EXPLANATORY MEMORANDUM TO

THE MACHINE GAMES DUTY (AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 No. 866

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) 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 amends the Machine Games Duty Regulations 2012 (S.I. 2012/2500) (the MGD Regulations). It alters the time by which HMRC is required to process applications to register for machine games duty (MGD) and in doing so ensures the effective operation of the MGD Regulations following the withdrawal of the United Kingdom from the European Union. In addition, this instrument makes further amendments to address defects in the drafting of the MGD Regulations identified by the Select Committee on Statutory Instruments.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 In the 1st Report for the Parliamentary Session 2012-2013, the Select Committee on Statutory Instruments identified two drafting errors in the MGD Regulations; one concerning the definition of "registration number" and the other in relation to the term "unique trader reference number". This instrument corrects both of these errors.

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 United Kingdom.

4.2 The territorial application of this instrument is 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 MGD is an excise duty that is charged on the playing of dutiable machine games in the UK. A machine game is a game played on a machine for a prize, and it is dutiable

if at least one of the prizes that can be won is, or includes, cash to a value greater than the cost to play once. MGD is calculated in respect of the net takings (stakes minus winnings) from dutiable machine games that are made available for play in the UK.

6.2 In accordance with paragraph 20 of Schedule 24 to the Finance Act 2012 (c.14), HMRC maintains a register for MGD purposes of those responsible for premises from which dutiable machine games are provided for play. The registration process must be successfully completed before dutiable machine games can legitimately be made available for play on the premises. The person who is registered for MGD must also fall within the definition of a "registrable person" in respect of those premises.

6.3 A person is a "registrable person" in respect of premises if that person falls within one of several listed conditions in the Schedule (for example, if the person holds a relevant licence or permit for the premises). It is possible for there to be more than one person who is a "registrable person" in respect of premises and in those cases the registrable persons can make a choice about which of them registers to pay the duty.

6.4 If machine games are made available for play on premises in respect of which there is no registration, any person who is a "registrable person" for those premises may be liable to a penalty for non-registration. HMRC can also compulsorily register a registrable person in respect of the premises. If no one is registered in respect of premises, any person who is a registrable person in respect of the premises is liable for MGD.

6.5 The MGD Regulations provide for matters relating to the administration of MGD. For the purposes of the time by which HMRC is required to process applications to register for MGD, they currently distinguish between applications to register for MGD from persons usually resident or established in a member State (or part of a member State) and applications from other persons.

7. Policy background

What is being done and why?

7.1 This instrument replaces the existing time limits applicable to the processing of applications to register for MGD with a requirement that applications be processed "as soon as reasonably practicable" and clarifies how this requirement applies to applicants who are not yet registrable. This change also has the effect of ensuring the effective operation of the MGD Regulations following the withdrawal of the United Kingdom from the European Union.

7.2 In practice most registration applications are processed quickly. The registration process itself will remain the same and the requirement that applications be processed as soon as reasonably practicable is consistent with HMRC's current practice of registering applicants without undue delay, whilst allowing for the possibility that some applications might take longer to process. For instance, an application might take longer to process if additional checks need to be made such as where HMRC has reason to believe that a person who is liable for the payment of MGD may not discharge that liability as it falls due from time to time. In these circumstances, HMRC may make registration conditional on providing security for the payment of MGD or, in the case of a foreign person, appointing a UK representative.

7.3 These Regulations also make minor amendments to address errors in the MGD Regulations identified by the Select Committee on Statutory Instruments. They omit

the definition of "registration number" and make a further amendment in consequence of this change. They also clarify the reference numbers that applicants to register for MGD can be required to provide to HMRC.

7.4 It has been concluded that the free issue procedure applies to this instrument, which means that this instrument will be issued free of charge to all known recipients of the MGD Regulations. The free issue procedure applies because this instrument corrects errors identified by the SCSI and clarifies the time by which HMRC is required to register an applicant who was not registrable at the time of applying.

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 United Kingdom from the European Union because it is, in part, being made to ensure the effective operation of the MGD Regulations following withdrawal. As stated above, for the purposes of the time by which HMRC is required to process applications to register for MGD, the regulations currently distinguish between applications to register for MGD from persons usually resident or established in a member State (or part of a member State) and applications from other persons. Once the United Kingdom withdraws from the European Union, it will no longer be a member State and the distinction will not operate as intended. This instrument addresses this issue by removing the reference to "member State (or part of a member State)".

9. Consolidation

9.1 There are no plans to consolidate the MGD Regulations.

10. Consultation outcome

10.1 No consultation was considered necessary as the instrument makes minor amendments and it is not anticipated that the registration process will change as a result.

11. Guidance

11.1 Guidance on MGD and when to register is available in Notice 452: Machine Games Duty on the HMRC website www.hmrc.gov.uk. The minor amendments effected by this instrument will be reflected in this guidance.

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.

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 (employing up to 50 people). The basis for this final decision is that this instrument

ensures that the current registration treatment of small UK businesses will not change. This amendment therefore works to avoid any further regulatory burdens on small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that HMRC will continue to monitor all aspects of the MGD legislation.

14.2 The regulation does not include a statutory review clause because this measure relates to tax.

15. Contact

15.1 Anne Merrell at HMRC Telephone: 03000 588078 or email: anne.merrell@hmrc.gsi.gov.uk can be contacted with any queries regarding the instrument.

15.2 Judith Kelly at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 Exchequer Secretary to HM Treasury can confirm that this Explanatory Memorandum meets the required standard.