

2001 No. 1712

CUSTOMS AND EXCISE

The Tobacco Products Regulations 2001

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ARRANGEMENT OF REGULATIONS

PART I

Preliminary

1. Citation and commencement
2. Revocation
3. Interpretation

PART II

Registered premises

4. Registration of factories
5. Registration of stores
6. Registered premises—revocation of registration
7. Registered premises—conditions and requirements
8. Registered stores
9. Removal
10. Electronic removal
11. Refuse

PART III

Excise duty points, security and payment of duty

12. Excise duty points
13. Person liable to pay the duty
14. Payment and calculation of the duty
15. Recommended retail prices, weights and deficiencies
16. Security
17. Deferred payment—payment day
18. Deferred payment—approval of arrangements
19. Deferred payment—payment of duty
20. Returns

PART IV

Fiscal marks

21. Application of Part IV
22. When specified tobacco products are required to carry a fiscal mark
23. Exceptions to the requirement to carry a fiscal mark
24. Removal of products that are required to carry a fiscal mark
25. Offences—supplementary provisions

PART V

Repayment and drawback of duty

26. Returned products

PART VI

Application and amendment of other Regulations

27. The Excise Warehousing (Etc.) Regulations 1988
28. The Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992

The Commissioners of Customs and Excise, in exercise of the powers conferred upon them by sections 93(1), (2)(a), (c) and (d), and (3), 100G and 100H, 118A(1) and (2) and 127A of the Customs and Excise Management Act 1979(a), sections 2(2), 7(1) and (1A), 8B, 8C and 8G of the Tobacco Products Duty Act 1979(b), sections 1 and 2 of the Finance (No. 2) Act 1992(c) and of all other powers enabling them in that behalf, hereby make the following regulations:

PART I PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Tobacco Products Regulations 2001 and come into force on 1st June 2001.

Revocation

2. The following Regulations are revoked—
- (a) the Tobacco Products Regulations 1979(d);
 - (b) the Excise Warehousing Regulations 1979, etc. (Amendment) Regulations 1980(e);
 - (c) the Tobacco Products (Amendment) Regulations 1982(f);
 - (d) the Tobacco Products Regulations 1979 (Amendment) Regulations 1990(g);
 - (e) the Tobacco Products (Amendment) Regulations 1992(h); and
 - (f) the Tobacco Products (Amendment) Regulations 1993(i).

Interpretation

- 3.—(1) In these Regulations—
- “the Act” means the Tobacco Products Duty Act 1979;
 - “business day” has the meaning given in section 92 of the Bills of Exchange Act 1882(j);
 - “duty” means the duty of excise charged on tobacco products by section 2(1) of the Act(k);
 - “duty suspension arrangements” means any arrangements, including arrangements made by these Regulations, that enable tobacco products to be held or moved without payment of duty;
 - “electronic removal” has the meaning given in regulation 10 below;
 - “manufacturer”, subject to paragraph (2) below, means any person who manufactures tobacco products in premises that may be registered as a registered factory;
 - “the occupier” means the manufacturer who occupies a registered factory or, as the case may be, a registered store;

