EXPLANATORY MEMORANDUM TO

THE WAREHOUSEKEEPERS AND OWNERS OF WAREHOUSED GOODS (AMENDMENT) REGULATIONS 2006

2006 No. 577

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

2. Description

This instrument amends the Warehousekeepers and Owners of Warehoused Goods Regulations 1999 (S.I. 1999/1278) to relieve an authorized warehousekeeper from his obligation to pay excise duty on goods in his warehouse. This relief applies where the excise duty became payable owing to a prescribed event that was outside the warehousekeeper's control, and the warehousekeeper abandons the goods in question to the Commissioners.

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

None

4. Legislative Background

4.1 Regulation 21 of the Warehouse and Owners of Warehoused Goods Regulations 1999, which came into force on 1st October 1999, stipulates that an excise duty point arises when duty-suspended goods stored in an excise warehouse cease to be owned by a registered owner or there is no longer a duty representative acting as the owner's agent. In these circumstances joint and several liability to pay the duty applies to the authorized warehousekeeper, registered owner and any duty representative acting as the owner's agent.

4.2 This amendment to regulation 21 allows the warehousekeeper to abandon the goods to the Commissioners immediately following the excise duty point as an alternative to being jointly and severally liable to pay the duty where registered owners and duty representatives fail to advise the warehousekeeper that their registration has been revoked or fail to produce a registration certificate as required under the Warehousekeepers and Owners of Warehoused Goods Regulations 1999, regulations 18(3) and (5), or 19(3) and (5).

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 Warehousekeepers and Owners of Warehoused Goods Regulations 1999 require warehousekeepers, owners and duty representatives to be registered and impose certain conditions and restrictions on these parties with regards to the holding of duty-suspended goods. This legislative change evolved from an internal policy review of those Regulations in October 2002.

7.2 The purpose of this instrument is to remove the joint and several duty liability for authorized warehousekeepers and is seen by the industry as a trade facilitation measure. When duty-suspended goods are sold in warehouse to an unregistered owner or are no longer owned by a registered person, warehousekeepers, owners and duty representatives are jointly and severally liable to pay the duty. Warehousekeepers who do not own the goods are placed at a disadvantage as they rarely have control over sales of goods in warehouse and are the party most likely to face paying the duty. The Commissioners also believe that this provision will reduce the inherent risk of goods being removed from warehouse without duty being paid.

7.3 The alcohol trade have been formally consulted and from the responses received 100% supported the proposal seeing it as a trade facilitation measure with no anticipation of compliance costs.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector is negligible.

9. Contact

David Walsh at H.M. Revenue and Customs Tel: 0161 827 0359 or e-mail: david.walsh@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

Regulatory Impact Assessment

1. **Title of proposal:** Abandonment of goods to Her Majesty's Revenue and Customs (HMRC).

   Legislation - The Warehousekeepers and Owners of Warehoused Goods (Amendment) Regulations 2006 amend Section 21 of the Warehousekeepers and Owners of Warehoused Goods Regulations 1999 (WOWGR).

2. **Purpose and intended effect**
   Objective –
   - The amendment to section 21 of the Warehousekeepers and Owners of Warehoused Goods Regulations 1999 (WOWGR) will extend the circumstances in which warehousekeepers registered under WOWGR may abandon goods to HMRC as an alternative to paying the duty.

   Background –

   Under the current Regulations, different rules apply depending when a warehousekeeper discovers that goods are not owned by a registered person:

   (a) If, **during an initial period of 72 hours** following their deposit in an excise warehouse, goods are found not to be owned by registered owner or the foreign owner has not appointed a duty representative, the warehousekeeper has a choice of either paying the excise duty due on the goods or abandoning them to HMRC.

   However:

   (b) If, **after the expiry of the 72 hour period**, goods are found not to be owned by registered owner or the foreign owner has not appointed a duty representative, warehousekeepers, owners and duty representatives are jointly and severally liable to pay the duty – the warehousekeeper does not have the option of abandoning the goods to HMRC. This may occur when duty suspended goods stored in an excise warehouse are sold to an unregistered owner or the current owner has their authorisation removed.

