

Treatment of herbal smoking products

Who is likely to be affected?

Manufacturers and importers of herbal smoking products (for example herbal cigarettes, herbal rolling mixture and herbal shisha) will be directly affected. Distributors and consumers of herbal smoking products will be indirectly affected.

General description of the measure

This measure changes the tax treatment of herbal smoking products, so that in future they will be treated as if they contained tobacco. Herbal smoking products will therefore become liable to tobacco products duty.

Policy objective

This change is being made to bring UK legislation into line with the European Directive 2011/64/EC on the structure and rates of excise duty on manufactured tobacco, which indicates that herbal smoking products can only be exempted from excise duty when they are used exclusively for medical purposes. The current exemption granted to all herbal smoking products in the UK provides such products with an unfair advantage over their tobacco counterparts.

Background to the measure

The measure was announced at Budget 2012 and a consultation was conducted during April, May and June 2012.

Detailed proposal

Operative date

The change will take effect on and after 1 January 2014.

Current law

The liability to tobacco products duty is determined in the UK by section 1 of the Tobacco Products Duty Act 1979 (the Act). This Act also sets the requirements for fiscal marks on tobacco products in section 8. The duty rates applicable to product types affected (cigarettes, hand-rolling tobacco, other smoking tobacco) are set out in a schedule to the Act.

Tobacco products are further defined by the Tobacco Products Description of Products Order 2003 (the Order) Articles 4 and 7.

The Tobacco Products Duty Regulations 2001 (the Regulations) further refine the requirements for fiscal marks in Article 23.

Proposed revisions

Legislation will be introduced in Finance Bill 2013 to remove the references in section 1 of the Act which currently exempt herbal smoking products from the duty but will retain an exemption for products which are used exclusively for medical purposes. HM Revenue & Customs (HMRC) will accept the granting of a marketing licence for the product from the Medicines and Healthcare Products Regulatory Authority (MHRA) as evidence of medical purpose and will consider whether this is the exclusive purpose of the product on a case-by-case basis. Without such a licence all herbal smoking products will be liable to tobacco products duty at the same rate as their tobacco counterparts.

Secondary legislation will be introduced to remove residual references to herbal smoking products within the Order.

Secondary legislation will also amend the Regulations to exclude non-tobacco products from the fiscal marks requirements, to ensure that although herbal smoking products will be liable for duty, they will not be required to bear fiscal marks. This is because the costs to the trade would be disproportionate to the risk of fraud and fiscal marks are primarily an anti-fraud measure.

Summary of impacts

| Exchequer impact (£m) | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 |
|---|---|------------|------------|------------|------------|------------|
| | - | negligible | negligible | negligible | negligible | negligible |
| | This measure is expected to have a negligible impact on the Exchequer. Any impact will be set out at Budget 2013. | | | | | |
| Economic impact | The measure is not expected to have any significant economic impacts. | | | | | |
| Impact on individuals and households | Smokers of herbal products would face an increase in the price of herbal smoking products. | | | | | |
| Equalities impacts | <p>The change will make herbal water-pipe mixture (commonly known as herbal shisha) liable to tobacco duty. The change may therefore have a proportionately higher impact on ethnic groups that are more likely to smoke shisha. However, herbal shisha is a minority product even in the shisha market, and the risk of infraction and evasion would outweigh this associated impact.</p> <p>There may be a difference between business and consumers in this respect in that the ethnic mix of consumers may be different from that of traders.</p> | | | | | |
| Impact on business including civil society organisations | <p>This measure is expected to have a negligible impact on businesses.</p> <p>A small number of manufacturers and importers of herbal smoking products will be affected by this measure. They will face one-off costs from familiarisation with new legislation and from putting in place a process to calculate and record the duty that they are liable for. Manufacturers will be required to apply for registration and comply with the necessary requirements.</p> <p>Manufacturers and importers of herbal smoking products will face a negligible increase in ongoing administrative burdens because they will now have to submit monthly returns.</p> <p>This measure is expected to have no impact on civil society organisations.</p> | | | | | |
| Operational impact (£m) (HMRC or other) | This measure will have a negligible operational cost for HMRC. | | | | | |
| Other impacts | Other impacts have been considered and none have been identified. | | | | | |

Monitoring and evaluation

The measure will be kept under review through communication with affected taxpayer groups.

