

EXPLANATORY MEMORANDUM TO
THE EXCISE GOODS (HOLDING, MOVEMENT AND DUTY POINT)
(AMENDMENT) REGULATIONS

2011 No. XXXX

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

2. Purpose of the instrument

2.1 To amend the Excise Goods (Holding, Movement and Duty Point) Regulations 2010 (“the Principal Regulations”) which implemented (in part) Council Directive 2008/118/EC concerning the general arrangements for excise duty and repealing Directive 92/12/EEC¹ (“the Directive”).

2.2 The amendments –

- amend provisions relating to reports of export from the territory of the EU;
- clarify and extend simplified procedures for movements of alcohol and tobacco products taking place wholly within the UK;
- provide for fallback procedures when the destination of excise goods is amended and the computerised system used for notifying such changes is unavailable;
- reduce the Minimum Indicative Levels (MILS) in relation to cigarettes and tobacco; and
- correct some minor drafting errors in the Principal Regulations.

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

None

4. Legislative Context

The Principal Regulations transpose Chapters I to V of the Directive. The Directive cleared scrutiny in the House of Commons on 5th November 2008² and in the House of Lords on 11 November 2008. A Transposition Note which takes account of the amendments made by these Regulations can be found at;

http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_ReferenceDocuments&propertyType=document&columns=1&id=HMCE_PROD1_030243

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

¹ OJ No L 009, 14. 1. 2009, p.12

² See the thirty-eighth report of the Select Committee on European Scrutiny-session 2007-08.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The Directive was adopted on 16 December 2008. It sets out the general arrangements for excise duty, including the provisions relating to the holding and movement of excise goods (alcohol, energy and tobacco products) in duty suspension, and replaces Council Directive 92/12³.

7.2 The Directive provides a legal basis for the Excise Movement and Control System (EMCS) which was introduced on 1 April 2010. EMCS introduces a computerised monitoring system of movements of excise goods in duty suspension within the European Union, replacing the paper-based system in place since 1993. It allows business and excise administrations to operate in a paperless environment which reduces administrative burdens on business, improves efficiency and minimises fraud.

7.3 These Amendment Regulations amend procedures in relation to reports of export from the territory of the EU so that they comply fully with the requirements of the Directive.

7.4 They also clarify and extend the simplified procedures allowed under article 30 of the Directive in relation to movements of excise goods under duty suspension arrangements which take place entirely within the UK. These include movements of alcohol and tobacco to a place in the UK where they will leave the territory of the EU. Whilst EMCS is available for intra-UK movements, to enable businesses to benefit from the savings afforded by it, they will have the flexibility, if they so wish, to continue to use existing manual systems for certain movements which take place solely within the United Kingdom. These changes are being made following discussions with businesses who welcome them as a reduction in regulatory burden.

7.4 The Amendment Regulations also provide for a procedure when the destination shown on an electronic administrative document is amended, but the computerised system is not available for notifying the change of destination and make consequential amendments to Schedule 1 to the Principal Regulations (civil penalties).

7.5 Furthermore Regulation 13 of the Principal Regulations is amended to reduce the Minimum Indicative Levels (MILS) in relation to cigarettes and tobacco to which regard must be taken for the purposes of determining whether any such goods which have been acquired in another member State are for a person's own use. The reduction aims to make it more difficult for fraudsters to bring tobacco products into the UK without paying UK duty and is being introduced as part of the Government's renewed strategy to tackle tobacco smuggling. This will not affect travellers that import goods genuinely for their personal consumption.

³ OJ: L 076, 23.03.92, p.1.

7.6 Some minor drafting errors in the Principal Regulations are also corrected.

8. Consultation outcome

8.1 No formal consultation has taken place as there is no discretion over whether or not to implement the provisions of the Directive. However an advanced draft of the Amendment Regulations was exposed to business and some modifications to the amendments relating to the simplified procedures were made as a result.

8.2 In addition the draft instrument was published for comment for 8 weeks.

9. Guidance

HM Revenue and Customs will revise their existing Notices to reflect the new obligations and procedures.

10. Impact

10.1 The provision reducing the MILS will potentially impact upon 10% of travellers who cross-border shop for cigarettes and/or Hand Rolling Tobacco in the EU for the purposes of illicit resale. However, travellers who genuinely import such goods for their personal consumption will not be affected.

10.2 A Tax Information and Impact Note is attached to this memorandum in respect of changes to the MILS.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The changes as a result of EU law apply equally to all businesses. Any concession for small business would adversely impact on their ability to trade within the EU.

12. Monitoring & review

12.1 The European Commission must submit a report to the European Parliament and Council on the EMCS system by 1 April 2013. HMRC will conduct its own review within 3 years and feed any findings to the European Commission.

12.2 Additionally the European Commission must submit a report on the implementation of the Directive by 1 April 2015.

13. Contact

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