

2019 No. 15

EXITING THE EUROPEAN UNION

EXCISE

The Excise Duties (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019

Made - - - - at 9.20 a.m. on 14th January 2019

Laid before Parliament at 9.40 a.m. on 15th January 2019

Coming into force in accordance with regulation 1

The Commissioners for Her Majesty's Revenue and Customs(a) make the following Regulations in exercise of the powers conferred by—

- (a) section 93(1)(b), (c), (d), (2)(a), (da), (e), (ee), (fa), (3), 100G(1)(a) of the Customs and Excise Management Act 1979(b);
- (b) section 2(3), 13(1)(a), (b), 13(1A)(a), 15(6), 77(1)(a), (e) and (2) of, and paragraphs 1(1), 3(1), 4(1), (2)(a),(3), (4), (6) and 5(1) of Schedule 2A to, the Alcoholic Liquor Duties Act 1979(c);
- (c) section 20AA(1)(a), (2)(b), (c), 23C(2) and (3)(a) of the Hydrocarbon Oil Duties Act 1979(d);
- (d) section 5(2) and (3) of the Finance Act 1995(e); and
- (e) section 52(2) and (5)(b) of the Taxation (Cross-border Trade) Act 2018(f).

-
- (a) Section 1(1) of the Customs and Excise Management Act 1979 (c. 2), as amended by paragraph 22(b) of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11), provides that “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs. Under section 4(3) of the Alcoholic Liquor Duties Act 1979 (c. 4) and section 27(3) of the Hydrocarbon Oil Duties Act 1979 (c. 5), “the Commissioners” has the same meaning in those Acts as it has in section 1(1) of the Customs and Excise Management Act 1979. Section 5(8) of the Finance Act 1995 (c. 4) provides that section 5 of that Act shall be construed as one with the Alcoholic Liquor Duties Act 1979.
 - (b) 1979 c. 2. Section 93(1) was substituted by paragraph 2(1) of Schedule 2 to, the Finance (No. 2) Act 1992 (c. 48). Section 93(2)(a) was relevantly amended by paragraph 2(a) of Schedule 8, Part 1, to the Finance Act 1981 (c. 35), section 93(2)(da) and (fa) were inserted by paragraph 2(2) of Schedule 2 to the Finance (No. 2) Act 1992 (c. 48), and section 93(2)(ee) was inserted by paragraph 3 of Schedule 3 to the Finance Act 1986 (c. 41). Section 100G was inserted by Schedule 4 to the Finance Act 1991 (c. 31).
 - (c) 1979 c. 4. Section 13(1A) was substituted by paragraph 12 of Schedule 8, Part 2, to the Finance Act 1981. Section 77 was amended by paragraph 23 of Part 2 of Schedule 8 to the Finance Act 1981, paragraphs 5 and 6 of Schedule 2, and Part 1 of Schedule 29, to the Finance Act 1995. There are other amendments to sections 2, 13 and 77 of the Act, but none is relevant. Paragraphs 1 and 5 of Schedule 2A were relevantly amended by S.I. 2006/144, 2015/664.
 - (d) 1979 c. 5. Section 20AA was inserted by section 2(1) of the Finance Act 1989 (c. 26), and amended by Part 1(4) of Schedule 23 to the Finance Act 1993 (c. 34). There are other amendments to section 20AA, but none is relevant. Section 23C was inserted by section 13 of the Finance Act 2004 (c. 12). Section 23C extends the Commissioners’ powers to make regulations under section 93 of the Customs and Excise Management Act 1979 concerning the substances listed in section 23C(4). Relevant amendments were made to section 23C by the Finance Act 2016 (c. 24), Schedule 17, Part 1, paragraph 8.
 - (e) 1995 c. 4. Section 5 was amended by S.I. 2009/56, but not relevantly.
 - (f) 2018 c. 22. By virtue of sections 52(1) and (5) of that Act, the powers of the Commissioners for Her Majesty’s Revenue and Customs to make relevant subordinate legislation cited above include power to make supplementary, incidental, transitional, transitory, saving or consequential provision.

The Commissioners for Her Majesty's Revenue and Customs consider it appropriate in consequence of, or otherwise in connection with, the withdrawal of the United Kingdom from the European Union, that the following Regulations come into force on such day as the Treasury may by regulations under section 52(2) of the Taxation (Cross-border Trade) Act 2018 appoint, and to make the transitional and savings provisions contained in Part 3 of these Regulations.

PART 1

Introductory provision

Citation and commencement

1. These Regulations may be cited as the Excise Duties (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019 and come into force on such day as the Treasury may by regulations under section 52(2) of the Taxation (Cross-border Trade) Act 2018 appoint.

