

EXPLANATORY MEMORANDUM TO
THE TOBACCO PRODUCTS (DESCRIPTIONS OF PRODUCTS)
(AMENDMENT) ORDER 2013

2013 No. 2721

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs on behalf of the Treasury and is laid before the House of Commons by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The Tobacco Products (Descriptions of Products) (Amendment) Order 2013 removes references to herbal smoking products in the Tobacco Products (Descriptions of Products) Order 2003 ("the 2003 Order").
3. **Matters of special interest to the Select Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 The Tobacco Products Duty Act 1979 ("the Act") sets out which products are liable to excise duty. The products are further defined by the 2003 Order. The Act and the 2003 Order exempted herbal smoking products from excise duty. This exemption went further than Council Directive 2011/64/EU ("the 2011 Directive") permitted.
 - 4.2 Section 1 of the Act was amended by section 182 of the Finance Act 2013 and this instrument makes the necessary consequential amendments to the 2003 Order by removing references to herbal smoking products to align the definitions with the 2011 Directive.
 - 4.3 This Order amends the 2003 Order to implement the definitions set out in the 2011 Directive.
 - 4.4 A Transposition Note covering the changes made by the Finance Act 2013 and this Order is included at Appendix A.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to all of the United Kingdom.
6. **European Convention on Human Rights**
 - 6.1 The Economic Secretary to the Treasury, Sajid Javid MP, has made the following statement regarding Human Rights:

In my view the provisions of the Tobacco Products (Descriptions of Products) (Amendment) Order 2013 are compatible with the Convention rights.

7. Policy background

7.1 The policy aim 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 reason for exemption.

7.3 The instrument reflects the changes made to primary legislation by removing the remaining references to herbal smoking products in the 2003 Order.

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. The consultation had a direct effect on the implementation date of the changes, giving extra time for the trade to adjust.

9. Guidance

9.1 HMRC will publish guidance on this Order 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 all businesses implementing this provision.

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 measures.

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.