

2019 No. 1216

EXITING THE EUROPEAN UNION

EXCISE

**The Excise Duties (Miscellaneous Amendments) (EU Exit)
(No. 4) Regulations 2019**

Made - - - - *4th September 2019*

Laid before the House of Commons *5th September 2019*

Coming into force in accordance with regulation 1

The Treasury consider it appropriate, in consequence of, or otherwise in connection with, the withdrawal of the United Kingdom from the European Union to make regulations 1, 2, 3, 7 and 8 and make those regulations in exercise of the powers conferred by sections 51(1)(c) and 52(2) of the Taxation (Cross-border Trade) Act 2018(a).

The Commissioners for Her Majesty's Revenue and Customs make regulations 1 and 4 to 6 in exercise of the powers conferred by sections 45(1), (2)(a), (b), (f) and (j), 48(11) and 52(2) of the Taxation (Cross-border Trade) Act 2018(b) and sections 100G and 100H of the Customs and Excise Management Act 1979(c).

The Treasury and the Commissioners for Her Majesty's Revenue and Customs consider it appropriate in consequence of, or otherwise in connection with, the withdrawal of the United Kingdom from the European Union, that the following Regulations (other than regulations, 1, 5, 6 and 8) come into force on such days as the Treasury may by regulations under section 52(2) of the Taxation (Cross-border Trade) Act 2018 appoint.

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- (a) 2018 c. 22. The power under section 51(1)(c) is conferred on "the appropriate Minister" to make provision relating to "any excise duty" in consequence of, or otherwise in connection with, the withdrawal of the United Kingdom from the EU. Under section 51(4)(b), "the appropriate Minister" means the Treasury. For the purposes of sections 51 and 52, "excise duty" has the meaning given by section 53.
- (b) For the purposes of sections 45 and 48 of the Taxation (Cross-border Trade) Act 2018, "excise duty" has the meaning given by section 49.
- (c) 1979 c. 2. Section 1(1) defines "the Commissioners"; the definition of "the Commissioners" was substituted by the Commissioners for Revenue and Customs Act 2005 (c. 11), Schedule 4, paragraph 22(b). Sections 100G and 100H were inserted by the Finance Act 1991 (c. 31), Schedule 4. Section 100H was amended by the Finance (No. 2) Act 1992 (c. 48), Schedule 1, paragraph 6, Schedule 2, paragraph 4 and Schedule 18, Part 1, and by the Finance Act 2002 (c. 23), Schedule 3, paragraph 2.

PART 1

Introductory provision

Citation and commencement

1.—(1) These Regulations may be cited as the Excise Duties (Miscellaneous Amendments) (EU Exit) (No. 4) Regulations 2019.

(2) This regulation and regulations 5, 6 and 8 come into force on the twenty-first day after the day on which these Regulations are laid before the House of Commons.

(3) The remaining provisions of these Regulations come into force on such day as the Treasury may by regulations under section 52(2) of the Taxation (Cross-border Trade) Act 2018 appoint.

PART 2

Suspension of the domestic implementation of EU law on tobacco products

Suspension of the effect of the Tobacco Products (Traceability and Security Features) Regulations 2019

2.—(1) Regulations 5 to 24 of the Tobacco Products (Traceability and Security Features) Regulations 2019^(a) do not have effect in relation to anything that, on or after the date on which this regulation comes into force, is done or omitted to be done.

(2) Where—

(a) a period is or has been specified in a notice in accordance with regulation 22(2)(d) of those Regulations; and

(b) the period ends on or after the date on which this regulation comes into force,

the notice ceases to have effect on that date.

PART 3

Modifications of retained direct EU legislation

Modifications of retained direct EU legislation

3.—(1) In Council Implementing Decision (EU) 2015/356 of 2 March 2015 authorising the United Kingdom to apply differentiated levels of taxation to motor fuels in certain geographical areas, in accordance with Article 19 of Directive 2003/96/EC, treat—

(a) the reference to Directive 2003/96/EC in Article 1(2) of the Decision—

(i) as a reference to that Directive as it had effect immediately before exit day; and

(ii) as if the minimum rates provided for by Article 7 of that Directive (read in accordance with paragraph (i)) were binding on the United Kingdom on and after exit day; and

(b) the second paragraph of Article 2 and Article 3 as omitted.

