

EXPLANATORY MEMORANDUM TO
THE EXCISE DUTIES (MISCELLANEOUS AMENDMENTS) (EU EXIT) (NO. 3)
REGULATIONS 2019

2019 No. 474

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue & 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 modifications to the excise regime relating to: the Channel Tunnel, the movement of goods in certain customs transit procedures and Roll on Roll off (RoRo) locations. The instrument also makes changes to the Excise Goods (Holding, Movement and Duty Point) Regulations 2010 (S.I. 2010/593) (the "Holding and Movement Regulations"), which are consequential on customs secondary legislation, and makes minor corrections to the Excise Goods (Holding, Movement and Duty Point) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/13). A minor modification is made to the Tobacco Products Regulations 2001 (S.I. 2001/1712) (the "TPR 2001") relating to elections to defer payment for a 3 month period if the UK leaves the EU without a deal on 29 March 2019 . 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 Where it amends the Channel Tunnel (Alcoholic Liquor and Tobacco Products) Order 2010 (S.I. 2010/594) (the "2010 Channel Tunnel 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 Regulation 17 refers to requirements to be specified by HMRC under the modification made by that regulation. The precise details of those requirements are not finalised and so it has not been possible to publish the notice alongside this instrument. This will be available when finalised at:

<https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal>

A hard copy may be inspected free of charge at HM Revenue & Customs, 3rd Floor West, Ralli Quays, 3 Stanley Street, Salford, M60 9LA. This information is also provided in a footnote to regulation 17.

- 3.3 Regulation 12 refers to RoRo listed locations, which will be specified in a published notice made under the Customs (Import Duty) (EU Exit) Regulation 2018 (S.I. 2018/1248). That notice is currently only available in draft at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777006/Draft_Notices_to_be_Made_Under_The_Customs_Import_Duty_EU_Exit_Regulations_2018.pdf.
- If and when finalised, it will be published and a hard copy may be inspected free of charge at HM Revenue and Customs, 100 Parliament Street, London SW1A 2BQ.
- 3.4 The revocation of the Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998 and the transitional and saving provisions are made under section 45(1), (2)(a), (b), 48(11)(d) of the Taxation (Cross-border Trade) Act 2018 (c. 22) (TCTA). The existing vires under sections 100G and 100H of the Customs and Excise Management Act 1979 (c. 2) do not provide for transitional and saving provision. For simplicity, TCTA powers are used throughout.
- 3.5 The amendments made to the Channel Tunnel (Alcoholic Liquor and Tobacco Products) Order 2010 (S.I. 2010/594) are made under a combination of powers contained in the Channel Tunnel Act 1987 (c. 53), and (for regulation 4(2) and the transitional provision, which the Channel Tunnel Act 1987 does not provide power for) section 45(1), (2)(a), (b), (d), 48(11)(d) TCTA.
- 3.6 The amendments to the Holding and Movement Regulations in Part 4, chapter 1 of this instrument are made under section 45(1), (2)(a), (b) and (j), 48(11)(c) and (d) TCTA.
- 3.7 The modifications to the Holding and Movement Regulations in Part 4, chapter 2 of this instrument and the modification to the TPR 2001 in regulation 17 are made under section 51(1)(c) TCTA.
- 3.8 The amendments made to the Excise Duties (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/14) are made under the same vires as the provision that is corrected, namely, section 45(1), (2)(d) and 48(11) TCTA.
- 3.9 This instrument will be brought into force by commencement regulations as provided for under section 52(2) TCTA. Those commencement regulations will only be made if it is clear that the UK will be leaving the EU without a deal.

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)

- 3.10 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. In addition, the provisions made in Part 3 and Part 4, chapter 2 apply to the control zone as referred to in the Channel Tunnel (Customs and Excise) Order 1990 (S.I. 1990/2167) article 5(2)(a).

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 is one of four instruments solely relating to excise duties on EU exit. The other three instruments were laid on 15 January 2019. They are:

- 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) Regulations 2019 (S.I. 2019/14); and
- the Excise Duties (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/15).

6.2 In the event that the UK exits the EU without a negotiated agreement, all four instruments will be brought into force on exit day using the power in section 52(2) (TCTA). The sequencing of amendments to Excise Goods (Holding, Movement and Duty Point) (Amendment etc.) (EU Exit) Regulations 2019 and the Excise Duties (Miscellaneous Amendments) (EU Exit) Regulations 2019 made by this instrument will be addressed in the commencement regulations made under section 52(2) TCTA.

6.3 The amendments predominately address provisions in existing excise instruments that will be inapplicable, or that will not function correctly, on the exit of the UK from the EU.

6.4 This instrument also modifies the application of the Holding and Movement Regulations to the importation of excise goods via RoRo ports and the Channel Tunnel in consequence of specific customs provisions for these scenarios.

