

2004 No. 2064

CUSTOMS AND EXCISE

The Excise Warehousing (Energy Products) Regulations 2004

<i>Made</i> - - - -	<i>6th August 2004</i>
<i>Laid before Parliament</i>	<i>10th August 2004</i>
<i>Coming into force</i> - -	<i>1st September 2004</i>

The Commissioners of Customs and Excise, in exercise of the powers conferred upon them by sections 93, 100G(1) and 100H(1)(b), (c), (d), (g), (k) and (m) and (2) of the Customs and Excise Management Act 1979(a) and sections 21(1), (2) and (2A) and 23C(2) and (3) and paragraphs 3, 11, 19 and 25 of Schedule 3 of the Hydrocarbon Oil Duties Act 1979(b), hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Excise Warehousing (Energy Products) Regulations 2004 and come into force on 1st September 2004.

Interpretation

2. In these Regulations—

“Community duty suspension arrangements” means a suspension arrangement within the meaning of Article 4(c) of Council Directive 92/12/EEC(c) on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products;

“duty” means any duty of excise;

“occasional importer” has the meaning given by regulation 2(1) of the REDS Regulations(d);

“the Oil Act” means the Hydrocarbon Oil Duties Act 1979;

(a) 1979 c.2; section 1(1) defines “the Commissioners” as meaning “the Commissioners of Customs and Excise”. Relevant amendments were made to section 93 by paragraph 2 of Schedule 8 to the Finance Act 1981 (c. 35), paragraphs 3 to 7 of Schedule 3 to the Finance Act 1986 (c. 41), section 9(2) of the Finance Act 1988 (c. 39), paragraph 2 of Schedule 2 to the Finance (No. 2) Act 1992 (c. 48) and paragraph 3 of Schedule 4 to the Finance Act 1994 (c. 9). Sections 100G and 100H were inserted by Schedule 4 to the Finance Act 1991 (c. 31) and relevant amendment was made to section 100H by paragraph 6 of Schedule 1 to the Finance (No. 2) Act 1992 (c. 48).

(b) 1979 c.5; section 27(3) applies the definitions of “the Commissioners”, “excise warehouse” and “warehouse” and cognate expressions in section 1(1) of the Customs and Excise Management Act 1979 (c.2). By virtue of section 6A(4) (inserted by section 11(1) of the Finance Act 1993 (c.34)), the references to “hydrocarbon oil” in the following provisions (such as section 21 and Schedule 3) shall be construed as including references to any substance on which duty is charged under section 6A. By virtue of regulation 3 of S.I. 2004/2065, references to hydrocarbon oil in section 21 of, and paragraphs 3 and 11 of Schedule 3 to, the act are to be construed as including references to biodiesel and bioethanol. Section 21 was amended by Part 1(4) of Schedule 23 to the Finance Act 1993 (c. 34), paragraph 55 of Schedule 4 to the Finance (No. 2) Act 1992 (c. 48) and section 6(3) of the Finance Act 2004 (c. 12). Section 23C was inserted by section 13 of the Finance Act 2004 (c. 12). Paragraph 11 of Schedule 3 was amended by paragraph 4 of Schedule 4 to the Finance Act 1985 (c. 54).

(c) OJ No L 076, 23.03.1992, p 1.

(d) S.I. 1992/ 3135; there are no amendments relevant to this definition.

“REDS” has the meaning given by regulation 2(1) of the REDS Regulations^(a);

“the REDS Regulations” means the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992^(b);

“special energy product” means a substance that is—

- (a) petroleum gas,
- (b) animal fat set aside for use as motor fuel or heating fuel,
- (c) vegetable fat set aside for use as motor fuel or heating fuel,
- (d) non-synthetic methanol set aside for use as motor fuel or heating fuel,
- (e) biodiesel, or
- (f) a mixture of two or more substances specified in paragraphs (a) to (e).

Community imports

3.—(1) Special energy product that is imported into the United Kingdom under Community duty suspension arrangements must be warehoused in an excise warehouse as if it were a substance chargeable with duty, whether or not duty is in fact chargeable.

(2) Special energy product that is imported into the United Kingdom under Community duty suspension arrangements and which is—

- (a) consigned under the instructions of a REDS, or
- (b) consigned under the instructions of an occasional importer,

shall be treated as warehoused for the purposes of paragraph (1) at the time that the special energy product is received by the REDS or the occasional importer.

(3) Special energy product that is imported into the United Kingdom under Community duty suspension arrangements and which is consigned to an ultimate destination outside the United Kingdom shall be treated as warehoused for the purposes of paragraph (1) at the time that the special energy product arrives at its ultimate destination.

Voluntary warehousing

4. Special energy product that is not chargeable with duty under the Oil Act may be warehoused in an excise warehouse as if it were a substance chargeable with duty.