   Rationale for government intervention -

   - Warehousekeepers can become liable to duty in a number of circumstances beyond their immediate control. For example:
     - **i.** They have little control over the sales of goods in warehouse and may not have been advised that a sale of goods and subsequent change of ownership has occurred.
     - **ii.** An owner's registration may have been cancelled without the knowledge of the warehousekeeper. The owner may have failed to notify the warehousekeeper prior to depositing goods in the warehouse and produced an invalid certificate of registration.

   - These circumstances can occur well after the 72-hour "initial period" has come to an end. Currently there is no legal provision for abandoning goods

other than in relation to the 72-hour "initial period". Therefore warehousekeepers remain liable for the duty but are not able to abandon the goods to HMRC to avoid paying it.

3. **Consultation -**

- **Public consultation**

The measure was first set out, along with other possible regulatory measures, in the consultation document "EXCISE: Reducing the opportunities for alcohol fraud: July 2003". This document was published on the HM Customs and Excise internet site and copies were sent to 20 trade bodies or groups whose members were most likely to have an interest in the proposals.

The measure was then discussed on a number of occasions within the Joint Alcohol and Tobacco Consultation Group (JATCG) and its sub-groups. These discussions involved all relevant trade associations. In written responses to the consultation, and in the course of these discussions, the trade confirmed that they viewed this as a sensible measure to address a legislative weakness.

A discussion document providing further detail of this and other regulatory and operational proposals was issued in July 2004 to trade association groups via the JATCG. This requested further information with regards to compliance costs and any other implications.
Respondents were satisfied that no additional compliance costs would be introduced by this measure, provided that HMRC arranged prompt collection of abandoned goods.

4. **Options**

(a) Do nothing option:

(b) Introduce amended legislation:

Option (b) is the preferred option.

If Government does not amend the legislation, the duty liability of warehousekeepers will continue to be inconsistent, depending whether they discover that goods in their care are not owned by a registered person before or after the expiry of the initial 72 hour period. The Government considers this an unjustified anomaly that is neither fair to warehousekeepers nor helpful to HM Revenue and Customs. Amending the legislation will reduce the temptation for warehousekeepers to remove goods illicitly from warehouse without duty being paid.

5. **Costs and benefits**

- **Sectors and groups affected**

The main party affected will be authorised warehousekeepers. There are currently around 325 registered warehousekeepers who have responsibility for approximately 650 approved excise warehouse premises.

- **Benefits**

  The impact upon warehousekeepers will be wholly beneficial due to the removal of potential duty liability against them.

- The legislation will be fairer and more consistent.

- **Costs**

  If HMRC cannot quickly remove abandoned goods from warehouses this may result in a small potential financial cost to warehousekeepers as the space occupied by abandoned goods could have been offered to other customers. However, any delay in removal would represent an unwelcome revenue risk and removal of the goods will be a priority for HMRC. Any potential costs will therefore be minimal and should be considered against the potential duty liability that warehousekeepers would otherwise face.

6. **Small Firms Impact Test**

Excise duty represents a considerable portion of the retail sale price of excise goods. This measure provides potential benefits to all warehousekeepers. It will be of particular benefit to smaller excise warehousekeepers, as they are less likely to be able to withstand the unexpected financial burden that a significant excise liability would create.

7. **Competition assessment**

This measure will not affect competition in the excise warehousing market.

8. **Enforcement, sanctions and monitoring**

These regulations will be enforced by HMRC. The Regulations do not introduce any additional sanction or penalty. Instead they provide the trade with the option of abandoning the goods where they would otherwise have been liable for excise duty.

9. **Implementation and delivery plan**

HMRC have published information on the measure in advance of its introduction informing all warehousekeepers of the new provisions.

10. **Post-implementation review**

HMRC intend to review the effectiveness of these regulations and how the provisions are operating with the relevant Trade Associations and other interested parties between 12 months and two years after their implementation.

11. **Summary and recommendation**

The new regulations will reduce potential financial burdens upon compliant warehousekeepers where they arise due to particular circumstances outside their control. They provide warehousekeepers with a welcome option where they would otherwise face potentially significant excise duty liabilities. The industry has been supportive of the introduction of this measure during the consultation process.

12. **Declaration and publication**

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

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