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STATUTORY INSTRUMENTS

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**2001 No. 3022**

**CUSTOMS AND EXCISE**

**The Excise Duty Points (Duty Suspended  
Movements of Excise Goods) Regulations 2001**

*Made* - - - - *5th September 2001*  
*Laid before Parliament* *6th September 2001*  
*Coming into force* - - *28th September 2001*

The Commissioners of Customs and Excise, in exercise of the powers conferred on them by sections 100G and 100H of the Customs and Excise Management Act 1979<sup>(1)</sup>, section 1 of the Finance (No. 2) Act 1992<sup>(2)</sup>, and, additionally, being a department designated<sup>(3)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(4)</sup> in relation to excise matters of the European Communities and payment of excise duty, in exercise of the powers conferred upon them by that section, and of all other powers enabling them in that behalf, hereby make the following regulations:

**PART I**

*Preliminary*

**Citation and commencement**

1. These Regulations may be cited as the Excise Duty Points (Duty Suspended Movements of Excise Goods) Regulations 2001 and shall come into force on 28th September 2001.

**Interpretation**

2. In these Regulations—

“accompanying administrative document” means

- (a) the document specified in Annex 1 to Commission Regulation (EEC) No. 2719/92<sup>(5)</sup> or any document that in accordance with Article 2 of that Regulation replaces that document; and

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(1) 1979 c. 2; section 1(1) defines “the Commissioners” and “excise duty point”; 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 and Schedule 2 paragraph 4.

(2) 1992 c. 48.

(3) S.I.1980/865 (excise matters of the European Communities) and S.I. 1982/529 (payment of excise duty).

(4) 1972 c. 68.

(5) OJ No. L276, 19.9.1992, p. 1, amended by Commission Regulation (EEC) No. 2225/1993 (OJ No. L198, 7.8.1993, p. 5).

- (b) in any case where, under an exemption granted in accordance with Article 29 of the Directive, a person is entitled to use, and uses, a document specified by Commission Regulation (EEC) No. 2238/93(6) in substitution for an accompanying administrative document, that document as so specified;

“authorized warehousekeeper” has the same meaning as in Article 4(a) of the Directive;

“the Directive” means Council Directive 92/12/EEC of 25 February 1992(7);

“duty suspended movement” means

- (a) a movement of excise goods which:

- (1) starts at a tax warehouse in one member State and is intended to finish by the arrival of those goods with either:

(i) the authorized warehousekeeper at a tax warehouse or a registered or non-registered trader in another member State; or

(ii) the authorized warehousekeeper at a tax warehouse in the same member State having passed through at least one other member State during the course of the movement; and

- (2) in respect of which the excise duty to which those goods are subject by virtue of Article 5 of the Directive is suspended pursuant to suspension arrangements as defined in Article 4(c) of the Directive; and

- (b) does not include any movement that has been discharged as described in Article 19(3) of the Directive;

“excise duty” means:

- (a) in relation to the United Kingdom, a duty of excise charged by or under an enactment on excise goods falling within Article 3(1) of the Directive; and

- (b) in relation to a member State other than the United Kingdom, a similar charge, imposition or levy;

“excise goods” means goods (other than chewing tobacco) of a class or description subject to any excise duty;

“guarantee” means the guarantee provided in accordance with the provisions of Article 15(3) of the Directive;

“irregularity” means an irregularity or offence within the meaning of Article 20 of the Directive;

“non-registered trader” has the meaning given in Article 4(e) of the Directive, and, in relation to the United Kingdom, is an “occasional importer” within the meaning of regulation 2(1) of the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992(8);

“registered trader” has the meaning given in Article 4(d) of the Directive and, in relation to the United Kingdom, is a “REDS” within the meaning of regulation 2(1) of the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992;

“tax warehouse” has the same meaning as in Article 4(b) of the Directive.

(6) OJ No. L200, 10.8.1993, p. 10, amended by Commission Regulation (EC) No. 1592/1999 (OJ No. L188, 21.7.1999, p. 33).

(7) OJ No. L76, 23.3.1992, p. 1, amended by Council Directive 92/108/EEC of 14 December 1992 (OJ No. L390, 31.12.1992, p. 124), Council Directive 94/74/EC of 22 December 1994 (OJ No. L365, 31.12.1994, p. 46), Council Directive 96/99/EC of 30 December 1996 (OJ No. L8, 11.1.1997, p.12).

(8) S.I. 1992/3135, amended by S.I. 1993/1228, S.I. 1999/1278, S.I. 1999/1565.

## PART II

### *Excise Duty Points*

#### **Irregularity occurring or detected in the United Kingdom**

3.—(1) This regulation applies where:

(a) excise goods are:

- (i) subject to a duty suspended movement that started in the United Kingdom; or
- (ii) imported into the United Kingdom during a duty suspended movement; and

(b) in relation to those goods and that movement, there is an irregularity which occurs or is detected in the United Kingdom.

(2) Where the Commissioners are satisfied that the irregularity occurred in the United Kingdom, the excise duty point shall be the time of the occurrence of the irregularity or, where it is not possible to establish when the irregularity occurred, the time when the irregularity first comes to the attention of the Commissioners.

(3) Where it is not possible to establish in which member State the irregularity occurred, the excise duty point shall be the time of the detection of the irregularity or, where it is not possible to establish when the irregularity was detected, the time when the irregularity first comes to the attention of the Commissioners.

(4) For the purposes of this regulation, detection has the same meaning as in Article 20(2) of the Directive.