PART 2

Amendments to miscellaneous regulations relating to excise duties

Amendment of the Excise Warehousing (Etc.) Regulations 1988

2.—(1) The Excise Warehousing (Etc.) Regulations 1988(a) are amended as follows.

(2) In regulation 17 (removal from warehouse— documentary exceptions)—

(a) omit paragraphs (7)(e) and (ea);

(b) in paragraph (12), for the definition of “single administrative document”, substitute—

“single administrative document” means the single administrative document provided for in a public notice made by the Commissioners(b) under paragraph 5 of Schedule 1 to the Taxation (Cross-border Trade) Act 2018(c);”.

Amendment of the Spirits Regulations 1991

3.—(1) The Spirits Regulations 1991(d) are amended as follows.

(2) In regulation 18 (ascertainment of strength of spirits), for paragraph 1(c), substitute—

“(c) by a method set out in the Annex to Commission Regulation (EC) No 2870/2000 of 19 December 2000, laying down Community reference methods for the analysis of spirits drinks, as it had effect in the United Kingdom immediately prior to exit day.”.

(a) S.I. 1988/809, relevantly amended by S.I. 2002/501, 2010/593.

(b) In S.I. 1988/809, “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs. That is the meaning given by section 1(1) of the Customs and Excise Management Act 1979 and by section 4(3) of the Alcoholic Liquor Duties Act 1979. Section 37(1) of the Taxation (Cross-border Trade) Act 2018 provides that in Part 1 of that Act, “HMRC Commissioners” means “the Commissioners for Her Majesty's Revenue and Customs”.

(c) A draft of the notice is available 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. When finalised, a hard copy will be available on request from HM Revenue and Customs, 100 Parliament Street, London SW1A 2BQ.

(d) S.I. 1991/2564, amended by S.I. 2006/1058. There are other amending instruments, but none is relevant.

Amendment of the Hydrocarbon Oil Duties (Marine Voyages Reliefs) Regulations 1996

4.—(1) The Hydrocarbon Oil Duties (Marine Voyages Reliefs) Regulations 1996(a) are amended as follows.

- (2) In regulation 2 (interpretation), for the definition of “private pleasure craft”, substitute—
“private pleasure craft” has the same meaning as in section 14E of the Hydrocarbon Oil Duties Act 1979(b);”.

Amendment of the Warehousekeepers and Owners of Warehoused Goods Regulations 1999

5.—(1) The Warehousekeepers and Owners of Warehoused Goods Regulations 1999(c) are amended as follows.

- (2) Omit regulation 11(2)(aa) (privileges of an authorized warehousekeeper).

Amendment of the Excise Warehousing (Energy Products) Regulations 2004

6.—(1) The Excise Warehousing (Energy Products) Regulations 2004(d) are amended as follows.

(2) In regulation 2 (interpretation), omit the definitions of “Community duty suspension arrangements” and “UK registered consignee”.

(3) Omit regulation 3 (European Union imports).

(4) In regulation 5 (treatment of warehoused special energy products)—

- (a) omit paragraph (1);
- (b) in paragraph (2), omit “(other than special energy product that falls within paragraph (1) above)”;
- (c) in paragraph (3), after “to which paragraph” omit “(1) or”;
- (d) omit paragraph (4)(c).

Amendment of the Denatured Alcohol Regulations 2005

7.—(1) The Denatured Alcohol Regulations 2005(e) are amended as follows.

(2) In regulation 4 (classes of denatured alcohol)—

(a) for paragraph (2), substitute—

“(2) Subject to paragraph (6), completely denatured alcohol is denatured alcohol that has been made in accordance with regulation 5.”;

(b) for paragraph (3), substitute—

“(3) Subject to paragraph (6), industrial denatured alcohol is denatured alcohol that has been made in accordance with regulation 6.”;

(c) omit paragraph (4);

(d) in paragraph (6), omit the words from “that”, in the first place that it occurs, to “consumption”;

(e) omit paragraph (7).

(3) For regulation 18, substitute—

(a) S.I. 1996/2537. The instrument has been amended, but not relevantly.
(b) Section 14E is relevantly amended by paragraph 6 of Schedule 9 to the Taxation (Cross-border Trade) Act 2018. Section 57(3) of that Act provides that Schedule 9 comes into force on such day as the Treasury may by regulations appoint.
(c) S.I. 1999/1278, relevantly amended by S.I. 2002/501, 2004/2064.
(d) S.I. 2004/2064, relevantly amended by S.I. 2010/593.
(e) S.I. 2005/1524, relevantly amended by S.I. 2010/593, 2011/1043.

“Importing and exporting denatured alcohol

18. The Excise Goods (Holding, Movement and Duty Point) Regulations 2010(a) shall apply to imports and exports of denatured alcohol as if it were alcohol in respect of which excise duty has not been paid.”.

