EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (DRUGS AND MEDICINES) ORDER 2020

2020 No. 250

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument amends the scope of the zero Value Added Tax (VAT) rate for drugs and medicines to ensure that United Kingdom's (UK's) VAT legislation is in line with the Department of Health and Social Care's (DHSC) legislation relating to the UK pharmacies dispensing prescriptions written by European Economic Area (EEA) health professionals. The effect of the instrument is to make prescriptions issued by EEA health professionals subject to a zero rate of VAT when dispensed by UK pharmacies.

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 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 The Financial Secretary to the Treasury, the Rt Hon Jesse Norman MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Value Added Tax (Drugs and Medicines) Order 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 These changes have been made to ensure that the UK's VAT regime regarding prescriptions written by EEA health professionals is in line with the DHSC's legislation.

6.2 Item 1 of Group 12 of Schedule 8 to the Value Added Tax Act 1994 allows the zero rate to apply when prescriptions issued by an "appropriate practitioner" are dispensed by a registered pharmacist. The definition of appropriate practitioner in Note (2B) to the Group does not currently include health professionals registered only in EEA states other than the UK.

6.3 This instrument amends Note (2B) to include a new category of "approved country health professionals". This is defined by the instrument as persons identified as appropriate practitioners by regulation 214(6) of the Human Medicines Regulations 2012 (S.I. 2012/1916). Regulation 214(6) currently identifies "EEA health professionals" as defined in Regulation 213 and so these practitioners will now fall within the zero rate in relation to all supplies of qualifying goods.

6.4 Section 39(1) of the European Union (Withdrawal Agreement) Act 2020 defines "IP completion day" as meaning 11.00pm on 31 December 2020, the end of the transition period in the withdrawal agreement. On that day regulation 213 will be amended to replace EEA health professionals with "approved country health professionals" included in a list published under a new regulation 214(6A). Regulation 214(6) will also be amended such that it identifies approved country health professionals as appropriate practitioners and so those professionals as listed will then fall within the zero rate.

7. Policy background

What is being done and why?

7.1 This instrument will bring the tax regime in line with the DHSC's medical regulatory regime. A zero rate of VAT means that no VAT is charged on a supply but the supplier can recover the input tax on his costs. The medical regime allows EEA prescriptions to be dispensed by UK pharmacists and has already been accepted by Parliament and implemented. Prescriptions issued by UK health professionals are subject to a zero rate of VAT when dispensed and this instrument extends the zero rate to prescriptions issued by EEA health professionals. By an amendment to come into force at the end of the transition period the medical regulatory regime will be altered to replace EEA health professionals with approved country health professionals; who are to be published on a list. This list will include all EEA health professionals and so they will continue to fall within the zero rate.

7.2 This measure has no impact on NHS-issued prescriptions or private prescriptions issued by UK doctors. Pharmaceutical products dispensed against these prescriptions will continue to benefit from the zero rate. The estimated cost to the exchequer is negligible.

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. However, as a result of withdrawal of the UK from the European Union, a change in wording will take effect at the end of the transition period (see paragraph 7.1).

9. Consolidation

9.1 This instrument amends Group 12 and therefore the changes made will be consolidated within the existing primary legislation in relation to the charge at the zero rate.

10. Consultation outcome

10.1 A consultation on the draft legislation was published on 3 October 2019 along with draft legislation. Only one response was received, and this required no amendment to the legislation.

11. Guidance

11.1 The changes made by this instrument will be reflected in published guidance on the zero rate for drugs and medicines. The guidance will be updated shortly after this instrument is laid and will be available at https://www.gov.uk/guidance/health-professionals-pharmaceutical-products-and-vat-notice-70157.

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 was published on 3 October 2019 alongside the draft legislation. This has been updated as a result of changes to the impacts as a result of this instrument and is available 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 business.

13.3 The basis for the final decision on what action to take to assist small businesses is that this instrument creates no additional burden on those businesses.

14. Monitoring & review

14.1 These changes will be kept under review through communication with affected taxpayer groups.

14.2 The instrument does not include a statutory review clause as it relates to tax and is not subject to the requirements under the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Rosemin March at HM Revenue and Customs Telephone: 03000 585 031 or email: Rosemin.march@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Ian Broadhurst, Deputy Director, Indirect Tax Directorate at HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.

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