy ( <i>Financial Secretary to the Treasury</i> )             | † Webb, Suzanne ( <i>Stourbridge</i> ) (Con)                       |
| † Grundy, James ( <i>Leigh</i> ) (Con)                                    |  |
| † Hendry, Drew ( <i>Inverness, Nairn, Badenoch and Strathspey</i> ) (SNP) | Rebecca Lees, <i>Committee Clerk</i>                               |
| † Johnson, Kim ( <i>Liverpool, Riverside</i> ) (Lab)                      |  |
| † Latham, Mrs Pauline ( <i>Mid Derbyshire</i> ) (Con)                     |  |
| † Mackinlay, Craig ( <i>South Thanet</i> ) (Con)                          | † <b>attended the Committee</b>                                    |

## Second Delegated Legislation Committee

Monday 14 March 2022

[MR VIRENDRA SHARMA *in the Chair*]

### Customs (Amendment) (EU Exit) Regulations 2022

4.30 pm

**The Financial Secretary to the Treasury (Lucy Frazer):** I beg to move,

That the Committee has considered the Customs (Amendment) (EU Exit) Regulations 2022 (S.I. 2022, No. 109).

It is a pleasure to serve under your chairmanship, Mr Sharma.

The regulations consist of two measures that are being introduced following a review of customs enforcement rules. The measures make minor changes to legislation that will not have significant implications for traders or place additional burdens on them. None the less, the regulations will help to ensure that trade between Northern Ireland and Great Britain can continue smoothly and that traders in GB have appropriate safeguards where customs enforcement rules are applied by Her Majesty's Revenue and Customs.

The first measure makes a number of changes relating to vehicles and goods travelling between Great Britain and Northern Ireland. First, it will ensure that HMRC can collect information about goods—for example, alcohol or tobacco—that are imported to the UK on Royal Navy ships from Northern Ireland. That rule already applies to vessels more broadly. The measure makes no change to the way in which the Royal Navy supplies that information to HMRC.

Secondly, that measure will give HMRC new powers to prevent fraudsters from exploiting the rules, for example, by putting goods shipped into Great Britain via Northern Ireland into the British market without paying the right duty. Thirdly, the measure will remove an unused and outdated requirement for information about goods being transported by ship from Great Britain to Northern Ireland. Again, let me stress that those are all minor changes that will place no extra burden on traders.

The second measure is also made up of several parts. The first relates to HMRC's right to request a security as a condition of releasing imported goods from customs control. That might happen where a customs declaration form cannot be verified immediately, for example, in cases of suspected undervaluation fraud. Our customs officials rightly take a rigorous approach to their work. That means that, in some circumstances, the verification process might take a significant amount of time which, in turn, might mean that goods become commercially worthless to traders and cause storage problems for HMRC. As a result, it is in both parties' interest to allow the goods to be released from customs control, as long as a trader can provide a security to cover any additional duty owed.

When the UK was in the European Union, traders who disagreed with HMRC's decision to require a financial security could request a review or appeal to an independent tribunal. Those rights were also supported in domestic legislation. Since the end of the transition period, HMRC has the right to continue to require financial security from importers under the Customs and Excise Management Act 1979. That legislation, however, is not currently linked to statutory rights to request a review or to appeal to an independent tribunal. The regulations will therefore reinstate those rights and give businesses the same right of appeal as under EU legislation.

The final parts of the measure update the 1979 Act so that it reflects terminology used elsewhere in domestic customs legislation. The measure also omits previous amendments to the Act that have not yet come into force and that would have removed HMRC's ability to require traders to provide a security.

**Mr John Baron** (Basildon and Billericay) (Con): I would like my right hon. and learned Friend's assessment of whether the arrangements are proceeding as per the spirit of the EU protocol, given that when the trade arrangements were being negotiated, the feeling was that if there were no disruption to trade elsewhere in the EU, there would be a light-touch approach to the trading relationship between Northern Ireland and the mainland. In effect, however, that has not taken place. What is her assessment of that?

**Lucy Frazer:** My hon. Friend and many Members of the House—on both the Government and Opposition Benches—are very concerned about the implications of the Northern Ireland protocol. For that reason, through the Foreign Secretary, who is leading the negotiations, we are trying to change the arrangements for Northern Ireland. It is important that we do so, because they are having an effect on trade and on societal difficulties in Northern Ireland. As my hon. Friend knows, we have a number of easements on Northern Ireland that ease the requirements that were first put into the protocol. We support them, because they ease trade.

