

EXPLANATORY MEMORANDUM TO
THE EXCISE DUTIES (MISCELLANEOUS AMENDMENTS) (EU EXIT)
REGULATIONS 2019

2019 No. 14

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 makes miscellaneous changes to correct European Union (EU) derived excise legislation and other deficiencies, in the event of the United Kingdom (UK) leaving the EU without a deal. The changes include in the main, housekeeping amendments, which among other things, remove references to EU concepts and terminology that will no longer apply when the UK leaves the EU. 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 the Statutory Instruments

- 3.1 Where it amends the Excise Duties (Personal Reliefs) (Fuel and Lubricants Imported in Vehicles) Order 1989 (S.I. 1989/1898) (the 1989 Order) and revokes the Travellers' Reliefs (Fuel and Lubricants) Order 1995 (S.I. 1995/1777) ("the 1995 Order"), this instrument has been made by regulations rather than by order in accordance with section 105 of the Deregulation Act 2015 (c. 20).
- 3.2 Amendments to the Excise Goods (Drawback) Regulations 1995 (S.I. 1995/1046) (the Drawback Regulations) are made by a Commons-only instrument because it has been considered necessary to use powers contained in sections 45 and 48 of the Taxation (Cross-border Trade) Act 2018 (c. 22) (TCTA) in addition to powers contained in existing legislation. This is to ensure that appropriate provision can be made for the Commissioners for HMRC to issue published notices in order to specify certain detailed documentary requirements for drawback that may arise after exit from the EU, or under the transitional provisions. The precise details of those requirements are contingent on other changes to customs EU exit legislation that has not yet been finalised, because the new UK customs regime is being legislated for sequentially. It has therefore not been possible to identify those requirements in the body of this instrument.
- 3.3 For the same reason, it is not possible to publish a draft of the proposed published notice(s) relating to excise drawback at the same time as this instrument. However, the UK customs regime will be finalised in advance of exit day in the event that the UK leaves the EU without a withdrawal agreement and, consequently, the requisite

published notice(s) relating to drawback will also be finalised at the earliest opportunity.

- 3.4 Section 48(11) of the TCTA amplifies the power used in section 45, to include power to make provision by reference to things specified in a notice published in accordance with the regulations made under that power.
- 3.5 The transitional provisions in this instrument generally are made under the section 45 and 48(11) powers cited in the preamble. Besides published notices, the latter also provides for transitional or transitory provision and savings.
- 3.6 It is intended to bring this instrument into force on exit day, save that regulation 5 may be brought into force before that date if it is considered likely that the alternative documents the Commissioners of HMRC may specify by published notice under regulation 5(2) will have to be obtained by those exporting excise goods before exit day, in relation to a claim for drawback made after it.

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)

- 3.7 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 United Kingdom.
- 4.2 The territorial application of this instrument 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 It is intended that three instruments relating to excise duties on EU exit will be made and laid at the same time:
- the Excise Goods (Holding, Movement and Duty Point) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/13);
 - the Excise Duties (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/15); and
 - this instrument.
- 6.2 In combination with the Excise Goods (Holding, Movement and Duty Point) (Amendment etc.) (EU Exit) Regulations 2019, this instrument makes the first use of the powers in section 45 and 48(11) of the TCTA. This instrument will be brought into force using the power in section 52(2) of the TCTA, which has been used previously, for example, in S.I. 2018/1248.
- 6.3 This instrument revokes the 1995 Order. The 1995 Order implemented the provisions of Article 8a of Council Directive 92/81, as inserted by Council Directive 94/74/EC of 22 December 1994 (the provision is now contained in Article 24(2) of Council Directive 2003/96/EC). It provides relief from excise duty to lubricants and to fuel

contained in the standard tanks of commercial vehicles that travellers from other EU member states have with them.

- 6.4 This instrument also amends the 1989 Order. The 1989 Order implemented the provisions of Council Directive 85/347/EEC which allowed relief from excise duty on fuel and lubricants carried in a standard or a reserve tank for the propulsion unit (engine) and any refrigeration equipment fitted to motor vehicles (including railway engines) imported by and with any persons entering the UK.
- 6.5 The definition of a “standard fuel tank” in the 1989 Order is updated to reflect Directive 2003/96/EC, applying that definition to both private and non-private vehicles.
- 6.6 This instrument also amends the Drawback Regulations in relation to exports and chewing tobacco and makes transitional and saving provision.

7. Policy background

What is being done and why

Travellers’ Fuel Reliefs

- 7.1 The 1989 Order currently applies to fuel imported in all circumstances other than those to which the 1995 Order applies. It therefore applies to imports from what are regarded as third countries before the UK leaves the EU.
- 7.2 The net effect of the amendments made by these Regulations is to apply the 1989 Order to include imports from any country outside the United Kingdom. Thus, reliefs on imported fuel duties from the EU Member states will, in all cases, apply according to the existing rules that apply to third countries.

Excise Goods (Drawback) Regulations 1995 (SI 1995/1046)

- 7.3 This instrument makes minor changes to the Drawback Regulations, which are designed to ensure UK businesses can continue to claim drawback after the UK leaves the EU. References to EU customs and excise documentation that would be inapplicable on exit are removed or replaced.
- 7.4 Drawback is a reimbursement of UK excise duty paid on goods when those goods are not going to be consumed in the UK. This is because the goods have been exported from the UK or have been destroyed.
- 7.5 This instrument also makes transitional and saving provision on EU exit. Broadly, the approach taken is to allow the existing law to apply, so far as possible, to a drawback transaction that is incomplete at the point of exit. Such saving provision is only required for transactions that begin before exit day and will end after it.
- 7.6 However, because the UK will not be a Member state on or after exit, certain EU documents and customs and excise procedures referred to in the existing regulations may no longer be applicable in relation to these incomplete transactions. These Regulations accordingly make modification to how the Drawback Regulations should be read, for these transitional purposes.

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 2018 (c.16) but relates to the withdrawal of the UK from the EU. The rules concerning reliefs set out in the 1989 Order and the rules set out in the Drawback Regulations are no longer appropriate when the UK ceases to be a Member state of the EU.

9. Consolidation

- 9.1 There are no plans to consolidate the legislation given that the changes are minor and 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. 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 The impact on business, charities or voluntary bodies is negligible.
- 12.2 There is no 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/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal>
- 12.4 This instrument does not introduce new requirements or obligations; the changes contain no substantive amendments and are in the main minor and consequential upon the UK leaving the EU without a deal.

13. Regulating small business

- 13.1 The legislation applies to small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses employing less than 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 a duty.

15. Contact

- 15.1 Martins Akpojiyovwi at HM Revenue & Customs, Telephone: 03000 566466 or email: martins.akpojiyovwi@hmrc.gsi.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Judith Kelly, Deputy Director for Excise & Environmental Taxes Policy at HM Revenue & Customs 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.