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- (a) 1979 c. 2; section 1(1) defines “the Commissioners”, “excise duty point”, “excise warehouse”, “importer”, “registered excise dealer and shipper”, “registered excise dealers and shippers regulations”, “revenue trader”, “shipment”, “stores” and “warehoused” and cognate expressions; section 93(2)(a) was amended by the Finance Act 1981 (c. 35), Schedule 8, paragraph 2; section 93(1) and (3) was amended by the Finance (No. 2) Act 1992(c. 48), Schedule 2, paragraph 2; sections 100G and 100H were inserted by the Finance Act 1991 (c. 31), Schedule 4; section 100H was amended by the Finance (No. 2) Act 1992, Schedule 1, paragraph 6 and Schedule 2, paragraph 4; section 118A was inserted by the Finance Act 1991, Schedule 5; section 127A was inserted by the Finance Act 1983 (c. 28), section 6 and amended by the Finance (No. 2) Act 1992, Schedule 1, paragraph 7.
- (b) 1979 c. 7; sections 2(2) and 7(1) were amended by, and section 7(1A) was inserted by the Finance Act 2000 (c. 17), section 15; sections 8B, 8C and 8G were inserted by the Finance Act 2000, section 14; section 8C(2) defines “fiscal mark”; section 10(1) defines “hand-rolling tobacco” and “tobacco products”; section 10(3) applies the definitions in section 1(1) of the Customs and Excise Management Act 1979 (c. 2).
- (c) 1992 c. 48; section 2 was amended by the Finance Act 1998 (c. 36), Schedule 2, paragraph 6 and by the Finance Act 1999 (c. 16), section 11.
- (d) S.I. 1979/904; amended by S.I. 1980/992, 1982/964, 1990/544, 1992/3154, 1993/2167.
- (e) S.I. 1980/992; amended by S.I. 1985/1627.
- (f) S.I. 1982/964.
- (g) S.I. 1990/544.
- (h) S.I. 1992/3154.
- (i) S.I. 1993/2167.
- (j) 1882 c. 61 (45 & 46 Vict); section 92 was amended by the Banking and Financial Dealings Act 1971 (c. 80), sections 3 and 4.
- (k) Section 2(1) was amended by the Finance Act 1981 (c. 35), Schedule 19, Part III.

“packet” means any box, package, container or other receptacle that contains the tobacco product in which that product is, or is intended to be, presented for retail supply but does not include any additional outer wrapping that may be discarded at the time the packet is opened;

“payment day” means the day specified as payment day in regulation 17 below;

“recycling” means reworking the tobacco or tobacco substitute constituents of the tobacco product, and “recycled” should be construed accordingly;

“REDS” means a registered excise dealer and shipper approved and registered under section 100G of the Customs and Excise Management Act 1979 other than a registered excise dealer and shipper—

- (a) on whom any privilege is conferred by the Warehousekeepers and Owners of Warehoused Goods Regulations 1999(a), or
- (b) who is only a registered excise dealer and shipper by virtue of his being registered as a registered mobile operator for the purposes of the Excise Goods (Sales on Board Ships and Aircraft) Regulations 1999(b);

“registered factory” has the meaning given in regulation 4 below;

“registered premises” means any registered factory or any registered store;

“registered store” has the meaning given in regulation 5 below;

“removal” includes electronic removal and “remove” and “removed” should be construed accordingly;

“repackaging” means the replacement of any packaging or wrapping material that is customary, necessary or both customary and necessary to enclose and present tobacco products for retail sale purposes and “repackaged” should be construed accordingly;

“specified tobacco products” has the meaning given in regulation 21 below.

(2) For the purposes of these Regulations two bodies corporate may be treated jointly as a manufacturer if—

- (a) one of them manufactures tobacco products in premises that may be registered as a registered factory,
- (b) one of the other body corporate’s principal activities is the storage of tobacco products manufactured by the first mentioned body corporate, and
- (c) one of them controls the other or, although neither controls the other, they are both controlled by the same body corporate.

PART II

REGISTERED PREMISES

Registration of factories

4.—(1) The Commissioners may, subject to such conditions as appear necessary for the protection of the revenue, register that part of any premises where tobacco products are manufactured and premises that have been so registered will be known as a registered factory.

(2) Tobacco products may only be manufactured in a registered factory.

(3) Paragraph (2) above does not apply to premises that are to be used only for the manufacture of tobacco products for the purposes of research or experiment.

Registration of stores

5.—(1) The Commissioners may, subject to such conditions as appear necessary for the protection of the revenue, register premises occupied by a manufacturer who also occupies a registered factory for the safe storage of tobacco products without payment of duty.

(2) Premises that have been registered in accordance with paragraph (1) above will be known as a registered store.

(a) S.I. 1999/1278.

(b) S.I. 1999/1565; regulation 2(1) defines “registered mobile operator”.

Registered premises—revocation of registration

- 6.—(1) The Commissioners may revoke the registration of registered premises—
- (a) where there has been any failure to comply with or contravention of any condition imposed under—
 - (i) regulation 4(1) or regulation 5(1) above, or
 - (ii) regulation 7(5) below; or
 - (b) for any other reasonable cause.
- (2) Without prejudice to paragraph (1) above the Commissioners may give the occupier an opportunity to remedy the situation that provides the grounds to revoke the registration of the registered premises.
- (3) Subject to paragraph (4) below, the Commissioners must give not less than three months notice in writing of the date upon which revocation is to take effect.
- (4) If it is necessary for the protection of the revenue the Commissioners may give less than three months (but not less than seven days) notice of the date upon which revocation is to take effect.

