EXPLANATORY MEMORANDUM TO

THE EXCISE DUTIES (MISCELLANEOUS AMENDMENTS) (EU EXIT) (NO. 4) REGULATIONS 2019

2019 No. 1216

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC), partly also on behalf of Her Majesty's Treasury, and is laid before the House of Commons by Command of Her Majesty.

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument makes miscellaneous changes to correct European Union (EU) derived excise legislation and other deficiencies, in the event of the United Kingdom (UK) leaving the EU without a deal. The changes include: suspension of the EU track and trace regime until such time that a UK stand-alone system is established; modification of EU law relating to reliefs for fuel duty in certain rural areas; miscellaneous amendments to the Excise Goods (Holding, Movement and Duty Point) Regulations 2010 (S.I. 2010/593) (the "Holding and Movement Regulations"); and modification of the Tobacco Products Regulations 2001 (S.I. 2001/1712) to grant a period of grace of 6 months to provide a guarantee to defer the payment of excise duty on imported tobacco products. These changes will ensure that the UK continues to have a fully functioning and legally operable excise regime upon EU exit.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 This instrument will be brought into force by commencement regulations as provided for under section 52(2) of the Taxation (Cross-border Trade) Act 2018 (TCTA), save for regulations 1, 5, 6 and 8, which will come into force 21 days after this instrument is laid.

3.2 The earlier commencement is so that amendments made by this instrument to other instruments that have already been laid, can be made before those instruments are brought into force.

3.3 Apart from regulations 4, 5 and 6, this instrument is made by HM Treasury under powers in section 51(1)(c) of the TCTA. Regulations 4, 5 and 6 are made by the Commissioners for HMRC under a combination of powers in sections 45 and 48(11) of the TCTA, together with two existing powers. These are, so far as relevant, the same powers as those used in the Excise Goods (Holding, Movement and Duty Point) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/13) to amend the provisions in the Holding and Movement Regulations that are either directly or indirectly amended by regulation 5 of this instrument. Sections 48(6) and 48(7) of the TCTA mean that this instrument is subject to annulment in pursuance of a resolution of the House of Commons.

3.4 Regulations 6 and 8 omit provisions in earlier EU exit instruments relating to excise duty that are superseded by provisions in this instrument. The earlier provisions have not been brought into force.

3.5 Regulation 7 refers to requirements made under the Tobacco Products Regulations 2001 (S.I. 2001/1712), specifying the form, manner and conditions of guarantees to be provided in respect of excise duty. The precise details of those requirements are not finalised and so it has not been possible to publish the notice alongside this instrument. When finalised, this will be available at:

https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal

A hard copy may be inspected free of charge at HM Revenue & Customs, 3rd Floor West, Ralli Quays, 3 Stanley Street, Salford, M60 9LA. This information is also provided in a footnote to regulation 7. So far as necessary, the augmentation of the existing power to make these requirements is within scope of section 51(3)(a) of the TCTA, since that power could be conferred by Act of Parliament

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.6 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the whole of the United Kingdom.

4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 This instrument is one of five instruments solely relating to excise duties on EU exit. The other four instruments were laid on 15 January 2019 and 7 March 2019. They are:

- the Excise Goods (Holding, Movement and Duty Point) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/13);
- the Excise Duties (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/14);
- the Excise Duties (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/15); and
- the Excise Duties (Miscellaneous Amendments) (EU Exit) (No. 3) Regulations 2019 (S.I. 2019/474).

6.2 In the event that the UK exits the EU without a negotiated agreement, all five instruments will be brought into force on exit day using the power in section 52(2) TCTA.

7. Policy background

What is being done and why?

Suspension of the EU Track and Trace System

7.1 The introduction of a track and trace system is a requirement of the World Health Organization Framework Convention on Tobacco Control Illicit Trade Protocol, which the UK has ratified. The track and trace system along with new security features are introduced by the Tobacco Products Directive (2014/40/EU), which aims to improve the functioning of the internal market for tobacco and related products which will protect excise duties payable, while ensuring a high level of health protection for European citizens. The UK is bound to implement the Protocol regardless of EU membership. In the event of the UK leaving the EU without a deal, the tobacco track and trace system in the UK will need to be suspended because the EU legislation underpinning the scheme will fall away and the UK will lose access to the EU system which captures tracking and tracing data.

7.2 This instrument therefore suspends the effect of regulations 5 to 24 of the Tobacco Products (Traceability and Security Features) Regulations 2019 (S.I. 2019/594) (TSFR), which implements the EU track and trace regime, until such time that a UK stand-alone system is established, in which event it is intended that a later instrument will bring those regulations back into effect. Where anything is required to be done under a compliance notice (see regulation 22 of the TSFR) within a specified period that ends after the date on which regulation 5 to 24 of the TSFR are suspended, the notice will cease to have any effect and (to give those affected certainty) will not be revived in the future.

