

EXPLANATORY MEMORANDUM TO

THE TRAVELLERS' ALLOWANCES AND MISCELLANEOUS PROVISIONS (EU EXIT) REGULATIONS 2020

2020 No. 1412

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 the Commissioners for 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 is one of a number of instruments to be made under the Taxation (Cross-border Trade) Act 2018 (TCTA) following the United Kingdom's (UK) departure from the European Union (EU) on 31 January 2020. This instrument will become effective when the transition period ends on 31 December 2020.
- 2.2 The purpose of this instrument is to ensure that there is a comprehensive set of rules in place to determine the Value Added Tax (VAT) and excise treatment of goods brought into and taken out of Great Britain (GB) by travellers for personal use to ensure the smooth flow of passengers and goods at entry and exit points. Specific rules in relation to travellers to and from Northern Ireland (NI) will be contained in a separate instrument.
- 2.3 The instrument makes changes to the rules on sales of duty free excise goods to permit sales to travellers departing GB for all destinations outside of the UK (both EU and Rest of the World (RoW) countries). It provides for duty free sales at ports, airports and international railway stations (and on-board ships, planes and trains on international routes).
- 2.4 It increases the allowances for alcohol and aligns all allowances for passengers arriving from EU and RoW countries and introduces a new simplified method of calculating the excise duty due on excise goods.
- 2.5 The instrument also removes the VAT relief currently provided under the VAT Retail Export Scheme (VATRES) to RoW residents.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 The instrument deals with the consequences of the removal of EU rules applicable to travellers bringing goods into GB from EU member states and taking goods out of GB. It will come into force on the transition period completion day.
- 3.2 Where it amends the Travellers' Allowances Order 1994 (S.I. 1994/955) this instrument has been made by regulations rather than by order in accordance with section 105 of the Deregulation Act 2015.

- 3.3 The instrument includes amendments to the Tobacco Products Regulations 2001 (S.I. 2001/1712), the Excise Goods (Export Shops) Regulations 2000 (S.I. 2000/645), the Duty Stamps Regulations 2006 (S.I. 2006/202) and the Excise Goods (Aircraft and Ship's Stores) Regulations 2015 (S.I. 2015/368) and revokes the Excise Goods (Sales on Board Ships and Aircraft) Regulations 1999 (S.I. 1999/1565). These provisions are made by a Commons-only instrument because it has been considered necessary to use powers contained in section 51 of TCTA in addition to powers contained in existing excise legislation. This is done to ensure that appropriate provision can be made in consequence of, or otherwise in connection with, the UK's withdrawal from the EU.
- 3.4 The transitional, consequential and savings provisions in this instrument are made in reliance on section 51(1)(a) and (c). Section 51(9) of TCTA provides that the parliamentary procedure that applies in these circumstances is that applicable for section 51 of TCTA.

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)

- 3.5 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 the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 This instrument is made using the power in section 51 of TCTA.
- 6.2 Section 51 provides that the Treasury may make regulations that they consider appropriate in consequence of, or otherwise in connection with, the withdrawal of the UK from the EU, and that regulations made under this section may make any such provision as might be made by Act of Parliament.
- 6.3 Section 57(1) of TCTA provides (amongst other things) that sections 45 and 48, and sections 51 and 52 (Part 5: other provisions connected with the withdrawal from EU), which provide in part the power to make this instrument come into force on the day on which the Act is passed. TCTA received Royal Assent on 13 September 2018.
- 6.4 Section 1(1)(c) of the Value Added Tax Act 1994 is amended by section 41(2) of, and paragraph 2 of Schedule 8 to, TCTA to charge import VAT on importations of goods into the UK from the EU. Import VAT is not currently charged in such circumstances. The charge is subject to any reliefs that may be applicable.
- 6.5 As a consequence of the UK exiting the EU, this instrument amends the following VAT and excise statutory instruments: the Travellers' Allowances Order 1994, the Value Added Tax Regulations 1995 (S.I. 1995/2518), the Excise Goods (Export

Shops) Regulations 2000, the Tobacco Products Regulations 2001, the Duty Stamps Regulations 2006, the Excise Goods (Aircraft and Ship's Stores) Regulations 2015.

- 6.6 The instrument also revokes the Excise Goods (Sales on Board Ships and Aircraft) Regulations 1999.

