EXPLANATORY MEMORANDUM TO

THE TOBACCO PRODUCTS DUTY (ALTERATION OF RATES) ORDER 2020

2020 No. 1256

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument increases the rates of excise duty on tobacco products to take account of inflation and the government's commitment to the tobacco duty escalator. It also makes additional increases to the rate of duty on hand-rolling tobacco and the Minimum Excise Tax on cigarettes.

3. Matters of special interest to Parliament

Matters of special interest to the Select 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 The territorial application of this instrument includes Scotland and Northern Ireland.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 2(1) of the Tobacco Products Duty Act 1979 (c. 7) (the TPDA)) and the territorial application of this instrument is not limited either by the Act or by the instrument.

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 The Exchequer Secretary to the Treasury, Kemi Badenoch MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Tobacco Products Duty (Alteration of Rates) Order 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 Tobacco Products Duty is an excise duty charged on tobacco products. The products liable to that duty are cigarettes, cigars, hand-rolling tobacco, other smoking tobacco (e.g. 'pipe' tobacco), chewing tobacco and tobacco for heating. Duty is also chargeable on tobacco substitutes, which since 1 January 2014 include herbal cigarettes and herbal smoking mixtures.

6.2 The charging provisions for tobacco rate rises are contained within section 2 of the TPDA.

6.3 The relevant rates are set out in the Table in Schedule 1 to the TPDA.

6.4 This instrument will be a made under section 6 of the TPDA, which allows for the amount of duty payable to be increased or decreased by up to 10% by way of a Treasury Order.

6.5 Such an Order may remain in force for up to one year, following which the change to the amount payable lapses unless in the meantime it has been consolidated in a Finance Act or a further Order is made.

6.6 The amounts of duty applicable in the light of the changes made by the Order are shown in the table below.

1 Cigarettes	An amount equal to the higher of – (a) 16.5% of the retail price plus £244.78 per thousand cigarettes, or (b) £320.90 per thousand cigarettes
2 Cigars	£305.32 per kilogram
3 Hand-rolling tobacco	£271.40 per kilogram
4 Other smoking tobacco and chewing tobacco	£134.24 per kilogram
5 Tobacco for heating	£251.60 per kilogram

7. Policy background

What is being done and why?

7.1 Tobacco duty has two key policy objectives: to raise revenue, and to support health policy on smoking.

7.2 European Union (EU) Directives cover the structure of tobacco duties, as well as mandatory minimum rates that Member States need to apply**.** The Directives will apply in the UK until 31 December 2020 and will then cease to apply to Great Britain but still apply in relation to Northern Ireland after the end of the Transition Period under the Northern Ireland Protocol (Art. 8 and Annex 3, para 2).

7.3 Cigarettes are subject to a specific duty (per 1000 cigarette sticks) as well as an ad valorem duty (a percentage of the final retail price) or to a Minimum Excise Tax (MET), whichever is the higher.

7.4 At Spring Budget 2020, the government announced that it was continuing with the tobacco duty escalator for the term of this parliament. Under the duty escalator duty would increase by a minimum of Retail Price Index (RPI) +2% each Budget. Although there will not be a Budget in Autumn 2020, the government has decided to still proceed with uprating of tobacco duties. This decision has been taken to protect revenues and continue to support health objectives to reduce the prevalence of smoking.

7.5 The Order will, from 16 November 2020, increase the duty on all tobacco products by the duty escalator (RPI +2%). In addition, duty rates on hand-rolling tobacco will increase by an additional 4% (RPI +6%) and the MET on cigarettes by an additional 2% (RPI +4%). This results in total increases of approximately 7.134% on hand-rolling tobacco, 3.134% on all other tobacco products and 5.134% on the MET. These changes all fall within the limit for a 10% increase specified by section 6 of the TPDA.

7.6 Increases in the rate of duty for tobacco products are expected by the public and by industry. There is a low level of interest in tobacco duty rates and an acceptance that reducing the prevalence of smoking is a desirable public health outcome. Higher rates of tobacco duty will be welcomed by health lobby groups.

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

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 This instrument is not a consolidation measure. It makes amendment to existing legislation, which is not consolidated at this time.

10. Consultation outcome

10.1 No consultation is required for straightforward rates, allowances and threshold changes.

11. Guidance

11.1 The new duty rates are intended to be published on Gov.UK on the date these regulations are laid.

12. Impact

12.1 The impact on business, charities or voluntary bodies is that there will be a minor impact on fewer than 30 tobacco manufacturers and importers. They will face an increase in tobacco duty rates that they are likely to pass on to consumers. There is no, or no significant, impact on 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 the regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses was that rates of tobacco excise duty apply equally irrespective of the type of businesses that may be involved in the manufacture or supply of the tobacco. Furthermore, there

are no significant new burdens imposed except for the requirement to account for the new higher rates of tobacco duty.

14. Monitoring & review

14.1 HMRC will monitor the impact of the changes introduced by this instrument on an ongoing basis using information collected from its internal systems and processes, as well as regular engagement with affected stakeholder groups.

14.2 As this instrument concerns a duty related measure, it does not include a statutory review clause under section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Julie Hopper at HM Revenue and Customs, Telephone: 03000 587922, email: Julie.hopper@hmrc.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Annie Purkis, Deputy Director for Indirect Tax, at HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.

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