

**EXPLANATORY MEMORANDUM TO
THE EXCISE DUTIES (MISCELLANEOUS AMENDMENTS) (EU EXIT) (NO. 2)
REGULATIONS 2019**

2019 No. 15

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue & Customs (HMRC) and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint 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, house-keeping 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 Joint Committee on Statutory Instruments

- 3.1 This instrument broadly takes the approach of using powers contained in existing excise legislation where the relevant procedure is, as above, a two-house negative one.
- 3.2 Regulation 2(2)(b) imposes a condition by reference to a document in a published notice relating to customs declarations which the Commissioners of HMRC intend to make under customs powers if the UK leaves the EU without an agreement.
- 3.3 This notice is currently only available in draft (details are provided in a footnote to this regulation).
- 3.4 Regulation 3 provides a reference to Regulation (EC) No 2870/2000. This is necessary to preserve the existing provision because, when commenced, section 47(1) of the Taxation (Cross-border Trade) Act 2018 (c. 22) (TCTA) provides that any EU regulation, so far as applying in relation to excise duty, that would otherwise form part of the law of the UK on exit from the EU ceases to have effect.
- 3.5 Regulation 4 is made for consistency with a change to be made by the TCTA to the definition of a "private pleasure craft". That amendment to the primary legislation has not yet been brought into force, but it is intended that it will be before exit day.

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)

3.6 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.

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) Regulations 2019 (S.I. 2019/14); and
- this instrument.

6.2 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 amends the following excise regulations where a two-house negative procedure is required: the Excise Warehousing (etc.) Regulations 1988 (S.I. 1988/809); the Spirits Regulations 1991 (S.I. 1991/2564); the Hydrocarbon Oil Duties (Marine Voyages Reliefs) Regulations 1996 (S.I. 1996/2537); the Warehousekeepers and Owners of Warehoused Goods Regulations 1999 (S.I. 1999/1278); the Excise Warehousing (Energy Products) Regulations 2004 (S.I. 2004/2064); the Denatured Alcohol Regulations 2005 (S.I. 2005/1524); and the Duty Stamps Regulations 2006 (S.I. 2006/202).

6.4 These existing regulations all contain provisions that will be inapplicable, or that will not function correctly, on the exit of the UK from the EU.

7. Policy background

What is being done and why?

This instrument makes changes to the following excise secondary legislation:

The Excise Warehousing (etc.) Regulations 1988 (S.I. 1988/809)

7.1 This instrument amends these regulations which prescribe the conditions, requirements and allowable operations for goods in excise warehouses, to make the required changes as a consequence of the UK leaving the EU.