Registered premises—conditions and requirements

- 7.—(1) When applying for premises to be registered under regulation 4 above (registration of factories) or under regulation 5 above (registration of stores) the occupier must give the Commissioners notice of the times when those premises will be open.
- (2) The occupier of any registered premises must give the Commissioners seven days notice of any alterations to the times when those premises will be open.
- (3) Before the occupier of any registered premises reduces or extends those premises or alters the security arrangements for the safe storage of tobacco products he must give the Commissioners not less than thirty days notice in writing of his intentions.
- (4) The Commissioners may, in such circumstances as they see fit, permit the occupier to give shorter notice than that required by paragraph (2) or by paragraph (3) above.
- (5) The Commissioners may, in a notice published by them and not withdrawn by a further notice, impose on the occupiers of registered premises such requirements as to—
- (a) the manner in which the activities of deposit, storage and removal of tobacco products are carried out both on and immediately adjacent to those premises, and
 - (b) the treatment of tobacco products in registered premises,
- as may be reasonably necessary to protect the revenue.
- (6) Occupiers of registered premises must comply with—
- (a) all the conditions and requirements imposed on them by or under these Regulations, and
 - (b) any conditions subject to which the premises they occupy were registered.

Registered stores

- 8.—(1) Imported tobacco products may be moved from their place of importation to a registered store and deposited in that store without payment of duty if either—
- (a) they are being moved to that store in compliance with regulation 7 of the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992(a), or
 - (b) they have been imported from a place outside the Communities and any customs duty chargeable on their importation has been paid, secured or otherwise accounted for to the satisfaction of the Commissioners.
- (2) In the case of a movement permitted by paragraph (1) above the tobacco products must be moved from their place of importation to a registered store and deposited in that store without delay.
- (3) The occupier of a registered store must in relation to all tobacco products stored there—
- (a) cause them to be identified by permanent and legible markings, and

(a) S.I. 1992/3135, amended by S.I. 1993/1228, 1999/1278, 1999/1565.

(b) produce them without delay upon request by the Commissioners.

(4) The occupier of a registered store intending to repack tobacco products must give reasonable notice of his intention to the Commissioners.

Removal

9.—(1) No person may remove tobacco products from registered premises until the duty has been paid, secured or otherwise accounted for to the satisfaction of the Commissioners.

(2) Without prejudice to paragraph (1) above and to regulation 24 below (removal of products that are required to carry a fiscal mark), a manufacturer must remove tobacco products from his registered factory by the end of the first business day that follows the day of their manufacture.

(3) The Commissioners may, in such cases as they think fit, dispense with the requirement imposed by paragraph (2) above.

(4) Without prejudice to paragraphs (1) and (2) above, and subject to such conditions as the Commissioners see fit to impose, tobacco products that do not carry a fiscal mark may be removed from registered premises without payment of duty for any of the following purposes—

- (a) warehousing in an excise warehouse for any purpose other than home use;
- (b) exportation, removal to the Isle of Man or shipment as stores;
- (c) removal to other registered premises;
- (d) destruction or other disposal to the satisfaction of the Commissioners; or
- (e) such other purpose (except home use) as the Commissioners may permit.

(5) A manufacturer must not remove tobacco products from his registered factory to a registered store unless he is the occupier of that store.

(6) Where the removal to home use of any tobacco product takes place on a day upon which an increase in the rate of duty chargeable on that product takes effect then if that removal takes place after 11.59 am on that day the time of removal is deemed to be the time at which that increase takes effect.

Electronic removal

10.—(1) This regulation applies to registered stores in respect of which the records relating to removal are kept by means of a computer or other electronic system approved by the Commissioners; and the Commissioners may at any time revoke such approval upon giving fourteen days' notice in writing.

(2) The occupier of any registered store where electronic removal may take place must keep such records as may be specified in a notice published by the Commissioners and not withdrawn by a further notice.