The Travellers' Allowances Order 1994

- 6.7 The amendments to the Travellers' Allowances Order 1994 mean that EU to GB travellers will no longer be able to bring in unlimited amounts of goods without payment of UK VAT and excise duty. Instead they will be entitled to the RoW allowances for tax and duty, including the increased allowances for alcohol. This means that the treatment for travellers from the EU and from RoW countries will be aligned.
- 6.8 The instrument also introduces new simplified rates for calculating excise duty due on excise goods in the personal luggage of travellers entering GB in certain circumstances to facilitate making declarations.
- 6.9 To ensure the legislation applies as required, for the purposes of this instrument, the definition of the UK includes a control zone (as determined by the Channel Tunnel (Customs and Excise) Order 1990 (S.I. 1990/2167)).
- 6.10 This instrument also makes consequential and miscellaneous amendments to other instruments as a result of amendments made to the Travellers' Allowances Order 1994 to ensure that the rules relating to travellers operate as required after the end of the transition period. This includes making amendments to the current rules on exceptions to tobacco fiscal marking and alcohol duty stamp requirements and removing redundant provisions relating to offences to ensure that the rules continue to operate correctly.

Other miscellaneous amendments

- 6.11 This instrument changes the definition of 'entitled passenger' in the Excise Goods (Export Shops) Regulations 2000 to permit the sale of duty free goods to travellers departing from GB to destinations outside the UK (EU and RoW). It makes further amendments to the Excise Goods (Export Shops) Regulations 2000 and the Excise Goods (Aircraft and Ship's Stores) Regulations 2015 to permit duty free sales of excise goods to travellers leaving GB to destinations outside the UK (EU and RoW), at international railway stations and on-board international railway services. However, the sale of duty free goods will not be extended to travellers between NI and the EU.
- 6.12 It also amends the Value Added Tax Regulations 1995 to withdraw VATRES in GB and to clarify the scope of the relief for other supplies to overseas persons.
- 6.13 This instrument also revokes the Excise Goods (Sales on Board Ships and Aircraft) Regulations 1999. These regulations set out the rules for registered mobile operators (businesses, which can sell excise goods by retail to passengers on board ships and planes during journeys within the EU other than goods intended for consumption during the journey) and will become redundant at the end of the transition period.

7. Policy background

What is being done and why?

Current position

- 7.1 Different VAT and excise duty treatments currently apply to goods brought into the UK by travellers in their personal luggage that are for their own personal (non-commercial) use, depending on whether they are arriving from the EU or the RoW.
- 7.2 The treatment of goods purchased in the UK may be affected by the destination of the traveller or their country of residence.

Intra-EU travel

- 7.3 For travel within the EU, Single Market rules mean that VAT and excise duties are due in the country of purchase. This means that a traveller entering the UK carrying goods purchased in the EU has no further liability for VAT or excise duty. In the case of excise duty, although there are no specific limits, the goods must be carried by the person and be for their personal use or to be given away as a gift. In order to aid officials in assessing whether excise goods are for personal use, the legislation sets out a number of indicators that must be taken into account, including indicative quantities (commonly referred to as ‘minimum indicative levels’). These are:
- 10 litres of spirits,
 - 90 litres of wine (including a maximum of 60 litres of sparkling wine),
 - 110 litres of beer,
 - 800 cigarettes,
 - 200 cigars,
 - 1 kilogramme of any other tobacco products.
- 7.4 Under current rules there are no routine customs formalities for passengers arriving in the UK from the EU to go through. Passengers arriving at ports, airports and stations receiving traffic from EU countries will usually pass through without being subject to any fiscal checks, apart from checks to establish whether any excise goods they are carrying are for commercial use.

Arrivals from RoW countries

- 7.5 Travellers arriving from RoW countries must consider whether the goods that they are bringing into the UK exceed the RoW travellers’ allowances. Each traveller is entitled to quantitative limits for excise goods (e.g. 4 litres of still wine; and 200 cigarettes) and a monetary limit for all other goods (e.g. £390 for passengers arriving on a commercial airline or ship).
- 7.6 Passengers carrying goods within these limits (provided they are for personal use) declare that they have no obligation to pay VAT or excise duty by passing through the Green Channel (nothing to declare).
- 7.7 If the limits are exceeded or if the goods are for a commercial use, all the goods must be presented to customs at the point of entry at the Red Channel and UK VAT, customs and excise duties paid. VAT and duty will be due on all the goods within a category of goods (e.g. tobacco) if the amount exceeds the allowance.

Passengers leaving the UK to RoW countries

- 7.8 RoW residents purchasing goods in the UK to take back to their country of residence can take advantage of VATRES to obtain a VAT refund on eligible purchases.
- 7.9 Excise goods sold on board a ship or aircraft will be duty paid or duty free depending on the facts. Ships and aircraft travelling from the UK to the EU are allowed to load excise goods in the UK without payment of UK excise duty if the goods are to be consumed during the journey. For excise goods, which are going to be sold to a passenger and then taken off the ship or aircraft by them, the UK excise duty must be paid before the goods are loaded in the UK. Duty free stores are not currently permitted on cross-border trains.
- 7.10 Travellers, wherever resident, can purchase excise goods free of duty from export shops (colloquially referred to as ‘duty free shops’) at UK ports and airports, provided that they can show that they are taking them to a destination outside of the EU. Export shops in international railway stations are not currently permitted by EU rules.