Treatment of warehoused special energy products

5.—(1) Special energy product that is imported into the United Kingdom under Community duty suspension arrangements shall be treated, from the time of that importation until the relevant time, for all the purposes of the customs and excise Acts, as charged with duty under the Oil Act as set out in paragraph (3).

(2) Special energy product that is warehoused (other than special energy product that falls within paragraph (1) above) shall be treated, from the time that it is put in the excise warehouse until the relevant time, for all the purposes of the customs and excise Acts, as charged with duty under the Oil Act as set out in paragraph (3).

(3) Special energy product to which paragraph (1) or (2) applies shall be treated as follows—

- (a) biodiesel shall be treated as charged by section 6AA(1) of the Oil Act^(c) (biodiesel);
- (b) vegetable fat, animal fat and non-synthetic methanol shall be treated as charged by

^(a) Relevant amendment was made by regulation 23 of S.I. 1999/1278.

^(b) For relevant amendments, see other footnotes to this instrument.

^(c) Section 6AA was inserted by section 5(4) of the Finance Act 2002 (c. 23) and amended by section 4(2) of the Finance Act 2003 (c. 14) and sections 5(2) and 11 of the Finance Act 2004 (c. 12).

section 6A(2) of the Oil Act(a) (other fuel substitutes);

(c) petroleum gas shall be treated as charged by section 8(2) of the Oil Act(b) (road fuel gas).

(4) In this regulation, “the relevant time” is the earlier of—

- (a) the time that the special energy product is charged with duty under the Oil Act;
- (b) the time that the special energy product is removed from an excise warehouse for home use;
- (c) the time that the special energy product is received by the REDS or occasional importer described by regulation 3(2);
- (d) the time that the special energy product reaches its ultimate destination outside the United Kingdom.

Distance sales of special energy products

6. Regulations 2(4) and 10(5) and (6) of the REDS Regulations shall apply to special energy products as if every reference in those provisions to “excise goods” were a reference to special energy products.

Amendment to other warehousing regulations

7.—(1) Amend the Warehousekeepers and Owners of Warehoused Goods Regulations 1999(c) as follows.

(2) For the definition of “relevant goods” in regulation 2 (interpretation), substitute—

““relevant goods” means dutiable goods, other than—

- (a) hydrocarbon oil,
- (b) bioethanol within the meaning of section 2AB of the Hydrocarbon Oil Act, and
- (c) special energy product,

on which excise duty has not been paid;”.

(3) After the definition of “relevant revenue trader” in regulation 2 (interpretation), insert—

““special energy product” has the meaning given by regulation 2 of the Excise Warehousing (Energy Products) Regulations 2004;”.

(4) For regulation 11(2)(aa) substitute—

“(aa) consign—

- (i) relevant goods, or
- (ii) special energy product,

to other member States;”.

New King’s Beam House
22 Upper Ground
London SE1 9PJ
6th August 2004

MW Norgrove
Commissioner of Customs and Excise

(a) Section 6A was inserted by section 11(1) of the Finance Act 1993 (c. 34) and amended by section 11 of the Finance Act 2000 (c. 17), section 7(1) of, and paragraph 2 of Schedule 2 to, the Finance Act 2002 (c. 23) and sections 10(4) and 12 of the Finance Act 2004 (c. 12).

(b) Relevant amendments made by section 6 of the Finance Act 1995 (c. 4), section 2 of the Finance Act 1999 (c. 16) and section 6(2) of the Finance Act 2004 (c. 12).

(c) S.I. 1999/1278; relevant amendment made by regulation 30 of S.I. 2002/501.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 1st September 2004, provide for the application to certain energy products (“special energy products”) of the Community-wide system of holding and movement of excise products under duty suspension arrangements. Provision is made in respect of how that system is to operate in the UK.

Regulation 2 defines certain terms used in these Regulations, such as “Community duty suspension arrangements”, “special energy product” and “occasional importer”.

Regulation 3 provides for the compulsory warehousing of Community imports of special energy products that are imported duty suspended, subject to special rules for certain types of Community imports.

Regulation 4 provides for the voluntary duty suspended warehousing of special energy products that are not chargeable with duty under the Oil Act.

Regulation 5 makes provision regarding how special energy products that are warehoused or subject to other duty suspension arrangements are to be treated while warehoused or under those arrangements. The provision includes treating the special energy products, while they are warehoused or subject to other duty suspension arrangements, as charged to duty under specified enactments.

Regulations 6 and 7 make consequential amendment to other warehousing regulations.

These Regulations and the other warehousing regulations that now apply to special energy products by virtue of the provision made in these Regulations, give effect to Article 20(1) of Council Directive 2003/96/EC^(a) (of 27th October 2003 restructuring the Community framework for the taxation of energy products and electricity) in respect the application of the Community-wide duty suspension system to special energy products. A transposition note for the directive is available at www.hmce.gov.uk.

A full regulatory impact assessment has not been produced for this instrument, as it has no impact on the costs of business, charities or voluntary bodies.

^(a) OJ No L 283, 31.10.2003, p 51.

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