Let me be clear that the regulations do not in any way make it harder for traders to trade between Northern Ireland and the rest of the UK. In fact, they take away redundant provisions, tidy up the legislation and provide an easier and simpler route by way of the provision of a security. I understand the overall concern of my hon. Friend the Member for Basildon and Billericay and I share the concern that we need to get the right approach in Northern Ireland, but I do not think that the statutory instrument should aggravate or concern him unduly as regards Northern Ireland.

4.36 pm

**Abena Oppong-Asare** (Erith and Thamesmead) (Lab): It is a pleasure to serve under your chairship, Mr Sharma.

I thank the Minister for her explanation of the regulations. Although they are technical in nature, this is clearly an important area and I have a number of questions. As she set out, the regulations will make changes to customs legislation applying to goods moving between Great Britain and Northern Ireland. The Opposition recognise the significant challenges that businesses in Northern Ireland face when importing

goods from Great Britain and, conversely, the challenges that businesses in Great Britain face when selling into Northern Ireland.

We have urged the Government to negotiate properly with the EU to ensure that the protocol works for the people of Northern Ireland and people across the UK. Although progress has been made recently, a number of issues remain. For example, businesses and political parties in Northern Ireland have been urging the Government for months to negotiate a veterinary agreement that lowers barriers and brings long-term benefits to the people of Northern Ireland. People's jobs and livelihoods depend on the Government solving such problems as soon as possible.

Let me turn to the specific measures. I recognise that most of the amendments to the Customs and Excise Management Act 1979 largely tidy up the legislation to ensure that it reflects current customs processes. I also note that the explanatory memorandum states that the changes do not impact on the unfettered access of qualifying Northern Ireland goods that move to the rest of the UK. To double check, will the Minister confirm that businesses importing into Northern Ireland will not face any further trade barriers as a result of the changes?

The provision in paragraph (3) of regulation 2 allows HMRC to require a security and a guarantee in order to release imported goods in certain circumstances. It is sensible that goods can be released pending a future customs declaration, to prevent them from piling up in warehouses or, in the case of perishable goods, becoming entirely unusable. But why is that change being introduced now? Why has that procedure not been possible until this point? Have businesses suffered because of a failure to bring in the necessary legislative changes until now, given that is more than two years since the end of the transition period? Have the Government consulted with relevant businesses about the impact of the policy? If so, will the Minister tell us whether businesses expressed any concerns about the operation of the securities process?

It will be useful to hear from the Minister how long, on average, importers will have to wait until HMRC has calculated the right amount of duty to be paid. Finally, will the Minister say a little more about the new review and appeal procedure in relation to a HMRC decision to require a security? What will be the process for businesses if they wish to appeal?

4.40 pm

**Drew Hendry** (Inverness, Nairn, Badenoch and Strathspey) (SNP): It is a pleasure to serve under your chairmanship, Mr Sharma.

The fact that the regulations are a technical amendment has been laid out. I do not intend to ask any questions on the detail further to those that have already been asked. It would be wrong, however, to let the opportunity pass without commenting on the process.

More than a year on from the signing of the Brexit UK-EU trade and co-operation agreement, the House is still finding and amending existing legislation to implement Brexit changes. What an absolute bürach this is. It is messy and time consuming. It has been a drawn-out process, rather than an event. Brexit, it should be noted, has served absolutely no benefits to Scotland—quite the reverse—and yet the time of MPs is taken up

with these issues, rather than with passing meaningful legislation to tackle the vital issues such as the cost of living crisis or the energy crisis. That does not shine a good light on this House or on the decisions that have been made on this issue.

4.41 pm

**Mr Steve Baker** (Wycombe) (Con): The statutory instrument substitutes “Great Britain” where “United Kingdom” can be found. It does so repeatedly and explicitly. I listened carefully to my right hon. and learned Friend the Minister and to her explanation that it is technical, but here is the problem. According to article 4 of the protocol:

“Northern Ireland is part of the customs territory of the United Kingdom”.

That was an absolutely crucial concession by the European Union in the course of negotiations.

My right hon. and learned Friend said that trade will continue smoothly, but she subsequently acknowledged that there are real problems. I have just come back from Belfast, and I can tell her that temperatures there are running very high in the Unionist community. GB suppliers of note are not shipping to Northern Ireland—they are simply refusing to supply products from Great Britain to Northern Ireland—and other goods arrive in Northern Ireland from Great Britain with customs declarations attached.

People are forgetting that the Belfast agreement operates east-west as well as north-south. This is a matter of the most profound concern to the Unionist community. The statutory instrument, by substituting “Great Britain” where “United Kingdom” should be found, appears to run up the white flag and say that we are not negotiating on the protocol, that we will not use facilities in the treaty that were foreseen.

