

EXPLANATORY MEMORANDUM TO
THE TOBACCO PRODUCTS (DESCRIPTIONS OF PRODUCTS) (AMENDMENT)
ORDER 2019

2019 No. 953

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 Tobacco products duty is an excise duty charged on tobacco products. A new category of tobacco called 'tobacco for heating' is being introduced. The purpose of this instrument is to describe 'tobacco for heating' for the purposes of excise duty.

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 The territorial application of this instrument includes Scotland and Northern Ireland.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 2(1) of the Tobacco Products Duty Act 1979 (the TPDA)) and the territorial application of this instrument is not limited either by the Act or by the instrument.

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 The Exchequer Secretary to the Treasury, Robert Jenrick MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Tobacco Products (Descriptions of Products) (Amendment) Order 2019 are compatible with the Convention rights.”

6. Legislative Context

6.1 Tobacco products duty is an excise duty charged on tobacco products. The products already liable to that duty are cigarettes, cigars, hand-rolling tobacco, other smoking tobacco (i.e. 'pipe' tobacco) and chewing tobacco. Duty is also chargeable on tobacco substitutes, which since 1 January 2014 include herbal cigarettes and herbal smoking mixtures.

- 6.2 The TPDA sets out the rules for calculating excise duty due on tobacco products. A duty category in relation to ‘tobacco for heating’ was introduced into the TPDA by section 57 of the Finance Act 2019.
- 6.3 The Tobacco Products (Descriptions of Products) Order 2003 (the Order) describes tobacco products for the purposes of the TPDA.

7. Policy background

What is being done and why?

- 7.1 Tobacco for heating, also known as heat not burn, is a recent development in the tobacco market. It is processed tobacco heated to produce or flavour vapour, instead of smoked as in conventional tobacco products.
- 7.2 Tobacco for heating is treated and delivered so that it cannot be smoked. In general a small amount is contained in a capsule which is inserted into a hand-held device. The device heats the tobacco to release flavours and nicotine but without combustion of the tobacco.
- 7.3 E-cigarettes do not contain tobacco and are not liable to excise duty.
- 7.4 The existing categories of tobacco products capture tobacco designed for smoking but not smokeless products containing tobacco (apart from chewing tobacco). So far, HMRC has assessed each tobacco for heating device and the tobacco used on a case-by-case basis to determine its liability to duty.
- 7.5 To address this, the government announced at Spring Statement 2018 its intention to legislate for a new duty category called tobacco for heating. Section 57 of the Finance Act 2019 amended sections 1(1) and 1(3) of the TPDA, as well as Schedule 1 to that Act to introduce a new duty category called tobacco for heating.
- 7.6 This Statutory Instrument will insert a new article 9 into the Order, which will describe tobacco for heating, ensuring that this category of tobacco product is distinct.
- 7.7 The new article 9 describes tobacco which can be heated, without combustion, to produce or flavour a vapour. Products can only fall within the tobacco for heating category if they do not meet the description of other tobacco products in the TPDA.
- 7.8 Under Schedule 1 to the TPDA, duty on tobacco for heating will be calculated based on weight. The description limits duty to the weight of the tobacco or tobacco mixture contained within the product.
- 7.9 A description of tobacco for heating products will give certainty to producers and HMRC about liability to duty. It will also prevent potential future claims that heated products or devices do not fall within a duty category.
- 7.10 It is intended that the new duty category, description and duty rate will come into force on 1 July 2019.

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 amendment to existing legislation, which is not consolidated at this time.

10. Consultation outcome

- 10.1 HM Treasury conducted a consultation from 20 March to 12 June 2017 setting out proposals to deal with the tax treatment of tobacco for heating. A summary of responses was published on 13 March 2018 and is available at: [Tax treatment of heated tobacco products - GOV.UK](#)
- 10.2 These proposals included: the best way to capture, describe and calculate duty on tobacco for heating for duty purposes; potential problems or administrative burdens for the trade; factors to consider when setting the duty rate and the future evolution of products.
- 10.3 The consultation sought the views of stakeholders from the tobacco industry, health bodies, retailers and trade bodies.
- 10.4 A total of 31 responses were received. The largest group of respondents were tobacco manufacturers and retailers (52%). Other respondents comprised public health bodies (35%) and trade bodies (13%). Over 60% of all respondents were in favour of changes to the duty regime for tobacco for heating. Public health bodies who responded were all supportive of the proposals. Manufacturers and trade bodies were split with 50% in favour and 50% against the proposals.
- 10.5 The government acknowledged that the majority of respondents were in favour of introducing a new category and agreed that it was the best way to capture tobacco for heating products. As a result of the responses received, it was decided to amend the criteria for the description of tobacco for heating. A requirement for the tobacco to be encapsulated was removed, together with a reference to water pipes, as they use prepared tobacco which is capable of being smoked. It was further decided, based on the responses, that the duty calculation should be based on the weight of the tobacco rather than the weight of the capsule.
- 10.6 An eight week consultation on the draft instrument was published by HMRC on 18 December 2018 and is available at: [Draft legislation: Tobacco for Heating GOV.UK](#). Four responses were received and one respondent suggested alternative ways of describing tobacco for heating. After consideration, it was decided that the description as drafted for consultation was appropriate and best reflected the criteria published in the summary of responses document in March 2018.

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. This has been updated as a result of changes to the impacts as a result of this instrument and is available on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

13. Regulating small business

- 13.1 This 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 Julie Hopper at HM Revenue and Customs, Telephone: 03000 587922, email: julie.hopper@hmrc.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Annie Purkis, Deputy Director for Indirect Tax, at HM Revenue and Customs 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.