Further advice

If you have any questions about this change, please contact the Excise and Customs Helpline on 0845 010 9000.

1 Meaning of “tobacco products”

- (1) Section 1 of TPDA 1979 (tobacco products) is amended as follows.
- (2) In subsection (1), omit “, but does not include herbal smoking products”.
- (3) After that subsection insert –
 - “(1A) But a product is not a tobacco product for the purposes of this Act if –
 - (a) the product does not contain any tobacco, and
 - (b) the Commissioners are satisfied that –
 - (i) the product is of a description that is used for medical purposes, and
 - (ii) the product is intended to be used exclusively for such purposes.”
- (4) In subsection (3), omit “but not including herbal smoking products”.
- (5) Omit subsection (6).
- (6) The amendments made by this section come into force on 1 January 2014.

EXPLANATORY NOTE

MEANING OF “TOBACCO PRODUCTS”

SUMMARY

1. This clause amends section 1 of the Tobacco Products Duty Act 1979 (TPDA). It is designed to narrow the general exemption granted to herbal smoking products, so that exemption is only granted to products used exclusively for medical purposes. This change comes into force on 1 January 2014.

DETAILS OF THE CLAUSE

2. Subsections (2), (4) and (5) of the clause remove the existing references to herbal smoking products.
3. Subsection (3) invokes an exemption for non-tobacco smoking products which are used exclusively for medical purposes.
4. Subsection (6) makes the changes effective on and after 1 January 2014.

BACKGROUND NOTE

5. This clause amends section 1 of TPDA to correctly implement the following European legislation: Council Directive 2011/64/EC on the structure and rates of excise duty applied to manufactured tobacco (the Directive), specifically the second paragraph of Article 2.2.
6. Article 2.1 of the Directive sets out which tobacco products Member States should apply excise duty to.
7. Article 2.2 extends the definition to include products which may not contain tobacco but otherwise match the descriptions, for example, they are intended to be smoked.
8. Within Article 2.2 it is stated that products containing no tobacco and used exclusively for medical purposes are not to be treated as tobacco products.
9. The Directive is specific about which non-tobacco smoking products should be exempted from the application of excise duty - that is those products used exclusively for medical purposes. The current UK legislation does not specifically reflect this. In the TPDA (section 1, subsections 1.3 and 6) exemption was granted generally to herbal

smoking products, rather than to those herbal smoking products used exclusively for medical purposes.

10. This measure addresses that anomaly and aligns the UK legislation with the European Directive.
11. An additional advantage of this measure is that it will address the small but increasing risk of tax evasion. This stems from traders importing and dealing in products which claim to be herbal smoking products, but in fact contain tobacco and are therefore liable to duty. There will be no advantage to wrongly declaring goods as herbal smoking products when they are taxed at the same rate as their tobacco counterparts.
12. If you have any questions about this change, or comments on the legislation, please contact Paul McKee on 0161 827 0892 (email: paul.mckee@hmrc.gsi.gov.uk).

Order made by the Treasury, laid before the House of Commons under section 1(4) of the Tobacco Products Duty Act 1979, for approval by resolution of that House within twenty-eight days beginning with the date on which the Order was made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.

STATUTORY INSTRUMENTS

2013 No.

EXCISE

**The Tobacco Products (Description of Products) (Amendment)
Order 2013**

| | | |
|---|---------|-------------------------|
| <i>Made</i> | - - - - | *** |
| <i>Laid before the House of Commons</i> | | *** |
| <i>Coming into force</i> | - - | <i>1st January 2014</i> |

The Treasury, make the following Order in exercise of the powers conferred on them by section 1(3) of the Tobacco Products Duty Act 1979(a).

Citation and Commencement

1. This Order may be cited as the Tobacco Products (Description of Products) (Amendment) Order 2013 and comes into force on 1st January 2014.