(3) Electronic removal means the making of an entry in the records specified in accordance with paragraph (2) above which identifies the tobacco product which is the subject of that entry as having been removed from that store for the purpose of these Regulations notwithstanding that it remains in that store.

(4) Any entry made in accordance with paragraph (3) above may not be cancelled, amended or altered.

(5) Subject to regulation 9(6) above, tobacco products removed to home use from a registered store to which this regulation applies are deemed to have been removed at the time of their electronic removal or, if earlier, at the time they were actually removed.

Refuse

11.—(1) Except as provided by paragraph (2) below, no person may remove from registered premises any refuse from the manufacture of tobacco products until the Commissioners are satisfied that the refuse has been rendered unsmokeable.

- (2) The Commissioners may allow refuse to be removed from registered premises for—
- (a) exportation,
 - (b) removal to other registered premises, or
 - (c) disposal or destruction to their satisfaction.

PART III

EXCISE DUTY POINTS, SECURITY AND PAYMENT OF DUTY

Excise duty points

12.—(1) Subject to the provisions of this regulation, the excise duty point for tobacco products is the time when the tobacco products are charged with duty.

(2) If any duty suspension arrangements apply to the tobacco products, the excise duty point is the earlier of—

- (a) the time of their removal from any registered premises for home use;
- (b) the time of their consumption;
- (c) the time when there is any contravention of, or failure to comply with, duty suspension arrangements;
- (d) the time when the contravention of, or failure to comply with, duty suspension arrangements first came to the attention of the Commissioners;
- (e) the time of their receipt by a REDS;
- (f) the time of their receipt by the person who arranged for a REDS to account for the duty on them;
- (g) the time of their receipt by a person approved as an occasional importer under regulation 15 of the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992;
- (h) in the case of tobacco products that are not received by the person or at the place to which they were consigned, the time when they are charged with duty;
- (i) the time when premises cease to be registered premises;
- (j) the time when they are found to be missing from registered premises.

(3) In the case of chewing tobacco that is imported into the United Kingdom having been consigned from another member State, except where paragraph (2) above applies, the excise duty point is the time the chewing tobacco is received by the importer, owner or other person beneficially interested in it.

(4) If tobacco products have been relieved from payment of duty and there is a contravention of any condition subject to which the relief was afforded, the excise duty point is—

- (a) the time of that contravention, or
- (b) if that time cannot be readily ascertained, the time when that contravention first came to the attention of the Commissioners.

(5) In this regulation “chewing tobacco” means chewing tobacco of any description manufactured wholly or partly from tobacco or any substance used as a substitute for tobacco, and includes anything referred to or called chewing tobacco, but does not include herbal products.

(6) For the purposes of paragraphs (2)(e), (f) and (g) and (3) above, where the tobacco product is received after 11.59 am on a day upon which an increase in the rate of duty chargeable on that product takes effect the time of receipt is deemed to be the time at which that increase takes effect.

(7) This regulation does not apply to tobacco products that are warehoused in an excise warehouse.

Person liable to pay the duty

13.—(1) The person liable to pay the duty is the person holding the tobacco products at the excise duty point.

(2) Any person (not being the person specified in paragraph (1) above) who is described in paragraph (3) below is jointly and severally liable to pay the duty with the person specified in paragraph (1) above.

(3) Paragraph (2) above applies to—

- (a) the occupier of the registered premises in which the tobacco products were last situated before the excise duty point;

- (b) any REDS to whom the tobacco products were consigned;
- (c) any person who arranged for a REDS to account for the duty on the tobacco products;
- (d) any person approved as an occasional importer under regulation 15 of the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992 to whom the tobacco products were consigned;
- (e) any person who caused the tobacco products to reach an excise duty point.

(4) Paragraph (3)(a) above does not apply to the occupier of registered premises in which tobacco products were last situated before the excise duty point if the tobacco products were lawfully removed from his registered premises and—

- (a) he did not provide security for the accomplishment of the purpose for which the tobacco products were removed, and
- (b) some other person did provide security for the accomplishment of that purpose.

(5) In any case where paragraph (4) above applies the person who provided security for the accomplishment of the purpose for which the tobacco products were removed from registered premises is jointly and severally liable to pay the duty with any other person who is liable to pay the duty.

