EXPLANATORY MEMORANDUM TO

THE TOBACCO PRODUCTS AND EXCISE GOODS (AMENDMENT) REGULATIONS 2006

2006 No. 1787

1. This explanatory memorandum has been prepared by the Commissioners for Her Majesty's Revenue and Customs and is laid before Parliament by Command of Her Majesty.

2. Description

This instrument comes into force on 1 August 2006. It amends the Tobacco Products Regulations 2001 (S.I. 2001/1712) to make a number of changes (described in more detail below) to the arrangements for tobacco products. It also removes a redundant definition of "chewing tobacco" from the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992 (S.I. 1992/3135).

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

None.

4. Legislative Background

4.1 Tobacco products (i.e. cigarettes, cigars, hand-rolling tobacco and chewing tobacco) produced in or imported into the United Kingdom are liable to excise duty (tobacco products duty). The manufacture of tobacco products in the United Kingdom is governed by the Tobacco Products Duty Act 1979 (c.7) and by the Tobacco Products Regulations 2001 ("the 2001 Regulations"). This instrument amends the 2001 Regulations for a number of disparate purposes.

4.2 The 2001 Regulations were intended to provide that registered premises (tobacco factories and stores) would only have one occupier; and that joint or concurrent registrations of the same premises in the names of two or more tobacco manufacturers would not be permitted. The presence of more than one occupier could create a risk to revenue by jeopardizing the control of the tobacco products. The 2001 Regulations do not specifically preclude such joint or concurrent registration.

4.3 The 2001 Regulations also:

- prohibit a manufacturer from removing tobacco products from his factory to a registered store that he does not occupy,
- require cigarettes and hand-rolling tobacco to be fiscally marked even when they are to be used for testing purposes (and may not be packaged for the United Kingdom market) and when imported by a private individual in amounts exceeding that individual's duty-free allowance, and
- do not provide for remission of duty on tobacco products that are used, without being smoked by humans, for testing quality or testing products under development.

4.4 This instrument makes amendments to the 2001 Regulations in relation to all these matters. It also removes from the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992 a redundant definition of "chewing tobacco" that ought to have been removed when the 2001 Regulations were amended by the Excise Goods, Beer and Tobacco Products (Amendment) Regulations 2002 (S.I. 2002/2692).

5. Extent

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

7.1 The policy objective of the parent Act, the Tobacco Products Duty Act 1979, and the 2001 Regulations is to provide for excise duty on tobacco products.

7.2 This instrument amends the 2001 Regulations. In particular it:

- precludes the occupation of registered premises by more than one tobacco manufacturer,
- removes the prohibition on tobacco products being moved from a registered factory occupied by one tobacco manufacturer to a registered store occupied by another (without payment of duty under duty-suspension arrangements), but provides that sale to a person who is not a manufacturer is a contravention of duty-suspension arrangements requiring payment of the duty,
- creates an exception to the requirement to carry a fiscal mark in the case of personal duty-paid imports, in excess of the travellers' allowances, by travellers from outside the European Union,
- creates an exception to the requirement to carry a fiscal mark in the case of duty-paid tobacco products used in quality control or development tests; and
- remits the duty on tobacco products used in quality control or development tests (provided they are not smoked by humans).

7.3 The storage, under duty-suspension arrangements, of United Kingdom manufactured tobacco products that are intended for home-use is limited to registered stores occupied by the United Kingdom manufacturer. This, combined with a ban on the movement of those products from a registered factory to a registered store that is not occupied by the person who manufactured them, prevents third parties (such as wholesalers) from buying and storing under duty-suspension arrangements tobacco products, when those products have been manufactured in the United Kingdom. The purpose of this restriction is to limit the number of duty-payers, thus minimising the risk to the revenue, and the cost of assuring and collecting the duty, as well as maximising the efficacy of anti-forestalling restrictions. An unintended consequence of this is, in some circumstances, to impose an effective ban on sales of tobacco products that are under duty-suspension arrangements, because those products cannot be moved from the registered factory of one manufacturer to the registered store of

another. Such sales and movements would not compromise the policy objectives and will be permitted by these amendments.

7.4 Specified tobacco products (cigarettes and hand-rolling tobacco) are required to carry fiscal marks at the time of their importation into, or removal to home-use within, the United Kingdom (whichever is the earlier). Exceptions are prescribed by regulation 23 of the 2001 Regulations, but these do not include exceptions for specified tobacco products for their own use imported on payment of duty by travellers from outside the European Union, nor do they include duty-paid specified tobacco products used in quality control or development tests. This instrument remedies these omissions.

7.5 Section 2 of the Tobacco Products Duty Act 1979 makes provision for the remission of duty and empowers the Commissioners to make regulations providing for remission of duty in other cases. This instrument makes such provision in the circumstances described in paragraph 7.2 above.

7.6 The amendments made by this instrument have been drafted taking into account views gathered from the members of the Tobacco Manufacturers' Association (TMA) and the Imported Tobacco Products Advisory Council (ITPAC). The Commissioners have not formally consulted on the changes being made as, for the most part, they are a response to requests from industry. Both the TMA and ITPAC have been informed of the precise details of the amendments being introduced and their members generally welcome the changes as helping to clarify their obligations. They expressed a wish for a greater degree of trade facilitation than is provided by these amendments, but accept that this could not be provided without an unacceptable risk to the revenue and increased resource implications.

7.7 This instrument has been notified to the European Commission and the other member States in accordance with Directive 98/34/EC of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical standards and regulations (OJ No. L204, 21.7.1998, p.37; as amended). No comments were received.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is negligible.

9. Contact

Judith Kelly at the Her Majesty's Revenue and Customs Tel: 0161 827 0313 or e-mail: Judith.Kelly@hmrc.gsi.gov.uk can answer any queries regarding the instrument.