EXPLANATORY MEMORANDUM TO

1. THE EXCISE DUTY POINTS (ETC.)(NEW MEMBER STATES)(AMENDMENT) REGULATIONS 2006
2006 No. 3159

2. THE CUSTOMS AND EXCISE DUTIES (TRAVELLERS' ALLOWANCES AND PERSONAL RELIEFS)(NEW MEMBER STATES)(AMENDMENT) ORDER 2006
2006 No. 3157

3. THE RELIEF FOR LEGACIES IMPORTED FROM THIRD COUNTRIES (APPLICATION) ORDER 2006
2006 No. 3158

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

(a) Parliament in respect of the Excise Duty Points (Etc.)(New Member States)(Amendment) Regulations 2006, and

(b) the House of Commons in respect of the Customs and Excise Duties (Travellers' Allowances and Personal Reliefs)(New Member States)(Amendment) Order 2006 and the Relief for Legacies Imported from Third Countries (Application) Order 2006.

2. Description

2.1 The effect of the Excise Duty Points (Etc.)(New Member States)(Amendment) Regulations 2006 ("the Excise Duty Points Regulations") and the Customs and Excise Duties (Travellers' Allowances and Personal Reliefs)(New Member States)(Amendment) Order 2006 ("the Personal Reliefs Order") is to impose quantitative restrictions on the amount of cigarettes that an individual can import into the UK from Bulgaria and Romania for their personal use, without payment of UK excise duty, when these countries join the European Union on 1 January 2007.

2.2. The Relief for Legacies Imported from Third Countries (Application) Order 2006 ("the Legacies Order") updates a reference to Council Directive 77/388/EEC (OJ No L 145, 13.6.1997, p 1) in the Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992 (S.I.1992/3193)("the 1992 Order") so that its territorial application includes Bulgaria and Romania.

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

None

4. Legislative Background

4.1 The instruments set out in paragraph 2.1 above are made to maintain the quantitative limits on the amount of cigarettes which may be brought into the United Kingdom from Bulgaria and Romania without payment of UK excise duty.

4.2 In doing so the instruments give effect to derogations contained in the Act concerning the Accession of the Republic of Bulgaria and Romania to the European Union (OJ No L 157, 21.6.05, p 203). The new Member States have obtained, for a transitional period, derogations from the EU requirement to impose a minimum rate of duty on cigarettes provided for in Council Directive 92/79/EEC (OJ No L 316, 31.10.92, p 8). During this transitional period current Member States may maintain the same quantitative limits for cigarettes, which may be brought into their territory from Bulgaria and Romania without payment of their domestic excise duty, as those applied to imports from third countries. At the end of the transitional period, the relief from duty on the cigarettes will end as the new Member States must have imposed a minimum rate of duty on cigarettes. The new Member States will then be in the same position as current Member States.

4.3 The effect of the Excise Duty Points Regulations is to amend the Excise Duty Points (Etc.)(New Member States) Regulations 2004 to provide that the excise duty point for cigarettes acquired by private individuals in Bulgaria or Romania which are for their own use and transported by them to the United Kingdom, shall be the time that the products are charged with duty. The duty is charged at importation under section 2 of the Tobacco Products Duty Act 1979 (c.7). The effect of the Personal Reliefs Order is to amend the Customs and Excise Duties (Travellers' Allowances and Personal Reliefs)(New Member States) Order 2004 ("the 2004 Order") to provide that a person transporting cigarettes acquired in Bulgaria or Romania for their own use into the United Kingdom shall be relieved from payment of excise duty on a restricted number of cigarettes. These instruments will apply to cigarettes acquired in Bulgaria or Romania for the duration of the transitional period.

4.4 A transposition note setting out how the Excise Goods, Beer and Tobacco Products (Amendment) Regulations (S.I. 2002/2692) implements the requirements of Council Directive 92/12/EEC has been updated to reflect the provisions introduced by these instruments. It is attached as an annex.

4.5 In addition, the Excise Duty Points Regulations, the Personal Reliefs Order and the Legacies Order update references to Council Directive 77/388/EEC and/or Council Directive 92/12/EEC (OJ No L76, 23.3.92, p 1) in the Regulations and Orders referred to within them. At present the territorial application of these Regulations and Orders is defined by reference to the territorial application of the Directives. The Directives refer to Article 227 (now Article 299) of the EC Treaty. Article 17 of the Act of Accession replaces Article 299(1) of the EC Treaty. From 1 January 2007 the Directives will apply to Bulgaria and Romania and the effect of these instruments is that the Regulations and Orders are to be construed so as to take account of this change.