(2) In Council Implementing Decision (EU) 2017/1767 of 25 September 2017 authorising the United Kingdom to apply reduced levels of taxation to motor fuels consumed on the islands of the Inner and Outer Hebrides, the Northern Isles, the islands in the Clyde, and the Isles of Scilly, in accordance with Article 19 of Directive 2003/96/EC, treat the words “and shall expire on 31 October 2023” in Article 2 and Article 3 as omitted.

(a) S.I. 2019/594.

PART 4

Amendments to the Excise Goods (Holding, Movement and Duty Point) Regulations 2010 etc.

Amendments to the Excise Goods (Holding, Movement and Duty Point) Regulations 2010

4.—(1) The Excise Goods (Holding, Movement and Duty Point) Regulations 2010(a) are amended as follows.

(2) In regulation 9(1)(b)(ii) for “their release for free circulation in the United Kingdom”, substitute “a declaration for the free-circulation procedure(b) or an authorised use procedure(c) being accepted”.

(3) In regulation 30(1) for “their release for free circulation”, substitute “a declaration for the free-circulation procedure or an authorised use procedure being accepted”.

Amendments to the Excise Goods (Holding, Movement and Duty Point) (Amendment etc.) (EU Exit) Regulations 2019

5.—(1) The Excise Goods (Holding, Movement and Duty Point) (Amendment etc.) (EU Exit) Regulations 2019(d) are amended as follows.

(2) In regulation 9 for paragraph (3) substitute—

“(3) In paragraph (2)(a) omit “other than EU excise goods”.”.

(3) In regulation 22 for paragraph (4) substitute—

“(4) After that paragraph insert—

“(1A) This Part also applies to the movement of the energy products mentioned in Article 20(1) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity from a place of importation to—

(a) a tax warehouse; or

(b) a place from where they will leave the territory of the United Kingdom,

where the energy products do not at any time leave the United Kingdom during the course of the movement.

(2) (a) The Commissioners must publish a notice specifying the requirements for the electronic messages to be sent using the computerised system, namely—

(i) the electronic administrative document;

(ii) the cancellation message referred to in regulation 58(2);

(iii) the change of destination message;

(iv) the notification of change of destination message referred to in regulation 58(9); and

(v) the report of receipt and report of export; and

(b) for each message, the notice must specify the data elements required structured in data groups and, where applicable, data subgroups.”.

(a) S.I. 2010/593, amended by S.I. 2011/2225 and S.I. 2019/975 and modified by S.I. 2010/594. It is also amended by S.I. 2019/13 and amended and modified by S.I. 2019/474, but at the date of making these Regulations those amendments and modifications have not yet come into force pending commencement regulations to be made by HM Treasury. There are other amending instruments but none is relevant.

(b) “Free-circulation procedure” has the meaning given by section 3(3)(a) of the Taxation (Cross-border) Trade Act 2018.

(c) “Authorised use procedure” has the meaning given by paragraph 13 of Schedule 2 to the Taxation (Cross-border) Trade Act 2018.

(d) S.I. 2019/13, amended by S.I. 2019/474. The provisions amended by this regulation have not come into force pending commencement regulations to be made by HM Treasury.

(4) In regulation 30(4) for sub-paragraph (a) substitute—

“(a) for the definition of “authorisation to use the local clearance procedure” substitute—

““authorisation to use a simplified customs procedure” means—

- (a) where authorisation was granted before 1st May 2016, the authorisation referred to in Article 283 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code;
- (b) where authorisation was granted on or after 1 May 2016, an authorisation, granted by the Commissioners, which permits goods to be made available for examination at those premises;”;

Amendment to the Excise Duties (Miscellaneous Amendments) (EU Exit) (No. 3) Regulations 2019

6. Omit regulation 7 of the Excise Duties (Miscellaneous Amendments) (EU Exit) (No. 3) Regulations 2019(a).

PART 5

Modification of the Tobacco Products Regulations 2001 etc.

Modification of the Tobacco Products Regulations 2001

7.—(1) Where paragraph (3) applies, the Tobacco Products Regulations 2001(b) apply with the modification set out in paragraph (2).

(2) In regulation 18(1)(b), regard as inserted after the words “becoming payable”, the words “, in such form and manner and on such conditions”(c).