Payment and calculation of the duty

14.—(1) Except where regulations 17 to 19 below (deferred payment) apply, the duty must be paid at or before the excise duty point.

(2) For the purpose of calculating the amount of duty payable at the excise duty point, the weight of tobacco products (other than cigarettes) is their weight—

- (a) at the time of their entry into the production account, or
- (b) at such other time as the Commissioners may allow.

(3) For the purposes of complying with this regulation a manufacturer must keep a production account that shows for each tobacco product the quantity produced, the type, brand and size of retail packet, and the date of production and entry into that account.

(4) Except as the Commissioners may otherwise allow, the details referred to in paragraph (3) above must be entered into the production account immediately after whichever of the times specified in paragraph (5) below is the earliest practicable time for this to be done before removal from the registered factory.

(5) The following times are specified for the purposes of paragraph (4) above—

- (a) the time when the tobacco products are first put into a state suitable for use;
- (b) the time when the tobacco products are first put into a state suitable for removal; and
- (c) the time when the tobacco products are first packed for delivery.

(6) Except as the Commissioners may otherwise allow, a manufacturer must preserve a production account for not less than six years from the date of the last entry in that account.

Recommended retail prices, weights and deficiencies

15.—(1) The manufacturer or importer of tobacco products intended for retail sale in the United Kingdom must, before the excise duty point for those products, notify the Commissioners of the information specified in paragraph (2) below.

(2) The information to be notified by a manufacturer or importer in relation to all the tobacco products he manufactures or imports is—

- (a) the brand name and description of each tobacco product;
- (b) the retail packet sizes for each brand (the number of cigarettes or cigars and the weight of each product if that product is not cigarettes);
- (c) the price he recommends for each packet size of each brand of tobacco product;
- (d) the brand name, description and retail packet sizes of any tobacco product for which he does not recommend a retail price.

(3) Where a manufacturer or importer has notified the Commissioners in accordance with paragraph (1) above he is to be treated as complying with that paragraph if, before the excise duty point for the tobacco product concerned, he notifies any changes to the information already notified.

(4) The occupier of registered premises must, without delay, notify the Commissioners of any deficiencies of tobacco products discovered by him, whether as a result of stocktaking or otherwise.

(5) Notification given in accordance with this regulation must be in such form and manner as the Commissioners may require.

Security

16. If the Commissioners so require the occupier of registered premises must give security for the payment of any duty that may become payable—

- (a) on tobacco products manufactured or received by him, or
- (b) under section 8 of the Act (charge in cases of default).

Deferred payment—payment day

17.—(1) Any person liable to pay the duty due on tobacco products to which this regulation is applicable may, subject to regulations 18 and 19 below, elect to defer payment of that duty until payment day.

(2) This regulation is applicable to—

- (a) imported tobacco products for which the excise duty point is the time of their importation;
- (b) tobacco products imported by a REDS (including any importation where the tobacco products are moved under the instructions of a REDS or are, in accordance with registered excise dealers and shippers regulations, deemed to be so moved);
- (c) tobacco products that are entered for removal from an excise warehouse for home use; and
- (d) tobacco products entered for removal from registered premises for home use.

(3) In relation to tobacco products for which the excise duty point is the time of their importation or that are entered for removal from an excise warehouse for home use payment day is—

- (a) where but for the deferment granted by this regulation the duty would be payable during a period beginning on the 15th day of one month and ending on the 14th day of the next month, the 29th day of that next month (or the 28th day in the case of a month that has only 28 days), or
- (b) if that day is not a business day, the last business day before that day.

(4) In relation to tobacco products imported by a REDS payment day is—

- (a) the 15th day of the month following the month in which the duty would, but for the deferment granted by this regulation, be payable, or
- (b) if that day is not a business day, the last business day before that day.

(5) In any other case payment day is—

- (a) the 15th day of the month following the month in which the duty would, but for the deferment granted by this regulation, be payable, or
- (b) if that day is not a business day, the next business day following that day.

Deferred payment—approval of arrangements

18.—(1) Before electing to make deferred payment of duty the person liable to pay the duty must—

- (a) make application to the Commissioners for approval of the arrangements by which the duty is to be paid on payment day, and
- (b) give to the Commissioners such security for payment by him of any amount of duty becoming payable as the Commissioners may from time to time require.

