

FINANCE ACT 2009

EXPLANATORY NOTES

INTRODUCTION

Section 112: Customs and Enforcement Powers: Movements between Member States

Summary

1. **Section 112** amends section 4 of the Finance (No. 2) Act (F(No.2)A) 1992 to ensure that, in appropriate circumstances, officers of HM Revenue & Customs (HMRC) can use their powers to check whether or not a movement is between Member States. It will also make a textual change to clarify the circumstances in which officers can use their powers to conduct selective and proportionate checks on EU travellers for drugs and other prohibited goods.

Details of the Section

2. Subsections (2) and (3) insert a new subsection 1A into section 4 of F(No.2)A 1992, which allows the exercise of powers in order to ascertain whether a movement is in fact between Member States.
3. Subsection (4) makes a drafting amendment to subsection (2) to clarify that the precondition for exercising powers for purposes listed in subsections 2(a) to (c) is where it is necessary to exercise such a power.

Background Note

4. Section 4 of F(No.2)A 1992 limits the use of certain powers in the Customs and Excise Management Act 1979 (CEMA) in relation to movements between Member States. But the section provides two exceptions to that limitation. The first is where there are reasonable grounds for believing that the movement in question is not in fact between Member States. The second is where it is necessary to exercise the power for purposes connected with the collection of Community customs duties or the enforcement of any import prohibition or restriction.
5. The effect of this amendment is that an officer of HMRC will no longer need reasonable grounds for believing that a passenger has come from outside the EU in order to exercise the specified customs powers. This is necessary because at large international airports passengers from several flights mix airside before reaching customs. The amendment will permit officers to conduct limited checks such as questioning the traveller and inspecting their travel documents in order to ascertain whether they are EU travellers or not.
6. Another effect of this section is to amend the drafting of section 4 to clarify that officers do not need reasonable grounds for believing that it is necessary to exercise the relevant CEMA power before being able to do so for purposes connected with the collection of Community customs duties or the enforcement of any import prohibition or restriction. The section will now provide that the powers can be exercised where it is necessary to

*These notes refer to the Finance Act 2009 (c.10)
which received Royal Assent on 21 July 2009*

do so, as opposed to where there are reasonable grounds for believing that it is necessary to do so.

7. All checks on EU travellers are carried out in a selective and proportionate manner, and therefore will not interfere with an EU passenger's free movement rights.