The protocol was always unfinished business. That is why some of us, when we backed it, said that it was a tolerable path to a great future. The Prime Minister became Prime Minister on the assurance given repeatedly to Eurosceptics:

“The withdrawal agreement is dead”—

his words. We asked him, “You won't just remove the backstop, replace it with something else and change the destination, will you?” No, the withdrawal agreement is dead. He then went on to do just what he told us he would not do. Now, in a statutory instrument that replaces “United Kingdom” with “Great Britain”, we find that he appears to be doubling down on not fixing the protocol.

Surely we all now agree that the protocol is not doing what it promised. It is dividing the two communities, it has destroyed political confidence, it has ended power sharing and it has caused trade diversion. Those things are incontrovertible. They are good reasons for change. Not only that, they are reasons for change that were foreseen in the protocol itself. It is especially galling that the Government are not using article 16, which is of course limited in what it can do, when during the worst of the pandemic, the EU itself used article 16 to try to deprive the UK of vaccines—an extraordinary and aggressive act.

We must now save the Belfast agreement—I mean, save it—by recognising that it applies east-west. We must take steps to restore power sharing by doing what

[Mr Steve Baker]

is necessary to bring Northern Ireland back into the UK single market. That is the problem with this SI: it seems to further entrench—it is very explicit in the regulations—the substitution of “Great Britain” where “United Kingdom” should be found.

We need to use article 16 safeguards immediately, before the Stormont elections. Any suggestion that devolved purdah prevents our national Government from doing what is in the interests of the whole country is entirely risible. Any suggestion that Putin has vetoed action to restore our constitutional settlement is outrageous. Brexiteers would be rightly shamed into silence if we attempted that ludicrous argument in reverse. Violence does not have a veto—neither Putin’s in Ukraine nor any closer to home. It has been reprehensible how many supporters of the protocol have prayed in aid violence, the risk of violence and threats of violence to support their cause. That is not how we do things, and we should never surrender to threats of violence.

In any event, the question of a trade war that plagues us has been asked and answered. There are those saying that the EU would start a trade war if we did what was necessary to alleviate the problems of the protocol, but the public told us to get Brexit done, and they gave the Government an enormous—surprisingly large—majority to do it. The nation overall was willing to do what was necessary to get Brexit done, including possibly risking a trade war. The question was asked and answered, yet still we seem to be too reticent—too nervous—to do what the country instructed us to do.

I will begin to conclude my opening remarks. If the Government do not resolve the problem of the protocol, they will find themselves going into the next election saying, “Actually, Brexit’s not quite done.” Quite a large number of Members of Parliament in certain seats will not be able to put it on their leaflets and will have to say, “I’m afraid Brexit’s not quite done.” I expected that by now we would have resolved the problems of the protocol by using the facilities in it to improve and replace it. That has not happened. At the moment, the Foreign Office’s approach is strategic patience, I understand. Strategic patience will not do for the people of Northern Ireland. It is not fair and reasonable to Unionists, under the east-west provisions of the Belfast agreement, to continue as we are.

The cover of the Ukraine conflict has enabled the Prime Minister to avoid confronting the problem of the protocol, but I say to the Government that when the Ukraine conflict comes to an end, if it appears to Eurosceptics, and indeed to Members of Parliament recently elected on the promise that Brexit would be done, that Brexit is not quite done, and if Brexiteers lose confidence in the Prime Minister and his ability to deliver change on the protocol, what on earth do Ministers, Whips and party members think that they will do? It seems to me that the answer is obvious.

I know that this will amuse some Opposition Members, but I say to the Scottish National party spokesman that he will be left comically eating his words if he ever gets his way. He just spouted such nonsense about Brexit. Imagine that Scotland had had its independence from the UK. My goodness—the time and effort that they would all spend trying to untangle our Union would eclipse the problems that we have. I am grateful to you, Mr Sharma, for allowing those extended remarks.

4.48 pm

**Craig Mackinlay** (South Thanet) (Con): It is a pleasure to serve under your chairmanship, Mr Sharma. Perhaps the Minister could explain the benefits of the regulations? I understand that they are technical, and I am sure that the intention is to solve the mischief of the back-door route via the Republic into Northern Ireland and GB, but I will read what it says in the Northern Ireland protocol. In the preamble it is pretty clear that

“Northern Ireland is part of the customs territory of the United Kingdom and will benefit from participation in the United Kingdom’s independent trade policy”.

Article 4 says very clearly:

“Northern Ireland is part of the customs territory of the United Kingdom.”