Amendment to the Tobacco Products (Description of Products) Order 2003

2. The Tobacco Products (Description of Products) Order 2003(b) is amended as follows.

3.—(1) In article 4(2) (cigarettes) after “above” omit “, unless they are herbal smoking products”.

(2) In article 7(2) (other smoking tobacco) after “above” omit “, unless they are herbal smoking products”.

| | |
|------|---|
| | <i>Name</i> |
| | <i>Name</i> |
| Date | Two of the Lords Commissioners for Her Majesty’s Treasury |

(a) 1979 c. 7; section 1(3) was amended by the Finance Act 1993 (c. 34), section 14.
(b) S.I. 2003/1471.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order comes into force on 1 January 2014 and amends the Tobacco Products (Description of Products) Order 2003, which describes products that fall within the description of tobacco for the purposes of the Tobacco Products Duty Act 1979.

Regulation 3 has the effect of including herbal smoking products (that consist in whole or in part of substances other than tobacco) in the definition of a cigarette for the purpose of the Tobacco Products Duty Act

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

DRAFT EXPLANATORY MEMORANDUM TO

The Tobacco Products (Description of Products) (Amendment) Order 2013

- 1.** This explanatory memorandum has been prepared by HM Revenue & Customs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

- 2. Purpose of the instrument**

2.1 The Tobacco Products (Description of Products) (Amendment) Order 2013 removes references to herbal smoking products in the Tobacco Products Description of Products Order 2003.

- 3. Matters of special interest to the Select Committee on Statutory Instruments**

3.1 None

- 4. Legislative Context**

4.1 The Tobacco Products Duty Act 1979 (the Act) sets out which products excise duty applies to. The products are further defined by the Tobacco Products (Description of Products) Order (the Order). Previously the Act and the Order exempted herbal smoking products from duty. This exemption went further than the European Directive directed. This measure seeks to amend the Act and the Order to align them with the Directive.

4.2 The Act will be amended by means of the Finance Bill 2013 and this instrument makes the necessary consequential amendments to the Order by removing references to herbal smoking products.

- 5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

- 6. European Convention on Human Rights**

6.1 The Economic Secretary to the Treasury, Sajid Javid MP, has made the following statement regarding Human Rights:

In my view the provisions of the Tobacco Products (Description of Products) (Amendment) Order 2013 are compatible with the Convention rights.

7. Policy background

7.1 The policy aim of the herbal smoking products changes is to tighten the exemption on non-tobacco smoking products so that only those with an exclusive medical purpose are exempted from duty.

7.2 This will mean that all smoking products are taxed equally, regardless of tobacco content, unless there is a legitimate reason for exemption.

7.3 The instrument adheres to the changes made to primary law by removing remaining references to herbal smoking products.

8. Consultation outcome

8.1 HMRC has conducted a formal consultation which took place from 2 April 2012 to 29 June 2012. The consultation was about how the changes could be implemented rather than whether they should be. The UK legislation must comply with European Directives. The consultation had a direct effect on the implementation date of the changes, giving extra time to the trade to adjust.

9. Guidance

9.1 HMRC will publish guidance on this Order by making changes to the Public Notice on Tobacco Products Duty Number 476. The notice is available on the departmental website at www.hmrc.gov.uk.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum at www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to provide an additional three months to prepare for the change and amend the law so that fiscal marks are not required on the products affected.

11.3 The basis for the final decision on what action to take to assist small business was the responses received to our formal consultation, although few businesses provided the depth of information that we hoped for.

12. Monitoring & review

12.1 This policy may be kept under review through communication with taxpayer groups affected by the measures.

13. Contact

Mark Palmer at HM Revenue & Customs email: mark.t.palmer@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

2013 No.

EXCISE

The Tobacco Products (Amendment) Regulations 2013

Made - - - - - ***

Laid before Parliament ***

Coming into force - - - *1st January 2014*

The Commissioners for Her Majesty's Revenue and Customs(a) make the following Regulations in exercise of the powers conferred by section 8B(2) of the Tobacco Products Duty Act 1979(b).

