EXPLANATORY MEMORANDUM TO

THE EXCISE GOODS (SALES ON BOARD SHIPS AND AIRCRAFT) (AMENDMENT) REGULATIONS 2010

2010 No. 592

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

2. Purpose of the instrument

2.1 These Regulations amend the Excise Goods (Sales on Board Ships and Aircraft) Regulations 1999, S.I. 1999 / 1565 ("the principal Regulations"). They introduce what is termed a "closed shop procedure" which implements Article 33(5) of Council Directive 2008/118/EC[1] (" the 2008 Directive").

2.2 That Article provides that excise goods which are held on board a boat or aircraft making sea-crossings or flights between two Member States but which are not available for sale when the boat or aircraft is in the territory of one of the Member States are not regarded as held for a commercial purpose in that Member State and, accordingly, the excise duty charged on those goods in that Member State is not payable.

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

None

4. Legislative Context

4.1 The principal Regulations implemented Article 7 of Council Directive 92/12/EEC[2]("the Directive") in relation to goods held on board a boat or aircraft. Part 7 of the principal Regulations provided for a simplified procedure in cases where, under Article 7(9) of Council Directive 92/12/EEC ("the 1992 Directive"), the United Kingdom has agreed a simplified procedure with another Member State.

4.2 However, it is now considered that a bi-lateral agreement is not required in order to operate a procedure which provides that UK excise duty is not payable on excise goods which are neither sold, nor held out for sale, while in UK territorial seas or airspace. Article 33(5) of the 2008 Directive provides that in such cases the goods are not held for a commercial purpose in the UK and UK excise duty is not payable.

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[1] OJ L 9 14.01.2009, p 12.
[2] OJ L 076 23.03. 92, p.1

4.3 These Regulations give effect to Article 33(5) by introducing a "closed shop procedure" and also provide (under the powers contained in section 1 of the Finance (No 2) Act 1992[3]) that UK excise duty will be payable (i.e. there will be an excise duty point) and prescribe the persons liable to pay if goods that are subject to the closed shop procedure are sold, held out for sale or go missing while they are in UK territorial seas or airspace.

4.4 The majority of the 2008 Directive is implemented by the Excise Goods (Holding, Movement and Duty Point) Regulations 2010[4] and a transposition note showing how the Directive is transposed is attached to the Explanatory Memorandum to that instrument. It is also available at [ ]

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom

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 principal Regulations set out HMRC requirements regarding the procedure when take away excise goods are sold to passengers on ships and aircraft undertaking journeys between the UK and other MSs.The principal Regulations implemented Article 7 of the 1992 Directive in relation to such goods .

7.2 The purpose of the principal Regulations was to enable HMRC to identify those persons who intend to sell goods on board ships and aircraft in circumstances where UK excise duty is due and provide for payment and, in appropriate cases, reimbursement of that duty. This placed such sales on an equal commercial footing with sales made in the UK

7.3 When the sales are made in the territorial seas or airspace of another MS, that MS's excise duty must be paid..

7.4 Article 7(9) of the 1992 Directive allowed for simplification in the procedures and, at the time the principal Regulations were made, it was considered that such simplification required a bi-lateral agreement between the UK and each MS between which journeys took place. Guidance issued by HMRC in Notice 202 outlined the policy on making sales using a simplified procedure and gave the Trade reasonable

[3] 1992 c. 48
[4] S.I. 2010/593

expectations that bi-lateral agreements would be put in place. However, only two such bi-lateral agreements are in place.

7.5 However, it is now considered that a procedure which provides that UK excise duty is not payable on excise goods which are neither sold, nor held out for sale, while in UK territorial seas or airspace does not require a bi-lateral agreement . Accordingly, following consultation with the trade, these Regulations regularise existing commercial practice and introduce what is termed a "closed shop" procedure which implements Article 33(5) of the 2008 Directive (which replaces the 1992 Directive). They also amend Part 7 of the principal Regulations ("simplified procedures") so that that Part now only provides for simplified documentary requirements where, in accordance with what is now Article 35(2) of the 2008 Directive a bi-lateral agreement is in place.

Consolidation

7.6 There are no immediate plans for a consolidation.

8 Consultation outcome

An informal consultation was undertaken with the trader who welcomed the proposed regulations to regularise current commercial practice.

9 Guidance

Notice 202 (Sales on Board Ships and Aircraft) will be amended.

10. Impact

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

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does apply to small business, but will have a negligible effect on these businesses.

12. Monitoring & review

No monitoring or review is required.

13. Contact

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