

## EXPLANATORY MEMORANDUM TO

### THE FINANCE ACT 2019, SECTION 57 (TOBACCO FOR HEATING) (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2019

2019 No. 975

#### 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.

#### 2. Purpose of the instrument

- 2.1 These Regulations make consequential amendments to secondary legislation to ensure the correct treatment of goods that fall within the category of tobacco duty called 'tobacco for heating'.
- 2.2 The Regulations amend The Excise Goods (Drawback) Regulations 1995 to exclude tobacco for heating from the drawback provisions, where it is dispatched to European Union (EU) member states. This is because tobacco for heating is not treated as excise goods in the EU. The same drawback treatment already applies to chewing tobacco, which is not excise goods under EU law. Drawback allows for the repayment of excise duty paid on goods that have not and will not be consumed in the United Kingdom (UK). The Regulations also amend The Excise Goods (Holding, Movement and Duty Point) Regulations 2010 to allow tobacco for heating to be treated in the same way as the existing category of chewing tobacco.

#### 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 United Kingdom.
- 4.2 The territorial application of this instrument is 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 Primary legislation introducing tobacco for heating was included in Finance Act 2019, which amends section 1 of the Tobacco Products Duty Act 1979 (TPDA) and Schedule 1 to that Act. Section 57(5) of the Finance Act 2019 allows HMRC to make regulations to insert tobacco for heating into the wider excise regime.
- 6.2 This instrument does so by distinguishing tobacco for heating from tobacco products recognised by EU law. This distinction already exists for chewing tobacco, which is a UK category of tobacco product, not an EU category.
- 6.3 This instrument firstly amends The Excise Goods (Drawback) Regulations 1995. Drawback allows for the repayment of excise duty paid on goods that have not and will not be consumed in the UK. Tobacco for heating is not eligible for drawback when dispatched to the EU, as it is not an EU excise good. Regulation 5(4) of The Excise Goods (Drawback) Regulations 1995 is amended to include tobacco for heating, as well as chewing tobacco.
- 6.4 It also amends The Excise Goods (Holding, Movement and Duty Point) Regulations 2010. Those Regulations set out the general arrangements for the holding and movement of excise goods. The amendments ensure that tobacco for heating can be treated in the same way as chewing tobacco, for these purposes. References to chewing tobacco are substituted by references to chewing tobacco and/or tobacco for heating.
- 6.5 Separately, an Order has been laid to amend The Tobacco Products (Description of Products) Order 2003 to insert a description of tobacco for heating, under section 1(3) TPDA.

## **7. Policy background**

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

- 7.1 The introduction of tobacco for heating as a new tobacco excise duty category requires consequential amendments to other regulations. This is necessary for the correct treatment of tobacco for heating in the wider excise regime.
- 7.2 The parts of the excise regime which are amended concern drawback arrangements and the general holding and movement of excise goods. This includes import, export and the point that payment of duty is required for tobacco for heating.
- 7.3 This statutory instrument will come into force on 1 July 2019 to align with the commencement of excise duty on tobacco for heating.

## **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.

## **9. Consolidation**

- 9.1 This instrument is not a consolidation measure. It makes minor amendments to existing legislation which are not consolidated at this time.

## **10. Consultation outcome**

- 10.1 A consultation was unnecessary as these consequential amendments are required for the tobacco duty system to function once the tobacco for heating category comes into force.

## **11. Guidance**

- 11.1 HMRC will publish updated guidance by 1 July 2019 in Excise Notice 476. This is available at [Excise Notice 476: Tobacco Products Duty, - GOV.UK](#)

## **12. Impact**

- 12.1 The impact on business, charities or voluntary bodies is limited to a small number of tobacco manufacturers and tobacco importers. These businesses will benefit from the measure as it aims to provide clarity and certainty on the future tax treatment of heated tobacco products. The administrative burden is expected to be negligible. Businesses will incur one off costs, including familiarisation with the new rules. It is not expected that there will be any on-going costs
- 12.2 The impact on the public sector is estimated at an initial cost of £830,000 to amend HMRC's information technology (IT) systems and additional IT maintenance costs of approximately £38,000 over 5 years. These costs relate to the introduction of the policy as a whole. There will be a negligible impact on staff resourcing for HMRC. Other public sector impacts have been considered and none have been identified.
- 12.3 A Tax Information and Impact Note covering this instrument was published on 6 July 2018 alongside draft Finance Bill clauses for 2018 - 2019 and is available on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that apply to this instrument.

## **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

- 14.1 HMRC will monitor the impact of the changes introduced by this instrument on an ongoing basis using information collected from its internal systems and processes, as well as regular engagement with affected stakeholder groups.
- 14.2 As this instrument concerns a duty related measure, it does not include a statutory review clause under section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

## **15. Contact**

- 15.1 Denise Welsby at the HM Revenue and Customs Telephone: 03000 598381 or email: [denise.welsby@hmrc.gov.uk](mailto:denise.welsby@hmrc.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Annie Purkis, Deputy Director for Indirect Tax, at the HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Exchequer Secretary to the Treasury, Robert Jenrick, can confirm that this Explanatory Memorandum meets the required standard.