EXPLANATORY MEMORANDUM TO

THE TOBACCO PRODUCTS (AMENDMENT) REGULATIONS 2013

2013 No. 2720

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

2. Purpose of the instrument

2.1 The Tobacco Products (Amendment) Regulations 2013 amend the Tobacco Products Regulations 2001 (the Regulations) so that those products previously described as herbal smoking products, are not required to display fiscal marks on the packaging although they may be considered as cigarettes and hand-rolling tobacco in other respects.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The exemption of herbal smoking products from tobacco products duty has been removed, to bring UK legislation into line with European Directive 2011/64/EU (OJ No. L 176, 5.7.11, p 24**)**. Changes to the Tobacco Products Duty Act 1979 were included in section 182 of the Finance Act 2013 and consequential amendments will be made through the Tobacco Products (Descriptions of Products) (Amendment) Order 2013. There was a consultation which sought views on how the changes could be made rather than whether they should be made (as the changes were necessary in order to fully meet the requirements of the EU legislation). This was to help smooth the transition for business and make the changes less burdensome.

4.2 The amendments to the Regulations take into consideration the responses to the consultation. Specifically, unless changes were made, herbal cigarettes and hand-rolling mixtures would have been subject to fiscal marks requirements, and in particular a requirement to carry the "UK DUTY PAID" mark. This was thought to be too burdensome for small business and disproportionate to the revenue risk.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 The policy aim of this change is to align UK legislation with EU legislation by removing the exemption from excise duty on herbal smoking products unless they are used exclusively for medical purposes.

7.2 This will mean that all smoking products are taxed equally, regardless of tobacco content, unless there is a legitimate medical reason for exemption.

7.3 This instrument complements the changes made to primary law by amending the fiscal marks regulations so that the changes do not have a disproportionate impact on herbal smoking products.

7.4 There is no intention to consolidate legislation at present.

8. Consultation outcome

8.1 HMRC conducted a formal consultation which took place from 2 April 2012 to 29 June 2012. The consultation sought views on how the changes could be implemented rather than whether they should be. The consultation had a direct effect on the implementation date of the changes, giving extra time to the trade to adjust. HMRC also recognised the administrative burdens on business arising from the need to incorporate fiscal marks would be disproportionate to the risks. After considering less onerous means of fiscally marking products, HMRC decided to exclude these products altogether from the fiscal mark requirements.

9. Guidance

9.1 HMRC will publish guidance on these Regulations by making changes to Notice 476: Tobacco Products Duty. The revised Notice will be available on the HMRC website at www.hmrc.gov.uk.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 A Tax Information and Impact Note was published on 11 December 2012 alongside the draft Finance Bill clauses for 2013 and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to ensure that there are negligible administrative burdens and costs involved for businesses implementing this provision. Businesses have been given a reasonable amount of time to prepare for the changes to the Tobacco Products Duty Act 1979 and these Regulations amend the law so that fiscal marks are not required on the products affected.

11.3 The basis for the final decision on what action to take to assist small business was due to the number of responses received to our formal consultation which was indicative of the size of the numbers of traders involved in the manufacture and import of herbal smoking products in the UK.

12. Monitoring & review

12.1 This policy will be kept under review through communication with taxpayer groups affected by the measure.

13. Contact

13.1 **Mark Palmer** at HM Revenue & Customs email: mark.t.palmer@hmrc.gsi.gov.uk or telephone number 03000 587928 can answer any queries regarding the instrument.