Amendment of the Duty Stamps Regulations 2006

8. The Duty Stamps Regulations 2006(b) are amended as follows.

9. In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) for the definition of “authorized warehousekeeper”, substitute—

““authorized warehousekeeper”, subject to paragraph (4), means an authorised warehousekeeper under regulation 3(1) of the Excise Goods (Holding, Movement and Duty Point) Regulations 2010;”;

(ii) for the definition of “external territory”, substitute—

““external territory” means a territory for whose external relations the United Kingdom is responsible;”;

(iii) in the definition of “irregular stamper”, omit “, other than a temporary registered consignee or unregistered commercial importer;”;

(iv) omit the definition of “registered commercial importer”;

(v) omit the definition of “tax representative”;

(vi) for the definition of “tax warehouse”, substitute—

““tax warehouse” has the meaning given in regulation 3(1) of the Excise Goods (Holding, Movement and Duty Point) Regulations 2010;”;

(vii) omit the definition of “temporary registered consignee”;

(viii) omit the definition of “third country”;

(ix) omit the definition of “UK registered consignee”;

(x) omit the definition of “unregistered commercial importer”;

(b) for paragraph (4)(b), substitute—

“(b) is, and is by law entitled to be, recognised by the authorities of the external territory in which it is established as representing the interests of those producers in that territory, and”.

10. In regulation 5 (conditions for obtaining type A stamps)—

(a) for paragraph (3), substitute—

“(3) A registered person who is a registered owner is authorized if they are also an authorized warehousekeeper (or a person of equivalent status in an external territory), irregular stamper, compounder, a person who bottles alcoholic liquor in the United Kingdom, the holder of an excise licence under section 54(2) or 55(2) of the Alcoholic Liquor Duties Act 1979, or they do not have a fixed establishment in the United Kingdom or an external territory and they carry on a trade or business that consists of or includes distilling, manufacturing, or bottling, alcoholic liquor.”;

(b) omit paragraph (4).

11. In regulation 6(3) (conditions for obtaining authority to affix type A stamps to retail containers), omit “who is not a temporary registered consignee or unregistered commercial importer and”.

(a) S.I. 2010/593, amended by S.I. 2011/2225, 2012/2786, 2013/3210, 2015/368, 2019/13 and modified by S.I. 2010/594.

(b) S.I. 2006/202, relevantly amended by S.I. 2010/593, 2011/1043. There are other amending instruments, but none is relevant.

- 12.** In regulation 9(2)(e) (registration), omit “UK registered consignee,”.
- 13.** In regulation 10 (disqualification from being registered)—
- (a) for paragraph (4), substitute—
“(4) A person is disqualified from being registered if they have a fixed establishment in the United Kingdom or an external territory, unless they are an authorized warehousekeeper (or a person of equivalent status in an external territory), irregular stamper, registered owner, compounder, a person who bottles alcoholic liquor in the United Kingdom, or the holder of an excise licence under section 54(2) or 55(2) of the Alcoholic Liquor Duties Act 1979.”;
 - (b) in paragraph (5), for “European Union” substitute “United Kingdom”.
- 14.** In regulation 14 (ordering and obtaining type A stamps)—
- (a) in paragraph (2)(f)(ii), for “an external territory or a third country” substitute “a place outside the United Kingdom”;
 - (b) omit paragraphs (7) and (8).
- 15.** In regulation 15 (receiving type A stamps)—
- (a) omit paragraph (2);
 - (b) in paragraph (3), after “registered person” omit “, temporary registered consignee or unregistered commercial importer”;
 - (c) omit paragraph (5).
- 16.** Omit regulation 16(3) (returning type A stamps).
- 17.** In paragraph (1) of regulation 19 (premises where duty stamps etc, may be affixed)—
- (a) in sub-paragraph (a), for “a third country” substitute “a place outside the United Kingdom that is not an external territory”;
 - (b) omit sub-paragraph (c);
 - (c) in sub-paragraph (d)—
 - (i) at the end of paragraph (ii), insert “, or”;
 - (ii) in paragraph (iii), for “an external territory or a third country” substitute “a place outside the United Kingdom”; and
 - (iii) omit paragraph (iv).
- 18.** In regulation 20 (times at which a retail container must be stamped)—
- (a) omit paragraph (1);
 - (b) in paragraph (2), for “an external territory or third country” substitute “a place outside the United Kingdom”.

PART 3

Transitional and saving provisions

Interpretation

19. In this Part, “in the course of a movement on exit day” has the same meaning as in regulation 45(2) of the Excise Goods (Holding, Movement and Duty Point) (Amendment etc.) (EU Exit) Regulations 2019(a).

(a) S.I. 2019/13.