6.5 The instrument also corrects minor drafting errors in the Excise Duties (Miscellaneous Amendments) (EU Exit) Regulations 2019 and the Excise Goods (Holding, Movement and Duty Point) (Amendment etc.) (EU Exit) Regulations 2019.

7. Policy background

What is being done and why?

7.1 This instrument makes changes to the following excise secondary legislation:

[The Excise Duty \(External and Internal Community Transit Procedure\) Regulations 1998 \(S.I.1998/202\)](#)

7.2 This instrument revokes these regulations (and also amends Excise Duty Point (External and Internal Community Transit Procedure) (Amendment) Regulations 1998 (S.I. 1998/3110)), which provide for an excise duty point (when excise duty becomes due) where there are breaches of the external and internal Community transit procedures. External and internal Community transit will not be relevant for the UK on exit from the EU. The UK will continue to have customs transit procedures when the UK leaves the EU. These procedures are provided for in the Customs Transit Procedures (EU Exit) Regulations 2018 (S.I. 2018/1258). The Holding and Movement Regulations (the rules which decide when excise duties should be paid depending on

where they are stored or moved) will provide for excise duty points and for liability to duty where there are breaches of these procedures.

- 7.3 The existing regulations align excise duty points (when excise duty becomes due) and liability for those breaches of EU customs legislation. For transitional movements on exit day of goods within the Community transit procedures, the existing regulations will continue to apply so far as possible. Where that is not possible, provision is made for the Holding and Movement Regulations to apply an excise duty point and to address liability when the existing legislation ceases to apply.

The Channel Tunnel (Alcoholic Liquor and Tobacco Products) Order 2010 (S.I. 2010/594)

- 7.4 Goods brought into the UK through the Channel Tunnel on a shuttle train are treated as being imported when they are taken into the control zone in France within the tunnel system. This instrument makes minor amendments to these regulations which apply the Holding and Movement Regulations with suitable modifications, to excise goods in a control zone. It also ensures that excise duty will be calculated in the same manner, and is subject to the same reliefs (on the same conditions), in the control zone, as it would be at any other place of entry to the UK under any excise duty legislation. The transitional provision saves the effect of the current Order for excise movements that started before exit day and end after exit day.

The Excise Goods (Holding, Movement and Duty Point) Regulations 2010 (S.I. 2010/593)

- 7.5 Certain definitions relating to the importation of excise goods from outside the territory of the United Kingdom are amended. These amendments correct and replace the amendments made by the Excise Goods (Holding, Movement and Duty Point) (Amendment etc.) (EU Exit) Regulations 2019. Consequently, the corresponding provisions in the latter regulations are revoked. A minor correction is also made to regulation 19 of the Holding and Movement Regulations.
- 7.6 The application of Part 8 of the Holding and Movement Regulations is extended to certain energy products (e.g. coal, lignite, petroleum oils etc.) moving from a place of importation to a tax warehouse and from a tax warehouse to a place from where those goods will be exported. This provision enables those goods to move under the Excise Movement and Control System (a computerised system for controlling the movement of excise goods in duty suspension).

RoRo Provisions

- 7.7 This instrument applies the Holding and Movement Regulations to excise goods being brought into the UK via RoRo ports with certain modifications. A RoRo vehicle is a freight vehicle or trailer that is boarded onto a vessel or train. RoRo ports are locations where RoRo vehicles arrive in the UK and are listed in a notice published by HMRC in accordance with the Customs (Import Duty) (EU Exit) Regulations 2018 (S.I. 2018/1248). The modifications allow additional time to pay duty and additional time to submit an electronic administrative document in order to facilitate the flow of traffic from RoRo ports. Consequential changes are made to provisions relating to the contravention of certain requirements and conditions in the Holding and Movement Regulations.

Tobacco Products Regulation 2001

- 7.8 This instrument makes a minor modification to the TPR 2001 for a 3 month period if the UK leaves the EU without a deal on 29 March 2019. It provides a power to HMRC to adjust the conditions for eligible persons who elect to enter duty deferment arrangements before 30 June 2019.

Transitional and saving provisions

- 7.9 This instrument also makes transitional and saving provision on EU exit. Broadly, the approach taken is to allow the existing law to operate, so far as possible, for movements that cross over the point in time at which the UK leaves the EU. Such saving provision is only required for certain existing excise regulations amended by this instrument that relate to excise movements that begin before exit day and will end after it.

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 because the revocations and modifications to existing excise legislation are required when the UK is no longer an EU member State.

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. 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. 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, or no significant, impact on the public sector.
- 12.3 This instrument will be covered by an overarching HMRC impact assessment (third 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 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 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.
- 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.