4.6 It may be helpful to explain why the Legacies Order (article 2) and the Personal Reliefs Order (article 3) each have the effect of updating the reference to Council Directive 77/388/EEC in the definition of third country in article 2 of the 1992 Order. The term "third country" is used throughout the 1992 Order including article 21 which provides relief from duty and value added tax for legacies imported from a third country. The effect of updating the reference is to restrict the reliefs provided for in the 1992 Order so that they no longer apply to the new member States. It therefore reduces the number of countries to which the Order applies. If no

updating occurred the relief would in any event bite on air because of the position of Bulgaria and Romania as Member States as of the 1st January 2007.

4.7 Two separate instruments are needed because different parliamentary procedures are required. The vires for the Personal Reliefs Order is found in section 13(1) and (3) of the Customs and Excise Duties (General Reliefs) Act 1979 ("the Act"). Section 17(3) of the Act provides that Orders under section 1, 7, 11A, **13(1)** or 13 A etc shall be subject to annulment in pursuance of a resolution of the House of Commons except in a case falling within subsection (4). Subsection (4) provides that where an order under section 1, 4, 11A, **13(1)** or 13A restricts any relief from duty or tax the Order is to be subject to the affirmative resolution procedure. As is seen from paragraph 4.6 above, the relief is restricted and therefore the affirmative resolution procedure applies.

4.8 The vires for the Legacies Order is found in section 7 of the Act. The Order is subject to the negative resolution procedure by virtue of section 17(3). Subsection (4) does not apply here, even though the relief is restricted, as it is an Order made under section 7.

4.9 The Government presented the Accession Treaty to Parliament as a Command Paper (Cm 6657) together with an Explanatory Memorandum summarising and analysing the contents of the Accession Treaty. The European Union (Accessions) Act 2006 (c.2), which enables the Accession Treaty to be implemented into UK law, received Royal Assent on 16 February 2006.

5. Extent

These instruments apply to all of the United Kingdom.

6. European Convention on Human Rights

The Financial Secretary to the Treasury, Mr John Healey MP, has made the following statement regarding Human Rights:

In my view the provisions of the Customs and Excise Duties (Travellers' Allowances and Personal Reliefs)(New Member States)(Amendment) Order 2006 are compatible with the Convention rights.

As the Excise Duty Points (Etc.)(New Member States)(Amendment) Regulations 2006 and the Relief for Legacies Imported from Third Countries (Application) Order 2006 are subject to negative resolution procedures and do not amend primary legislation, no statement is required.

7. Policy background

7.1 From 1 January 2007, Bulgaria and Romania will become members of the European Union. A consequence of this would be that cigarettes acquired by private individuals in Bulgaria and Romania, for their own use and transported by them into the United Kingdom, would not be subject to UK excise duty.

7.2 However, during the accession negotiations for Bulgaria and Romania, both new Member States were given a transitional period within which to raise their duty

rates on cigarettes to the EU minimum. During these transitional periods, existing Member States are entitled to maintain the same quantitative limits for cigarettes imported from Bulgaria and Romania as are currently applied to those brought back from non-EU countries, i.e. 200 cigarettes.

7.3 Due to the extremely low rates of excise duty in Bulgaria and Romania, especially when compared to those in the UK, concerns were raised regarding the greatly increased threat of smuggling from these countries upon their accession. Therefore the decision was made to maintain the existing restrictions on the importation of cigarettes as are applied to those imported from third countries. This gives certainty to both officers and travellers. It provides our officers with an effective tool to confidently distinguish legal from illegal quantities at lower levels, in order to combat this threat. It also reflects a consistent approach by the UK, as it would be an extension of the current restrictions on certain tobacco products on eight of the ten Member States that joined the EU in 2004.

7.4 The changes to Article 299 of the EC Treaty made by the Act of Accession in turn require changes to any legislation that cross-refers to this Article. Therefore the Legacies Order applies the reference to Council Directive 77/388/EEC in the Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992 in respect of relief for legacies so that its territorial application includes Bulgaria and Romania.

8. Impact

8.1 Regulatory Impact Assessments have not been prepared for these instruments as they have no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is none.

9. Contact

Caroline Winrow at HM Revenue & Customs Tel: 0161 827 0396 or e-mail: caroline.winrow@hmrc.gsi.gov.uk can answer any queries regarding these instruments.