The Excise Warehousing (Etc.) Regulations 1988

20.—(1) The amendments made by regulation 2 do not apply to excise goods that are in the course of a movement on exit day.

(2) In this regulation, “excise goods” means goods subject to any excise duty, as that term is defined by section 49 of the Taxation (Cross-border Trade) Act 2018.

The Warehousekeepers and Owners of Warehoused Goods Regulations 1999

21.—(1) Regulation 11(2)(aa) of the Principal Regulations continues to apply to goods that are in the course of a movement on exit day.

(2) In this regulation, “the Principal Regulations” means the Warehousekeepers and Owners of Warehoused Goods Regulations 1999 as they have effect prior to the amendment made by regulation 5 of these Regulations.

The Denatured Alcohol Regulations 2005

22.—(1) The amendments made by regulation 7 have no effect in relation to—

- (a) denatured alcohol made before exit day;
- (b) denatured alcohol that has been incorporated before exit day into a product that is not for human consumption; or
- (c) denatured alcohol (whether made or incorporated) that is in the course of a movement on exit day.

(2) In paragraph (1), references to denatured alcohol or to a product that is not for human consumption are to be construed according to the Denatured Alcohol Regulations 2005 as they have effect prior to the amendments made by regulation 7 of these Regulations.

The Duty Stamps Regulations 2006

23.—(1) The amendments made by regulations 8 to 18 have no effect in relation to retail containers of alcoholic liquor—

- (a) to which duty stamps are affixed before exit day; or
- (b) that are in the course of a movement on exit day.

(2) In paragraph (1)—

- (a) “duty stamps” has the meaning given by paragraph 1(5) of Schedule 2A to the Alcoholic Liquor Duties Act 1979;
- (b) “retail containers of alcoholic liquor” is to be construed in accordance with the definition of “alcoholic liquor” in regulation 2(1) of the Duty Stamps Regulations 2006 and paragraph 1(2) of Schedule 2A to the Alcoholic Liquor Duties Act 1979.

*Melissa Tatton
Jim Harra*

At 9.20 a.m. on 14th January 2019 Two of the Commissioners for Her Majesty’s Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make miscellaneous amendments to existing regulations relating to excise duty to address failures of retained EU law to operate effectively and other deficiencies arising on the withdrawal of the United Kingdom (the “UK”) from the European Union (the “EU”) . “Excise

duty” has the same meaning in this context as it has in Parts 4 and 5 of the Taxation (Cross-border Trade) Act 2018 (c. 22).

The Excise Warehousing (Etc.) Regulations 1988 (S.I. 1988/809) are amended so that the list of circumstances in which the accompanying document required by regulation 17(6) is not required is updated to reflect changes to excise and customs procedures that will occur as a result of the exit of the UK from the EU.

The Spirits Regulations 1991 (S.I. 1991/2564) are amended so that the existing methodology for ascertaining the strength of spirit drinks for excise duty purposes, which is drawn from the Annex to Commission Regulation EC No 2870/2000, will continue to function on and after exit day.

The Hydrocarbon Oil Duties (Marine Voyages Reliefs) Regulations 1996 (S.I. 1996/2537) are amended by substituting a definition of “private pleasure craft” by reference to domestic legislation in place of the existing EU citation.

The Warehousekeepers and Owners of Warehoused Goods Regulations 1999 (S.I. 1999/1278) are amended by removing regulation 11(2)(aa), which permits authorized warehousekeepers to consign certain goods to EU Member states.

The Excise Warehousing (Energy Products) Regulations 2004 (S.I. 2004/2064) are amended by removing references to terms which are no longer required in respect of movements of special energy products on exit day. Those products are fuels that are not chargeable with duty in the UK, but which are nonetheless subject to excise controls.

The Denatured Alcohol Regulations 2005 (S.I. 2005/1524) are amended to omit references to completely and partially denatured alcohol made in a member State other than the UK, and related citations. Those provisions are no longer required on and after exit day.

The Duty Stamps Regulations 2006 (S.I. 2006/202) are amended to omit or to replace a number of definitions and other provisions that will no longer be required on and after exit day or which will not function correctly, particularly those relating to categories of persons, EU legislative citations and to geographic descriptors.

These Regulations also make transitional and saving provision in respect of a number of the above regulations.

This instrument will be covered by an overarching HMRC impact assessment (second edition) which will be published on the website at <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal>.

© Crown copyright 2019

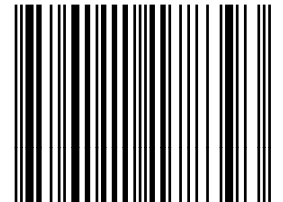
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.

£6.90

UK201901141004 01/2019 19585

<http://www.legislation.gov.uk/id/uksi/2019/15>

ISBN 978-0-11-117839-3



9 780111 178393