(2) Where the Commissioners are satisfied with those arrangements and the security offered they must approve them in writing.

(3) A person whose arrangements have been approved must notify the Commissioners forthwith of any change in any information given to them for the purpose of approving those arrangements.

(4) If any security given under this regulation at any time falls short of that required by the Commissioners the right to defer payment under regulation 17 above does not apply in respect of the unsecured duty.

(5) The Commissioners may for reasonable cause vary or revoke any approval granted under this regulation.

Deferred payment—payment of duty

19. On each payment day the person whose arrangements have been approved under regulation 18 must—

- (a) pay the amount due to the Commissioners in accordance with those arrangements, or
- (b) where those arrangements involve the collection of the amount due to the Commissioners by means of a direct debit, ensure that he has sufficient funds in his account to satisfy the claim for payment.

Returns

20. The occupier of registered premises must make such returns at such time, in such form and manner and containing such particulars as the Commissioners may require.

PART IV

FISCAL MARKS

Application of Part IV

21.—(1) This Part of these Regulations applies to specified tobacco products.

(2) In these Regulations “specified tobacco products” means tobacco products that are—

- (a) cigarettes, or
- (b) hand-rolling tobacco other than hand-rolling tobacco intended for retail sale in loose form that is supplied by the manufacturer or importer in packets that each contain not less than 500 grams.

When specified tobacco products are required to carry a fiscal mark

22.—(1) Subject to regulation 23 below, specified tobacco products—

- (a) that are manufactured in, imported into or removed to home use within the United Kingdom on or after 1st June 2001, or
- (b) whenever manufactured in, imported into or removed to home use within the United Kingdom, that are held by a person who is a revenue trader on or after 1st July 2001,

are required to carry a fiscal mark.

(2) Specified tobacco products that are required to carry a fiscal mark must not be packaged otherwise than in packets that, in conformity with requirements imposed under section 8C(3) or section 8D of the Act, carry a fiscal mark.

(3) Imported specified tobacco products that are required to carry a fiscal mark must carry a fiscal mark at the time they are imported.

Exceptions to the requirement to carry a fiscal mark

23.—(1) Specified tobacco products are not required to carry a fiscal mark if—

- (a) they are not intended for home use and are not delivered to home use or otherwise made available for home use;

- (b) in accordance with an Order made under section 13(1) or section 13A(1) of the Customs and Excise Duties (General Reliefs) Act 1979(a) relief from duty is afforded and the conditions (if any) subject to which that relief was afforded are complied with; or
 - (c) they are intended for supply to, or have been supplied to, entitled passengers in an export shop.
- (2) Specified tobacco products are not required to carry a fiscal mark if, having been removed to home use upon payment of excise duty in the Isle of Man—
- (a) they carry a mark prescribed for fiscal purposes in conformity with the requirements of the law of the Isle of Man, and
 - (b) the excise duty paid in the Isle of Man has not been and will not be repaid, remitted or drawn back.
- (3) Specified tobacco products that are not required to carry a fiscal mark must not carry a fiscal mark.
- (4) In this regulation “entitled passengers” and “export shop” have the meanings given in regulation 3 of the Excise Goods (Export Shops) Regulations 2000(b).

Removal of products that are required to carry a fiscal mark

24.—(1) Without prejudice to regulation 9 above (removal) and subject to such conditions as the Commissioners see fit to impose, specified tobacco products that carry a fiscal mark may be removed without payment of duty—

- (a) from a registered factory to a registered store, or
- (b) from a registered store to another registered store.

(2) Specified tobacco products that carry a fiscal mark that are in registered premises and that are not removed to home use may only be—

- (a) removed in accordance with paragraph (1) above,
- (b) destroyed or disposed of within the United Kingdom to the satisfaction of the Commissioners,
- (c) with the Commissioners’ consent—
 - (i) recycled, or
 - (ii) repackaged,
 within the United Kingdom, or
- (d) with the Commissioners’ consent and following the obliteration or destruction of the fiscal mark to their satisfaction, used solely for the purpose of research or experiment.