#### **Failure of excise goods to arrive at their destination**

4.—(1) This regulation applies where:

- (a) there is a duty suspended movement that started in the United Kingdom; and
- (b) within four months of the date of removal, the duty suspended movement is not discharged by the arrival of the excise goods at their destination; and
- (c) there is no excise duty point as prescribed by regulation 3 above; and
- (d) there has been an irregularity.

(2) Where this regulation applies and subject to paragraph (3) below, the excise duty point shall be the time when the goods were removed from the tax warehouse in the United Kingdom.

(3) The excise duty point as prescribed by paragraph (2) above shall not apply where, within four months of the date of removal, the authorized warehousekeeper accounts for the excise goods to the satisfaction of the Commissioners.

## PART III

### *Administrative Provisions*

#### **Repayment of excise duty**

5.—(1) This regulation applies where:

- (a) there has been an excise duty point as prescribed by either regulation 3(3) or 4 above; and
- (b) within three years of either:

- (i) the date on which the accompanying administrative document for the particular duty suspended movement of excise goods was drawn up; or
  - (ii) in the absence of such a document, the date when that movement started;
- the Commissioners ascertain that the member State in which the irregularity actually occurred is a member State other than the United Kingdom; and
- (c) either excise duty in relation to that irregularity has been paid in the member State where the irregularity actually occurred or no excise duty was due under the laws of that member State.

(2) Where this regulation applies, the person who paid the excise duty at the excise duty point shall be entitled to claim a repayment of that duty from the Commissioners.

(3) For the purposes of paragraph (2) above, such a claim shall be made in writing to the Commissioners and include full particulars, including evidence to satisfy the Commissioners that either the excise duty has been paid in the member State in which the irregularity actually occurred or that no excise duty was due under the laws of that member State.

6. For the purposes of regulation 5(2) above, section 137A(1) of the Customs and Excise Management Act 1979 shall be modified so as to apply to any amounts paid by way of excise duty and not be limited to excise duty which is not due to the Commissioners.

## PART IV

### *Payment of Excise Duty*

#### **Payment**

7.—(1) Subject to paragraph (2) below, where there is an excise duty point as prescribed by regulation 3 or 4 above, the person liable to pay the excise duty on the occurrence of that excise duty point shall be the person shown as the consignor on the accompanying administrative document or, if someone other than the consignor is shown in Box 10 of that document as having arranged for the guarantee, that other person.

(2) Any other person who causes or has caused the occurrence of an excise duty point as prescribed by regulation 3 or 4 above, shall be jointly and severally liable to pay the duty with the person specified in paragraph (1) above.

#### **Time for payment**

8. Any excise duty that any person is liable to pay by virtue of this Part shall be paid by that person at or before the excise duty point.

## PART V

### *Consequential Amendments*

#### **The Finance Act 1994**

9. Insert the following new subsection after subsection (2) of section 12 of the Finance Act 1994(9)—

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(9) 1994 c. 9; section 12(8) was amended by the Finance Act 1997 (c. 16), Schedule 6, paragraph 1(2).

“(2A) In subsection (2)(a) and (b) above “enactment” includes directly applicable Community provision.”

**The Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992**

**10.**—(1) Amend regulation 4(5) of the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992 as follows.

(2) Delete all and replace with—

“Where duty suspension arrangements do not apply in respect of Community excise goods consigned to a REDS or to an occasional importer or to an importer for whom a REDS is acting and, after importation, those goods do not arrive so that the excise duty point provided by paragraph (3) above does not occur, the excise duty point provided by paragraph (1) above shall apply.”

**11.** Delete regulation 4(8) of the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992.

New King’s Beam House, 22 Upper  
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5th September 2001

*Martin Brown*  
Commissioner of Customs and Excise

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations come into force on 28th September 2001.

### **Purpose of the Regulations**

These Regulations provide for the creation of excise duty points, and identify the persons liable to pay, where an irregularity occurs during the course of an intra-EU movement of duty suspended excise goods.

These Regulations implement Article 20 of Council Directive [92/12/EEC](#) (O.J. No. L76, 23.3.92, p. 1).

### **Content of the Regulations**

#### *Part II. Excise duty points*

Regulation 3 defines the duty points in respect of irregularities that occur, or are detected, in the UK whether the movement commenced in the UK or another member State.

Regulation 4 creates the duty point where goods dispatched from a UK tax warehouse do not arrive at their destination within four months of dispatch. An exemption applies where the warehousekeeper is able to account for the goods to the Commissioners' satisfaction.

#### *Part III. Administrative provisions*

Regulations 5 and 6 provide for the repayment of excise duty collected under regulation 3(3) or 4 where it is subsequently shown, within three years of the commencement of the movement, that the irregularity occurred in another member State and that duty has been paid in that member State or was not due under the laws of that member State.

#### *Part IV. Payment of excise duty*

Regulation 7 identifies the persons liable to pay at the duty points specified in regulations 3 and 4. These are the consignor and (jointly and severally) any person who caused the excise duty point. However, the consignor's liability is transferred to the person who provided the movement guarantee where the guarantee is supplied by someone other than the consignor.

Regulation 8 requires that any duty due under these Regulations must be paid at or before the excise duty point.

#### *Part V. Consequential amendments*

Regulation 9 amends section 12 of the Finance Act 1994 so as to extend the circumstances in which the Commissioners may assess for excise duty to cover failure to observe EU legal provisions. This will allow the Commissioners to assess where excise goods are imported in duty suspension from another member State but are not accompanied by the required form.

Regulations 10 and 11 amend the Excise Goods (Holding, Movement, Warehousing & REDS) Regulations 1992 so as to remove provisions which are duplicated by these Regulations.