(3) This paragraph applies where an election is made before the end of the period of six months beginning with exit day under regulation 17 of the Tobacco Products Regulations 2001 (deferred payment - payment day) in respect of tobacco products falling within regulation 17(2)(a).

Amendment to the Excise Duties (Miscellaneous Amendments) (EU Exit) (No. 3) Regulations 2019

8. Omit regulation 17 of the Excise Duties (Miscellaneous Amendments) (EU Exit) (No. 3) Regulations 2019.

Mike Freer
David Rutley

4th September 2019

Two of the Lords Commissioners of Her Majesty’s Treasury

Jim Harra
Ruth Stanier

4th September 2019

Two of the Commissioners for Her Majesty’s Revenue and Customs

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- (a) S.I. 2019/474, to which there are amendments not relevant to these Regulations. The provisions omitted by this regulation, and by regulation 8, have not come into force.
 - (b) S.I. 2001/1712, amended by S.I. 2010/593. It is also amended by S.I. 2019/13, but at the date of making these Regulations those amendments have not yet come into force pending commencement regulations to be made by HM Treasury. There are other amending instruments, but none is relevant.
 - (c) The requirements to be made under this modification are not yet finalised or available. Subject to this regulation being commenced, when finalised, they will be made in writing and available at <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal> and may be inspected free of charge at HM Revenue & Customs, Excise & Environmental Taxes Policy, 3rd Floor West, Ralli Quays, 3 Stanley Street, Salford, M60 9LA.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make miscellaneous amendments and modifications to secondary legislation relating to excise duties and are made to ensure the effective operation of the law applying to excise duties on the withdrawal of the United Kingdom (“UK”) from the European Union (“EU”).

Part 1 deals with the commencement of these regulations.

Part 2 suspends the effect of regulations 5 to 24 of the Tobacco Products (Traceability and Security Features) Regulations 2019 (S.I. 2019/594) (“the TSFR”). The TSFR implement EU requirements for an EU-wide track and trace system for certain tobacco products. This system will not function correctly on EU exit. The UK intends to introduce its own domestic track and trace system in the future. The provision states that the TSFR will not apply to acts or omissions under those Regulations after EU exit. Any outstanding compliance notice issued under regulation 22 of the TSFR will cease to have effect at that time.

Part 3 modifies two EU Decisions relating to motor fuels to reflect the withdrawal of the UK from the EU to address certain textual deficiencies and to address the fact that once the UK leaves the EU it would not be possible for the EU Council to extend the validity of these Decisions.

Part 4 amends, directly and indirectly, the Excise Goods (Holding, Movement and Duty Point) Regulations 2010 (S.I. 2010/593) (“HMDP 2010”). Regulation 4 amends regulation 30 of HMDP 2010 directly to ensure that registered consignors may move excise goods released to an authorised use procedure in duty suspension and makes a consequential amendment to regulation 9 of HMDP 2010. Regulation 5 amends the Excise Goods (Holding, Movement and Duty Point) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/13) to provide that movements of certain energy products from a place of importation to a tax warehouse or a place from where they will be exported from the United Kingdom are subject to Part 8 of HMDP 2010 and also makes other minor miscellaneous amendments. Regulation 6 is a consequential amendment to the Excise Duties (Miscellaneous Amendments) (EU Exit) (No. 3) Regulations 2019 (S.I. 2019/474).

Part 5 replaces a provision in the Excise Duties (Miscellaneous Amendments) (EU Exit) (No. 3) Regulations 2019 that had been made in anticipation of the UK leaving the EU on 29 March 2019. The new provision in regulation 7 makes a minor modification to the Tobacco Products Regulation 2001 (S.I. 2001/1712) for a 6 month period in the event that the UK leaves the EU without a deal.

This instrument will be covered by an overarching HMRC impact assessment (third edition) which will be published on the website at <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal>.

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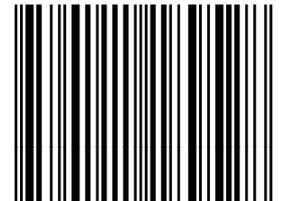
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.

£4.90

UK201909041012 09/2019 19585

<http://www.legislation.gov.uk/id/uksi/2019/1216>

ISBN 978-0-11-118952-8



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