Transposition Note setting out how the Customs and Excise Duties (Travellers' Allowances and Personal Reliefs)(New Member States)(Amendment) Order 2006 SI No. 3157, and the Excise Duty Points (Etc.)(New Member States)(Amendment) Regulations 2006 SI No. 3159 affect the requirements of Council Directive 92/12/EEC.

Directive

Council Directive 92/12/EEC (O.J. No. L76, 23.3.92) is concerned with the general arrangements for products subject to excise duty and for the holding, movement and monitoring of such products.

Introduction

The Directive provides the framework governing (amongst other things) the movement of goods subject to excise duty ("excise goods") between Member States. Articles 8 and 9 of Directive 92/12/EEC are implemented by The Excise Goods, Beer and Tobacco Products (Amendment) Regulations 2002 SI No. 2692. These Regulations were made by the Commissioners of Customs and Excise.

The Act concerning the Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union (OJ No L236,15.9.2003,p33) provides for certain derogations from the requirements imposed by Article 8 of Directive 92/12/EEC. These derogations are given effect by The Excise Duty Points (Etc.)(New Member States) Regulations 2004 (SI No. 1003) and The Customs and Excise Duties (Travellers' Allowances and Personal Reliefs)(New Member States) Order 2004 (SI No. 1002). These instruments have been made by the Commissioners of Customs and Excise.

The Act concerning the Accession of Bulgaria and Romania to the European Union (OJ No L157, 21.6.2005, p203) provides for certain derogations from the requirements imposed by Article 8 of Directive 92/12/EEC. These derogations are given effect by the Excise Duty Points (Etc.)(New Member States)(Amendment) Regulations 2006 (SI No. 3159) and the Customs and Excise Duties (Travellers' Allowances and Personal Reliefs)(New Member States)(Amendment) Order 2006 (SI No. 3157). These instruments have been made by the Commissioners of Revenue and Customs.

Articles	Objectives	Implementation
Article 8	Provides that excise goods acquired by private individuals for their own use and transported by them shall be liable to excise duty only in the Member State in which they are acquired.	The Excise Goods, Beer and Tobacco Products (Amendment) Regulations 2002 amend existing Regulations to provide that excise goods acquired in another Member State by private individuals for their own use and transported by them to the UK are not liable to UK excise duty otherwise than in the circumstances envisaged by Article 9 of the Directive. The Excise Duty Points (Etc.)(New Member States) Regulations 2004 provide that cigarettes acquired in the

		Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia by private individuals for their own use and transported by them to the UK are liable to UK excise duty. Similar provision is made in respect of smoking tobacco acquired in Estonia and manufactured tobacco acquired in the Czech Republic. The Customs and Excise Duties (Travellers' Allowances and Personal Reliefs)(New Member States) Order 2004 provides that a person transporting products to which the Excise Duty Points (Etc)(New Member States) Regulations 2004 apply shall be relieved from payment of UK excise duty on a restricted number of those products, subject to the condition that those products are not held or used for a commercial purpose. The Excise Duty Points (Etc.)(New Member States)(Amendment) Regulations 2006 provide that cigarettes acquired in the Bulgaria and Romania by private individuals for their own use and transported by them to the UK are liable to UK excise duty. The Customs and Excise Duties (Travellers' Allowances and Personal Reliefs)(New Member States)(Amendment) Order 2006 provides that a person transporting products to which the Excise Duty Points (Etc)(New Member States)(Amendment) Regulations 2006 apply shall be relieved from payment of UK excise duty on a restricted number of cigarettes, subject to the condition that those products are not held or used for a commercial purpose.
Article 9 (1)	Provides that excise duty is due where products for consumption in a Member State are held for commercial purpose in another Member State.	The Excise Goods, Beer and Tobacco Products (Amendment) Regulations 2002 amend existing Regulations to create an excise duty point (the time when a requirement to pay excise duty takes effect) where excise goods acquired as envisaged by Article 8 of the Directive are held or used for a

		commercial purpose.
Article 9 (2)	Specifies criteria that must be considered when establishing whether excise goods are intended for commercial purposes. Permits Member States to lay down guide levels, for the purpose of assisting in determining whether excise goods are intended for commercial purposes.	The Excise Goods, Beer and Tobacco products (Amendment) Regulations 2002 amend existing Regulations to specify the criteria that must be considered when establishing whether excise goods are intended for commercial purposes. The Excise Goods, Beer and Tobacco Products (Amendment) Regulations 2002 amend existing Regulations to lay down guide levels, for the purpose of assisting in determining whether excise goods are intended for commercial purposes.