I am sure it comes as no surprise to the Minister that when we see a statutory instrument of this type, which highlights a difference of approach in customs arrangements under section 63 of the CEMA—I have looked it up—then that raises alarm bells when a part of the United Kingdom, accepted in the protocol as fully and absolutely within the customs union of the United Kingdom, is treated separately from the UK as a whole.

Those are my concerns. If the Minister could lay them to rest, I might be in a different situation. However, as things stand, the SI almost exemplifies the difference that we need to be solve, not expand. Such SIs seem to expand and highlight that difference, particularly in the light of the recent court judgment in Northern Ireland and the fact that the Act of Union highlighted a long, long time ago—200 years ago or thereabouts—that there were complete and absolute freedoms to conduct business between any part of our Union, with no differences in tariffs, arrangements or anything else.

However, it would seem that the protocol, with its flaws, is being shown up as rewriting parts of that ancient Act of Union, with which we are all very familiar. Changes to the Act of Union seem to have crept through the back door, and that was not the promise that was given. Such statutory instruments make alarm bells ring in my head that we are not terribly serious about getting a proper solution to the protocol. Instead, we are giving into the inevitable and simply have to lump it, and I say to my respected right hon. and learned Friend that I really do not want to lump it. I have grave concerns about the statutory instrument and the direction in which things are going.

4.52 pm

**Mr Baron:** Having served in Northern Ireland in the 1980s, one still has friends and contacts there, if not through the Army then through the civilian population. I reinforce the concern expressed so far about the sense of unease in the Province, particularly in the Unionist community. I think the Minister understands that, but perhaps she needs to go to the Province more frequently and to talk to the Unionists, because passions are running very high.

The spirit of the Northern Ireland protocol—I hope that both sides entered the negotiations in this manner—was that provided it did not distort trade between Northern Ireland and the mainland and did not distort trade in any part of the EU, a light touch could be applied. However, that is not what has transpired. Despite no evidence whatsoever of trade being distorted within the

EU in any other market, a hard touch has now been applied to the protocol. I recently heard an example of a Christmas card sent between Northern Ireland and the mainland that attracted a £3 custom charge—that is farcical. If we are not careful, that situation threatens not just trade between Northern Ireland and the mainland, but the Act of Union itself.

I hear loose talk that by invoking article 16 we are somehow reneging on an international treaty, but that is not true, because article 16 is part of the arrangements of the Northern Ireland protocol. It did not stop the EU, as highlighted previously, threatening article 16 when it came to the vaccination programme. I gently suggest to the SNP spokesperson that had we been a member of the EU, we would not have vaccinated as quickly as we did, because it was courtesy of us not being in the European Medicines Agency and under the directive that we were able to roll vaccines out much faster, and a lot of citizens benefited from that. I cite that as one example of the benefits of Brexit, but there are many others, including many more trade deals than the sceptics thought.

Putting that to one side, let me address my comments to the Minister about the SI. It worries me that we seem to be substituting “Great Britain” for “United Kingdom” in the terminology, confusing the issue. That again goes back to the core Act of Union many centuries ago, so I am not happy with the SI. I worry about its implications, about how it will be read in the Province, in particular by the Unionist community, and about the effect it will have on real trade between Northern Ireland, the Province, and the rest of the UK.

I look forward to hearing what the Minister has to say, because I know that that concern runs deep in Government. I have spoken to the Northern Ireland Secretary and the Foreign Secretary. I have shared my

concerns and given what insight and reflections I can. Feelings are running raw in the Province, and it comes down to this approach to the Northern Ireland protocol at a time when there is no evidence whatever that a light-touch approach could not be reinstated.

4.56 pm

**Sir Robert Neill** (Bromley and Chislehurst) (Con): There are strong feelings about the protocol and the nature of the Brexit that we had. Today is not the day for those, frankly. This is a technical statutory instrument, which is there to achieve a specific purpose that, it seemed to me, the Minister set out well. Sensible points were made by the shadow Minister, which I am sure that the Minister will deal with, but we all agree that it is necessary to have the measure in place. At the end of the day, it is manifestly in the interests of business that goods should be able to be released from customs control and that there should be a means thereby of doing that through the receipt of a security. That is what the regulations do.

There may be broader concerns, and we might well have sympathy with them, but this is not a debate about that. I therefore submit that the sensible thing is to have those debates in the right place—that is not here—and to pass the regulations, which are necessary to ensure better business continuity and are to the advantage economically of people in Northern Ireland. The bigger picture is that that debate is not for now, on a technical statutory instrument.

*Ordered*, That the debate be now adjourned.—(*Alan Mak.*)

4.58 pm

*Committee adjourned.*