VAT and Excise reliefs after the transition period

Passengers arriving in GB

- 7.11 All passengers entering GB will be entitled to the same allowances whether they are arriving from the EU or RoW.
- 7.12 The current allowances for alcohol are being increased to allow a reasonable amount of alcohol to be brought into GB for personal use. The new allowances for alcohol will be:
- 42 litres of beer
 - 18 litres of still wine
 - 4 litres of spirits or 9 litres of sparkling wine, fortified wine or any alcoholic beverage less than 22% ABV
- 7.13 The current levels of allowances for tobacco products and other goods will remain unchanged, but an additional tobacco product (Tobacco for Heating), is being added to the tobacco allowances to reflect recent industry developments.
- 7.14 To facilitate declarations where allowances are exceeded, simplified excise duty rates will be used for declarations. If an individual wants to make a declaration using item by item rates (rather than the simplified rates), they can do this by making an alternative form of declaration.

Passengers leaving GB

- 7.15 This instrument will extend the rules for duty free sales to allow excise goods to be sold duty free to passengers travelling to EU countries. It also extends the rules so that duty free can be sold at international railway stations and on international train journeys (duty free sales are not currently permitted at railway stations or during rail journeys).
- 7.16 The operation of VATRES in GB will be withdrawn from 1 January 2021. This means that RoW residents will no longer be able to obtain a VAT refund on items they buy in GB and take home with them in their luggage. Retailers will instead continue to be able to offer VAT-free shopping, consistent with international principles of taxation,

to overseas visitors who purchase items in store and have them delivered to their overseas addresses directly.

- 7.17 This instrument makes a number of consequential amendments to ensure that the legislation operates correctly at the end of the transition period (see 6.10 - 6.12 above).
- 7.18 This instrument also makes transitional and saving provisions. For VAT and excise, the approach taken for transitional provision is to allow the existing rules to operate, so far as possible, for movements that span the end of the transition period. For travellers, the existing rules will continue to operate in relation to flights, voyages or train journeys that are scheduled to depart before the end of the transition period and the new provisions will apply for any scheduled to depart after that.
- 7.19 Savings provision is only required for certain existing excise regulations amended by this instrument that relate to excise movements that begin before the end of the transition period and will end after it, flights, voyages or train journeys that are scheduled to depart before the end of the transition period or in respect of duty stamps affixed before the end of the transition period.
- 7.20 The amendments made to the Value Added Tax Regulations 1995 in relation to the VATRES do not apply to any goods that were purchased before the end of the transition period.
- 7.21 This instrument covers travellers' allowances in relation to VAT and excise. It also covers simplified calculation of excise duty for travellers. The corresponding provisions for customs duty will be covered separately.

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 but relates to the withdrawal of the UK from the EU because the revocations and amendments to existing VAT and excise legislation are required to ensure that the UK VAT and excise regimes operate as required at the end of the transition period.

9. Consolidation

- 9.1 This instrument amends or revokes various Orders and Regulations. There are no plans to consolidate these.

10. Consultation outcome

- 10.1 The changes in this instrument follow a government consultation, which ran from 11 March to 20 May 2020 (<https://www.gov.uk/government/consultations/a-consultation-on-duty-free-and-tax-free-goods-carried-by-passengers>) and were the subject of a written ministerial statement on 11 September 2020 (<https://questions-statements.parliament.uk/written-statements/detail/2020-09-11/hcws448>). They form part of wider changes to ensure that the UK VAT and excise regimes operate as required at the end of the transition period.

11. Guidance

- 11.1 Existing guidance on www.gov.uk will be updated where necessary and will be available prior to commencement of this instrument.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

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 regulatory burdens on small businesses (employing up to 50 people).
- 13.3 The basis for the final decision on what action to take to assist small businesses is that this instrument imposes few new obligations on small businesses as the withdrawal of UK VATRES and the new aligned treatment of duty free sales simplify their operations.

14. Monitoring & review

- 14.1 This instrument will be kept under review through communications with key stakeholder groups, including the Joint VAT Consultative Committee and the Joint Alcohol and Tobacco Consultation Group (both of which are made up of a wide range of representatives), to ensure that it meets the policy objectives set out in paragraph 7 above.
- 14.2 The instrument does not include a statutory review clause because it relates to tax and duty and therefore meets the requirements of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

- 15.1 Jack Fletcher at HMRC Telephone: 03000 585 852 email: jack.fletcher@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Eileen Patching, Deputy Director VAT Principles and Risk, Indirect Tax Directorate at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kemi Badenoch MP, Exchequer Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.