

## EXPLANATORY MEMORANDUM TO

### THE EXCISE GOODS (HOLDING, MOVEMENT AND DUTY POINT) (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

2019 No. 13

#### 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 Excise Goods (Holding, Movement and Duty Point) Regulations 2010 (S.I. 2010/593) (the HMDP Regulations) and makes related changes upon the United Kingdom's (UK) exit from the European Union (EU) without a withdrawal agreement. In particular, changes are required to those parts of HMDP that relate to movements of goods subject to excise duty between the UK and EU countries. These changes will ensure that the UK continues to have a fully functioning and legally operable excise regime upon EU exit.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Select Committee on Statutory Instruments*

- 3.1 The excise duty regime interacts with the customs regime. Consequently the amendments made by this instrument refer to provisions of customs legislation made by statutory instrument or in public notices. At the time of making this instrument and laying it before the House of Commons certain of those provisions referred to have not yet been made. For example, regulation 30(4)(b) amends the definition of "full customs declaration" to refer to a public notice made under Part 1 of the Taxation (Cross-border Trade) Act 2018 (c. 22) (TCTA) which has not yet been made. This public notice is available in draft at:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/762620/Draft\\_Notices\\_to\\_be\\_Made\\_Under\\_The\\_Customs\\_Import\\_Duty\\_EU\\_Exit\\_Regulations\\_2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/762620/Draft_Notices_to_be_Made_Under_The_Customs_Import_Duty_EU_Exit_Regulations_2018.pdf)  
A hard copy of this draft, and the finalised version when available, may be inspected free of charge at HM Revenue & Customs, 100 Parliament Street, London SW1A 2BQ.
- 3.2 We note the concerns of the Joint Committee on Statutory Instruments (JCSI) about references in legislation to things that do not yet exist, for example in S.I. 2017/1189 (11th report of session 2017-19). This instrument is different to S.I. 2017/1189 in that all the relevant provisions will be in force by the time the new regime is operative (i.e. on leaving the EU) and there will be a further opportunity to consider the legal effect of the relevant provisions when the instruments are made, which will be well in advance of the relevant provisions being commenced. In addition, the powers in the TCTA were intended to ensure an effective regime was in place by exit day and it is

important to provide certainty about this regime to business and the public as far in advance of exit day as possible.

*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)*

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

**6. Legislative Context**

- 6.1 This instrument amends the HMDP Regulations, which implemented EU Council Directive 2008/118/EC (commonly referred to as the Holding & Movement Directive). The HMDP regulations are concerned with the protection of UK excise duty and provide for specific legal requirements regarding the control of excise goods in order to safeguard this. They deal with the holding and movement of excise goods within the UK and also make provision for the import and export of such goods between the UK and the EU, and also between the UK and the rest of the world. The HMDP Regulations establish specific rules for movements of excise goods between the UK and other EU Member states.
- 6.2 The HMDP Regulations refer to Commission Regulation 684/2009/EC which sets out the requirements for using the EU computerised system for monitoring movements of duty suspended goods (the Excise Movement and Control System (EMCS)).
- 6.3 For the purposes of the HMDP Regulations, excise goods are alcohol, tobacco and energy products (hydrocarbon oils), which are subject to excise duty under the domestic legislation cited in section 49 of the TCTA.
- 6.4 The general regulation making power for excise duty purposes provided in section 45 of TCTA is used in this instrument and in another instrument laid alongside it, the Excise Duties (Miscellaneous Amendments) (EU Exit) Regulations 2019. These are the first uses of this power and section 48(11) of TCTA.
- 6.5 In this instrument, section 45 is used to amend the provisions in the HMDP Regulations relating to EMCS and to transpose certain provisions of Commission Regulation 684/2009/EC into UK legislation (see Part 7 below). By virtue of section 47(1) of TCTA, which it is intended will also be brought into force if the UK leaves the EU without a withdrawal agreement, that Regulation will no longer form part of UK law on exit day. Transposing this Regulation into UK legislation includes using section 45 and 48(11)(a) and (b) to provide for a notice to be made by the Commissioners for HMRC specifying the requirements of the messages to be sent using EMCS.

6.6 Relying on section 48(11)(d) and 52(5) of TCTA, this instrument also makes provision for excise goods which are in the course of a movement to or from the EU on exit day.