(3) Specified tobacco products that carry a fiscal mark that are in an excise warehouse and that are not removed to home use may only be—

- (a) removed to—
 - (i) a registered store, or
 - (ii) another excise warehouse for rewarehousing,
 in accordance with an entry made for that purpose under regulation 16(2) of the Excise Warehousing (Etc.) Regulations 1988(c),
- (b) destroyed or disposed of to the satisfaction of the Commissioners, or
- (c) following the obliteration or destruction of the fiscal mark to the satisfaction of the Commissioners—
 - (i) exported, or
 - (ii) with the Commissioners’ consent, used solely for the purpose of research or experiment.

(4) During any period specified by order of the Commissioners in accordance with section 128 of the Customs and Excise Management Act 1979(d) specified tobacco products that carry a fiscal mark must not be removed to home use in quantities exceeding those that the Commissioners have specified as appearing to them to be reasonable in the circumstances.

(a) 1979 c. 3; section 13A(1) was inserted by the Finance Act 1989 (c. 26), section 28.

(b) S.I. 2000/645.

(c) S.I. 1988/809; to which there are amendments not relevant to these Regulations.

(d) 1979 c. 2; section 128 was amended by the Finance Act 1981 (c. 35), Schedule 6, paragraph 9.

Offences—supplementary provisions

25.—(1) A person is not guilty of an offence contrary to section 8G(4) of the Act in relation to any conduct that took place before 1st July 2001.

(2) A person afforded relief from duty in accordance with an Order made under section 13(1) or section 13A(1) of the Customs and Excise Duties (General Reliefs) Act 1979 is not guilty of an offence contrary to section 8G(4) of the Act unless his conduct occasioned the excise duty point prescribed by regulation 12(4) above.

(3) Where any person is, in accordance with section 13 of the Finance Act 1994(a), the subject of an assessment to a penalty for conduct falling within paragraph (a) of section 170A(1) of the Customs and Excise Management Act 1979(b) he is not, in relation to that conduct, guilty of an offence contrary to section 8G(4) of the Act.

PART V

REPAYMENT AND DRAWBACK OF DUTY

Returned products

26.—(1) Where any tobacco products are returned to registered premises within three years of their removal to home use and are—

- (a) recycled;
- (b) repackaged; or
- (c) otherwise disposed of to the satisfaction of the Commissioners,

the Commissioners may, subject to such conditions as they may impose under section 2(2) of the Act, allow credit for the duty charged on those products.

(2) For the purposes of any claim for drawback to which the Excise Goods (Drawback) Regulations 1995(c) apply specified tobacco products are not eligible goods unless the Commissioners are satisfied that any fiscal marks carried by the products have been obliterated or destroyed.

PART VI

APPLICATION AND AMENDMENT OF OTHER REGULATIONS

The Excise Warehousing (Etc.) Regulations 1988

27. Amend regulation 26 of the Excise Warehousing (Etc.) Regulations 1988 (duty chargeable on goods removed for home use) as follows—

- (a) before the words “The duty” insert “(1)”, and
- (b) at the end of the regulation insert—

“(2) Where the removal for home use of any tobacco product takes place on a day upon which an increase in the rate of duty chargeable on that product takes effect then if that removal takes place after 11.59 am on that day the time of removal is deemed to be the time at which that increase takes effect.”

The Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992

28.—(1) Save in the case of tobacco products that were at the time of the excise duty point or immediately before that time in an excise warehouse, Part II and (except for the case of UK distance selling arrangements) Part III of the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992(d) do not apply to tobacco products.

(a) 1994 c. 9; section 13 was amended by the Finance Act 1997 (c. 16), section 53(3) and Schedule 6, paragraph 1(3).
(b) 1979 c. 2; section 170A was inserted by the Finance (No. 2) Act 1992 (c. 48), Schedule 2, paragraph 8 and amended by the Finance Act 1994 (c. 9), Schedule 4, paragraph 13.
(c) S.I. 1995/1046; regulation 4 defines “eligible goods”.
(d) Regulation 2(4) defines “UK distance selling arrangements”.