- 7.2 The current regulations contain criteria for the removal of goods from a warehouse, including a requirement for an accompanying document. There are defined circumstances where the accompanying document is not required. Two of these circumstances relate to intra-EU movements and one relates to EU export procedures.
- 7.3 The changes made by this instrument remove the two circumstances relating to intra-EU movements and replaces them with post-exit UK export procedures.
- The Spirit Regulations 1991 (S.I. 1991/2564)
- 7.4 This instrument makes minor amendments to these regulations which set out the requirements for producing spirits in the UK.
- 7.5 These regulations provide for certain methods of measuring the strength of spirits, set out in the Annex to Commission Regulation (EC) No. 2870/2000 to continue to apply for UK spirit producers after the UK leaves the EU.
- The Hydrocarbon Oil Duties (Marine Voyages Reliefs) Regulations 1996 (S.I. 1996/2537)
- 7.6 This instrument makes a minor amendment to these regulations to provide a definition of “private pleasure craft” that is in line with the meaning of “private pleasure craft” provided for under section 14E of the Hydrocarbon Oil Duties Act 1979, as it is amended by the TCTA. It ensures that fuel used for “private pleasure craft” continues to be subject to duty at the full (road fuel) rate.
- The Warehousekeepers and Owners of Warehoused Goods Regulations 1999 (S.I. 1999/1278)
- 7.7 This instrument amends these regulations which provide for the approval and registration of excise warehousekeepers, owners of goods held in excise warehouses, and duty representatives of those owners of goods. The amendment removes the privilege of authorised warehousekeepers to send relevant goods to other EU Member states.
- 7.8 Certain excise goods may be produced, processed and held in an appropriate warehouse without payment of the applicable duty, providing that relevant authorisation has been granted.
- 7.9 Under current regulations, UK authorised warehousekeepers may send certain excise goods using intra-EU procedures. Following the UK’s exit from the EU, this will no longer apply as EU Member states will be subject to the existing non-EU procedures.
- 7.10 The changes made by this instrument amend these regulations to remove this privilege, maintaining a functioning warehousing regime where intra-EU movements are subject to the existing non-EU procedures.
- The Excise Warehousing (Energy Products) Regulations 2004 (S.I. 2004/2064)
- 7.11 This instrument makes minor amendments to these regulations, which allow for the duty suspended warehousing of special energy products, which have not been set aside as motor or heating fuel on production or importation. Special energy products are certain kinds of fuel that are not chargeable to UK duty, but are treated as if they are for the purposes of the control of movements of those fuels.
- 7.12 It removes references to EU concepts and terminology that will no longer apply when the UK leaves the EU, whilst retaining the existing arrangement whereby such products may voluntarily be warehoused in the UK.

The Denatured Alcohol Regulations 2005 (S.I. 2005/1524)

- 7.13 This instrument amends these regulations which set out the requirements for producing and using denatured alcohol without payment of excise duty in the UK. Denatured alcohol is alcohol that has been made unfit for consumption (denatured) by the addition of prescribed substances.
- 7.14 This instrument amends the definitions of: (i) completely denatured alcohol (CDA), so that other EU Member states' CDA formulations are not included; and (ii) industrial denatured alcohol, so that products not for human consumption that have been manufactured using EU member States' partially denatured alcohol formulations are not included in these regulations. The UK will no longer be obliged to include these categories of denatured alcohol in the exemption from excise duty following EU exit. This instrument also makes amendments to these regulations so that all imports and exports of denatured alcohol are to be treated as if they were of alcohol on which duty has not been paid, in line with the existing position between the UK and third countries.

The Duty Stamps Regulations 2006 (S.I. 2006/202)

- 7.15 These regulations set out the requirements for the duty stamps scheme for spirits, wine and made-wine (these include, but are not limited to 'alcopop' type drinks and flavoured ciders). The scheme was introduced in 2006 to tackle the problem of spirits duty fraud.
- 7.16 This instrument removes (i) EU references, and (ii) certain categories of businesses and geographical descriptors, from the duty stamp scheme, because they will no longer be appropriate once the UK leaves the EU.
- 7.17 The duty stamp scheme requires the application of duty stamps to retail containers with a capacity of 35cl or more containing spirits, wine or made-wine, with an alcoholic strength of 30% or more. The stamps indicate that the product is destined for use on the UK's home market and is therefore liable to UK excise duty.
- 7.18 The scheme sets out which type of businesses are allowed to obtain and attach duty stamps to retail containers. Some of these categories of businesses will no longer exist when the UK leaves the EU, for example "registered commercial importers", because these types of business only deal with the particular requirements for imports of goods from the EU. Once the UK leaves the EU, the requirements and process for importing goods from countries within the EU and outside the EU will be the same.
- 7.19 Following EU exit, duty stamps will still be required for retail containers of spirits, wine and made-wine with an alcoholic strength of 30% or more that are destined for use on the UK's home market. The categories of people who are allowed to acquire and attached duty stamps will be the same whether the goods are produced and imported from an EU or non-EU country.

Transitional and saving provisions

- 7.20 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, or in respect of certain denatured alcohol products made, or duty stamps affixed, before exit day.

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 regulations 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. 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 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 (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.
- 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, confirm that this Explanatory Memorandum meets the required standard.