Modifications of EU law relating fuel duty reliefs

7.3 This instrument makes certain modifications to two EU decisions, which will not otherwise function correctly on exit from the EU. Council Implementing Decision (EU) 2015/356 and Council Implementing Decision (EU) 2017/1767 provide the EU framework under which the UK has legislated for Rural Fuel Duty Relief. This relief is within the General Block Exemption Regulation (EU) No 651/2014 of 17 June 2014, for the purposes of EU state aid law. The scheme provides for a relief from fuel duty for retailers in certain designated areas of the UK and is legislated for in the Hydrocarbon Oil and Biofuels (Road Fuel in Defined Areas) (Reliefs) Regulations 2011 (S.I. 2011/2935) as amended by the Hydrocarbon Oil and Biofuels (Road Fuel in Defined Areas) (Reliefs) (Amendment) Regulations 2015 (S.I. 2015/550). This relief will continue to operate unchanged on EU exit.

7.4 The modifications made by regulation 3 mean that references within the above EU decisions to expiry dates are treated as removed because it would not be possible for the EU Council to extend the relief beyond these expiry dates once the UK has left the EU. The reference within Council Implementing Decision (EU) 2015/356 to the minimum rates of taxation provided for in Article 7 of Council Directive 2003/96/EC is also modified to show that this is the rate that is specified in that Directive at the time immediately before the UK leaves the EU. Regulation 3 also removes reference to a procedure under which the EU Council could cause Decision (EU) 2015/356 to expire before 2 March 2021. This procedure would be inappropriate following EU exit.

Amendments to the Excise Goods (Holding, Movement and Duty Point) Regulations 2010 (S.I. 2010/593) etc.

7.5 This instrument makes amendments, directly and indirectly, to the Holding and Movement Regulations to allow registered consignors to dispatch excise goods declared for the authorised use procedure without paying the excise duty upfront (duty suspension). An authorised use procedure is a customs special procedure that allows for a reduced or zero rate of customs duty on specified goods when used for specific purposes, such as hydrocarbon oil.

7.6 Prior to EU exit, a registered consignor (a type of registered excise agent) can only move excise goods in duty suspension from a port or airport once customs duties have been paid and import procedures completed. This new provision ensures that a registered consignor can also move goods that have been entered into the authorised use procedure. The instrument also amends other provisions relating to the dispatch of goods in excise duty suspense by registered consignors so they align with earlier amendments.

7.7 It also extends the requirements for the movements of excise goods within the UK to include movements of certain energy products (petrol, diesel, kerosene, fuel oil, biodiesel etc.) in duty suspension from the place of importation (ports or airports) to either a tax warehouse in the UK or a place from where the goods will be re-exported provided those products do not leave the UK during the course of the movement. When the UK leaves the EU, we will lose access to the EU system that controls the movement of energy products from the EU. In the absence of this system, this change means that energy products will be able to move in duty suspension in the same way as alcohol and tobacco products and ensures that the UK can continue to control movements of energy products from the time they enter the UK.

7.8 Regulation 5(2) has the effect of reverting to the existing language of the Holding and Movement Regulations, which better reflects the interaction of excise legislation with customs legislation.

7.9 Finally, it makes a small change to the definition of "an authorisation to use a simplified customs procedure" to make this clearer. This should make it easier for businesses to understand the specific type of authorisation needed in such cases.

Modification of the Tobacco Products Regulations 2001

7.10 This instrument makes a modification to the Tobacco Products Regulations 2001 for a 6 month period if the UK leaves the EU without a deal. It augments an existing power to HMRC to adjust the conditions for eligible persons who elect to defer the payment of excise duty upon EU exit. This modification replaces the modification made by regulation 17 of the Excise Duties (Miscellaneous Amendments) (EU Exit) (No 3) Regulations 2019, which is omitted by regulation 8.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 (c. 16) but relates to the withdrawal of the UK from the EU because the revocations and modifications to existing excise legislation are required when the UK is no longer an EU member State.

9. Consolidation

9.1 There are no plans to consolidate the legislation given that the changes are minor and consequential upon UK's withdrawal from the EU.

10. Consultation outcome

10.1 This instrument forms part of wider changes to ensure that the UK has an excise regime that operates as required when the UK leaves the EU. As there is no new policy being introduced because the overall approach taken is to treat what are currently other EU member States as third countries on and after exit, it is deemed that no formal consultation is required. However, HMRC has engaged with key excise businesses and software developers to ensure they are fully aware of the changes being proposed and how they are impacted.

11. Guidance

11.1 All relevant notices and guidance will be updated as appropriate to coincide with the implementation of these changes.

12. Impact

12.1 There is no significant impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 This instrument will be covered by an overarching HMRC impact assessment (third edition) which will be published and available on the website at: https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal

12.4 This instrument does not introduce new requirements or obligations; the changes contain no substantive amendments and are in the main minor and consequential upon the UK leaving the EU without a deal.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise the impact of the changes on small businesses (employing up to 50 people).

13.3 The basis for this final decision is that this instrument does not impose new obligations on them (other than those that follow because EU Member states will become third countries on exit).

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the changes it makes will be kept under review through communication with key stakeholder groups.

14.2 This instrument does not include a statutory review clause. None is required under section 28(3) (a) of the Small Business, Enterprise and Employment Act 2015 (c. 26) because this instrument relates to a duty.

15. Contact

15.1 Martins Akpojiyovwi at HM Revenue & Customs, Telephone: 03000 566466 or email: martins.akpojiyovwi@hmrc.gsi.gov.uk can be contacted with any queries regarding the instrument.

15.2 Judith Kelly Deputy Director for Excise & Environmental Taxes Policy at HM Revenue & Customs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.