## **7. Policy background**

### *What is being done and why?*

7.1 The current EU legal framework and electronic infrastructure enables excise goods to move freely between EU Member states without any barriers or border controls. Commercial movements of excise goods can undertake their whole journey, including across borders within the EU, under cover of the electronic system known as EMCS without paying excise duty up-front (duty suspension).

7.2 In the event that the UK leaves the EU without a withdrawal agreement, this EU legal framework will no longer apply, and, in particular, the EMCS as operated by the UK will no longer be connected to the EMCS operated by the EU Member states. This will have the effect that the free movement of excise goods under duty suspension between the UK and EU will no longer be practicable. Similarly, the provisions in the HMDP Regulations relating to co-operation between the UK and the EU Member states in respect of duty paid goods will no longer function correctly when such co-operation is no longer possible because the UK is no longer a Member state.

7.3 Consequently, from exit day, for excise duty purposes, goods imported from the EU will be treated in the same way as those coming from the rest of the world, as will those exported from the UK.

7.4 However, when the UK leaves the EU, the current excise systems will continue to operate for domestic purposes, including the operation of the duty suspension system for movements to and from UK points of entry and exit, and between UK businesses. Existing policy in relation to imports and exports between the UK and the rest of the world will be unaffected.

7.5 In light of the above, the current excise legislation needs to be amended, to ensure that the UK maintains suitable controls for the holding and movement of excise goods, in order to protect revenue.

7.6 This instrument: (i) removes inapplicable references to the EU and to its legislation, replacing them with appropriate domestic equivalents; and (ii) omits parts of the original HMDP Regulation which relate to intra-EU movements of excise goods. These omissions mean that certain categories of excise transaction, such as distance selling, will no longer be possible following the UK's exit from the EU.

7.7 These Regulations also incorporate details of the information required in the accompanying documentation for movements of excise goods in duty suspension. This is currently set out in Commission Regulation 684/2009.

7.8 Additionally, they provide a transitional legal basis for the treatment of movements which are in the course of a movement on EU exit day. The overall approach is, so far as possible, to allow movements that have started before exit day to continue under the HMDP Regulations as they are currently in force.

7.9 Finally, this instrument makes minor amendments to the Tobacco Products Regulations 2001 (S.I. 2001/1712) consequential on the above-mentioned amendments to the HMDP Regulations.

## **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 UK from the EU as it ensures the UK excise holding and movement regime continues to function after EU exit when excise goods moving between the UK and EU will no longer be subject to reciprocal arrangements with EU Member states and the EU rules will no longer apply in the UK.

## **9. Consolidation**

- 9.1 There are no plans to consolidate the legislation given that the changes are consequential upon UK's withdrawal from the EU.

## **10. Consultation outcome**

- 10.1 This instrument forms part of wider changes to ensure that the UK has an excise regime that operates as required when the UK leaves the EU in the event of there being no withdrawal agreement. As there is no new policy being introduced because the overall approach taken is to treat what are currently other EU Member states as third countries on and after exit, it is deemed that no formal consultation is required. However, HMRC has engaged with key excise businesses and software developers to ensure they are fully aware of the changes being proposed and how they are impacted.

## **11. Guidance**

- 11.1 All relevant notices and guidance will be updated as appropriate to coincide with the implementation of these changes.

## **12. Impact**

- 12.1 There is no significant impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 This instrument will be covered by an overarching HMRC impact assessment (second edition) which will be published and available on the website at:  
<https://www.gov.uk/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal>
- 12.4 This instrument relates to commercial movements of excise goods only and does not introduce new policy as EU movements will be treated the same as non-EU movements after EU exit. In addition, the changes are consequential upon the UK leaving the EU without a deal.

## **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 impact of the changes on small businesses (employing up to 50 people).
- 13.3 The basis for this final decision is that this instrument does not impose new obligations on them (other than those that follow because EU Member states will become third countries on exit).

## **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation is that the changes it makes will be kept under review through communication with key stakeholder groups via the existing excise business consultative group.
- 14.2 This instrument does not include a statutory review clause. None is required under section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015 (c. 26) because this instrument relates to duty.

## **15. Contact**

- 15.1 Caroline Winrow-Clark at HMRC Telephone: 03000 588076 or email: [caroline.winrow@hmrc.gov.uk](mailto:caroline.winrow@hmrc.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Judith Kelly, Deputy Director for Excise & Environmental Taxes Policy at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Mel Stride MP, Financial Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.