Citation and commencement

1. These Regulations may be cited as the Tobacco Products (Amendment) Regulations 2013 and come into force on 1st January 2014.

Amendment to the Tobacco Products Regulations 2001

2. The Tobacco Products Regulations 2001(c) are amended as follows.

3. In regulation 23 (exceptions to the requirement to carry a fiscal mark) after regulation 23(2A), insert—

“(2B) specified tobacco products that do not contain any tobacco are not required to carry a fiscal mark.”

Date *Name*
Name
Two of the Commissioners for Her Majesty's Revenue and Customs

(a) Section 10(3) of the Tobacco Products Duty Act 1979 (c. 7) provides that expressions used in that Act have the same meaning as provided in the Customs and Excise Management Act 1979 (c. 2). Section 1(1) of the Customs and Excise Management Act 1979 (as amended by the Commissioners for Revenue and Customs Act 2005 (c. 11), Schedule 4, paragraphs 20 and 22(b)) define “the Commissioners” as “the Commissioners for Her Majesty's Revenue and Customs”.

(b) 1979 c. 7; section 8B was inserted by the Finance Act 2000 (c. 17).

(c) S.I. 2001/1712.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations comes into force on 1st January 2014 and amend regulation 23 of the Tobacco Products Regulations 2001 which prescribe exceptions to the requirement to carry a fiscal mark for the purposes of the Tobacco Products Duty Act 1979.

Regulation 3 creates an exception to the need to carry a fiscal mark for specified tobacco products that do not contain any tobacco.

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

DRAFT EXPLANATORY MEMORANDUM TO

The Tobacco Products (Amendment) Regulations 2013

1. This explanatory memorandum has been prepared by HM Revenue & Customs and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Tobacco Products (Amendment) Regulations 2013 amends the Tobacco Products Regulations 2001 so that those products previously described as herbal smoking products, are not required to display fiscal marks on the packaging although they may be considered as cigarettes and hand-rolling tobacco in other respects.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The liability of herbal smoking products to tobacco products duty has been changed, to bring UK legislation into line with European Directives. Changes to the Tobacco Products Duty Act 1979 have been included in the Finance Bill 2013 and consequential amendments made through the Tobacco Products (Description of Products (Amendment) Order SI [xxxx]. This change was accompanied by a consultation which focused on how the changes could be made rather than whether they should be made. This was to help smooth the transition for business and make the change less burdensome.

4.2 The amendments to the Regulations are as a result of discussions during the consultation process. Specifically, unless changes were made, herbal cigarettes and hand-rolling mixtures would have been subject to fiscal marks requirements, and in particular a requirement to carry the "UK DUTY PAID" mark. This was thought to be too burdensome for small business and disproportionate to the revenue risk.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury, Sajid Javid MP, has made the following statement regarding Human Rights:

In my view the provisions of the Tobacco Products (Amendment) Regulations 2013 are compatible with the Convention rights.

7. Policy background

7.1 The policy aim of the herbal smoking products changes is to tighten the exemption on non-tobacco smoking products so that only those with an exclusive medical purpose are exempted from duty.

7.2 This will mean that all smoking products are taxed equally, regardless of tobacco content, unless there is a legitimate reason for exemption.

7.3 This instrument complements the changes made to primary law by amending the fiscal marks regulations so that the changes do not have a disproportionate impact on herbal smoking products.

8. Consultation outcome

8.1 HMRC has conducted a formal consultation which took place from 2 April 2012 to 29 June 2012. The consultation was about how the changes could be implemented rather than whether they should be. The UK legislation must comply with European Directives. The consultation had a direct effect on the implementation date of the changes, giving extra time to the trade to adjust. HMRC also recognised the difficulties that printing of fiscal marks would involve in terms of the cost to business. After considering less onerous fiscal marks, HMRC decided to exclude these products altogether from fiscal marks requirements.

9. Guidance

9.1 HMRC will publish guidance on this Order by making changes to the Public Notice on Tobacco Products Duty Number 476. The notice is available on the departmental website at www.hmrc.gov.uk.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

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