EXPLANATORY MEMORANDUM TO

THE EXCISE DUTIES (TRANSITIONAL AND MISCELLANEOUS AMENDMENTS) (EU EXIT) REGULATIONS 2020

2020 No. 1494

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument makes transitional changes to existing excise instruments that were made prior to the United Kingdom (UK) exiting the European Union (EU) on 31 January 2020. These existing instruments were drafted to create a fully functioning and legally operable excise regime should the UK have exited the EU without a withdrawal agreement. As the UK has now left the EU with a withdrawal agreement, these legislative amendments will be updated so that the UK continues to have a functioning excise regime at the end of the transition period.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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)

3.2 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 will be made using the powers within sections 45(1) and (2) and 48(11)(d) of the Taxation (Cross-border) Trade Act 2018. It will amend five instruments that were previously laid in preparation should the UK have exited the EU without a negotiated deal. 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);
- the Excise Duties (Miscellaneous Amendments) (EU Exit) (No. 3) Regulations 2019 (S.I. 2019/474); and
- the Excise Duties (Miscellaneous Amendments) (EU Exit) (No. 4) Regulations 2019 (S.I. 2019/1216).

7. Policy background

What is being done and why?

7.1 The UK left the EU on 31 January 2020 and entered a transition period which ends on 31 December 2020. The rules around the UK excise regime are currently set out within EU legislation and transposed into UK legislation. Legislative changes are required to provide a functioning UK excise regime at the end of the transition period.

7.2 These proposed amendments remove reference to the term 'exit day', which was defined as being 31 January 2020 at 11pm under section 20(1) of the European Union (Withdrawal Agreement) Act 2018 as amended by The European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) (No. 3) Regulations 2019. (S.I. 2019/1423).

7.3 The reference 'exit day' is to be substituted with 'IP completion day' which is defined as being 31 December 2020 at 11pm under section 39(1) of the European Union (Withdrawal Agreement) Act 2020.

7.4 This instrument makes amendments to the following excise secondary legislation which will come into force at 11pm on the 31 December 2020:

Excise Goods (Holding Movement and Duty Point) (Amendment etc.) (EU Exit) Regulations 2019

7.5 The amendments substitute 'exit day' with 'IP completion day' within the Tobacco Products Regulations 2001 (S.I. 2001/1712).

7.6 The changes also remove the reference to customs legislation from the definition of the term "in the course of a movement" and make clear that, where movements of excise goods between the UK (other than Northern Ireland) and the EU start before the end of the transition period and are still in course at the end of the transition period, they remain under the current EU rules until that movement has been completed.

7.7 This includes movements of excise goods that have been released for consumption and are transported by individuals for their personal use.

Excise Duties (Miscellaneous Amendments) (EU Exit) Regulations 2019

7.8 The amendments substitute 'exit day' with 'IP completion day' within the Excise Duty (Drawback) Regulations 1995 (S.I. 1995/1046). These amendments will allow for drawback procedures to operate where eligible claimants intend to make a claim for drawback in relation to eligible goods after the end of the transition period in relation to events that occurred prior to the end of the transition period.

7.9 This instrument makes amendments to the following excise secondary legislation which will come into force at 11pm on the 31 December 2020.

Excise Duties (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019

7.10 The amendments substitute 'exit day' with 'IP completion day' within the Spirit Regulations 1991 (S.I. 1991/2564) to allow for methods of certain methods of measuring the strength of spirits, set out in the Annex to Commission Regulation (EC) No. 2870/2000. They continue to apply for UK spirit producers on spirits produced prior to end of the transitional period.

7.11 Additionally, they substitute 'exit day' with 'IP completion day' within the Excise Warehousing (Etc.) Regulations 1988 (S.I. 1988/809), the Warehousekeepers and Owners of Warehoused Goods Regulations 1999 (S.I. 1999/1278), the Denatured Alcohol Regulations 2005 (S.I. 2005/1524) and the Duty Stamps Regulations 2006 (S.I. 2006/202).

Excise Duties (Miscellaneous Amendments) (EU Exit) (No. 3) Regulations 2019

7.12 The amendments substitute 'exit day' with 'IP completion day' for excise goods that arrive at via Ro-Ro (Roll-on/roll-off) ports. Ro-Ro ports are locations that are listed in a notice published by HMRC in accordance with the Customs (Import Duty) (EU Exit) Regulations 2018 (S.I. 2018/1248).

7.13 The changes also remove previous transitional amendments to the Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998 (S.I. 1998/3110) as these regulations will be revoked upon IP completion day.

Excise Duties (Miscellaneous Amendments) (EU Exit) (No. 4) Regulations 2019

7.14 This instrument substitutes 'exit day' with 'IP completion day' within the Tobacco Products Regulations 2001. It amends a modification which allows HMRC to adjust the conditions for eligible persons who defer duty on tobacco products post transition period.

7.15 They also remove a previous reference to suspending the effect of The Tobacco Products (Traceability and Security Features) Regulations 2019 (S.I. 2019/594). Amendments to The Tobacco Products (Traceability and Security Features) Regulations 2019 will be made within a separate statutory instrument for the end of the transition period and covered in a separate explanatory memorandum.

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 but relates to the withdrawal of the UK from the EU because it is being made under s45(1) and (2) and 48(11)(d) of the Taxation (Cross-border Trade) Act 2018. This instrument ensures that the United Kingdom has a functioning excise regime after the end of the transition period.

8.2 The definition of 'exit day' which is being replaced by 'IP completion day' is defined within Section 20(1) of the European Union (Withdrawal Agreement) Act 2020.

8.3 The definition of 'IP completion day' is defined in Section 39(1) of the European Union (Withdrawal Agreement) Act 2020.

9. Consolidation

9.1 There are no plans to consolidate the legislation given that the changes are minor and consequential following the UK's withdrawal from the EU and the end of the transition period.

10. Consultation outcome

10.1 No formal consultation on the legislation has been carried out. These are minor and consequential changes which have arisen as a result of the UK withdrawing from the EU and the end of the transition period.

11. Guidance

11.1 This instrument does not introduce any procedural changes requiring guidance.

11.2 Guidance on moving excise goods between the UK and the EU is available on the GOV.UK website.

12. Impact

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

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

12.3 A Tax Information and Impact Note covering this instrument will be published on the website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins.

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 end of the transition period.

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 regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that this instrument does not impose new obligations on them

14. Monitoring & review

14.1 The instrument will be kept under review through communications with key stakeholder groups, including the Joint Alcohol and Tobacco Steering Group (JATCG). The JATCG is a platform for HMRC to discuss and inform specifically targeted stakeholders on excise policy.

14.2 A statutory review provision is not included within this instrument by virtue of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015. This section sets out that there is an exemption where a provision is in connection with imposing a tax or duty.

15. Contact

15.1 Nicholas Hampson at HM Revenue and Customs Telephone: 03000 576 416 or email: nicholas.hampson@hmrc.gov.uk can be contacted with any queries regarding the instrument.

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

15.3 Kemi Badenoch MP, Exchequer Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.