(2) Amend the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992 as follows—

- (a) in the definition of a “tax warehouse” in regulation 2(1) insert after “1979”
“and any premises registered for the safe storage of tobacco products in accordance with regulations made under section 7(1)(b) of the Tobacco Products Duty Act 1979”;
- (b) after regulation 3(3) insert—
“(4) Save in the case of tobacco products that were at the time of the excise duty point or immediately before that time in an excise warehouse, Part II and (except for the case of UK distance selling arrangements) Part III of these Regulations do not apply to tobacco products.”;
- (c) in regulation 4(4), omit the words “chewing tobacco or”.

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8th May 2001

Martin Brown
Commissioner of Customs and Excise

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations come into force on 1st June 2001.

Purpose of the Regulations

These Regulations provide the machinery for administering the excise duty on tobacco products charged by section 2 of the Tobacco Products Duty Act 1979 (c.7). They also regulate the circumstances in which tobacco products are required to carry fiscal marks and related matters. A Regulatory Impact Assessment on the fiscal marking of tobacco products was published in April 2000 and is available from—

HM Customs & Excise
Tax Practice—Excise Social Regimes
Alcohol & Tobacco
3W Ralli Quays
3 Stanley Street
Salford M60 9LA

The Regulations implement Council Directive 92/12/EEC (OJ No. L76, 23.3.1992, p.4) (as amended) and Council Directive 95/59/EC (OJ No. L291, 6.12.1995, p.40) (as amended). They have 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 (OJ No. L204, 21.7.1998, p.37) (as amended).

These Regulations replace the Tobacco Products Regulations 1979 (S.I. 1979/904). The principal changes introduced by these Regulations are:

- (a) to define the tobacco products which must carry the fiscal mark and the circumstances in which the mark is required;
- (b) to allow the Commissioners discretion in the registration of tobacco factories and all registered stores;
- (c) to extend the requirement for formal notice of revocation to all registered tobacco premises;
- (d) to allow imported tobacco products to be received into registered stores;
- (e) to provide for certain requirements (for example conditions of registration) to be imposed by the Commissioners;
- (f) to restrict the repayment of duty to tobacco products that are returned to registered premises; and
- (g) to remove the relief from duty on tobacco products manufactured from home grown tobacco that was afforded by the Tobacco Products Regulations 1979.

Content of the Regulations

Regulation 1 contains the citation and commencement.

Regulation 2 revokes the Tobacco Products Regulations 1979 and subsequent amending Regulations.

Regulation 3 defines certain terms used in the Regulations.

Regulation 4 provides for the registration of tobacco factories and forbids the manufacture of tobacco products, except for the purposes of research or experiment, in premises other than registered factories.

Regulation 5 provides for the registration of premises for the safe storage of tobacco products. Such premises are termed “registered stores”.

Regulation 6 deals with the revocation of premises’ registrations.

Regulation 7 requires notice to be given of the opening times for registered premises. It also requires notice of changes to registered premises and allows the Commissioners to impose, in a notice, further requirements on the occupiers of registered premises.

Regulation 8 allows imported tobacco products to be received into registered stores without payment of duty. It also covers the identification, delivery up for examination, and repacking of tobacco products in registered stores.

Regulation 9 deals with the removal of tobacco products from registered premises and sets time limits for the removal of tobacco products from registered factories. It also provides for the time of removal for duty purposes, in the afternoon of the day of a duty increase, to be different from the actual time of removal so that tobacco products bear duty at the higher rate.

Regulation 10 is concerned with “electronic removal”.

Regulation 11 provides for the removal of tobacco refuse from registered premises under certain circumstances.

Regulation 12 lists the excise duty points for tobacco products.

Regulation 13 lists the persons liable to pay the duty at the excise duty point.

Regulation 14 is concerned with when the duty must be paid and the point at which the weight of tobacco products, except cigarettes, is determined for the purposes of calculating the duty due on them. It also requires that manufacturers keep a “Production Account”.

Regulation 15 requires that manufacturers and importers provide certain brand and price details of tobacco products. It also requires the notification of any deficiencies of tobacco products in registered premises.

Regulation 16 is concerned with financial security (bonds, guarantees etc.) for the duty on tobacco products in registered premises.

Regulation 17 is concerned with payment days in the case of duty deferment.

Regulation 18 is concerned with the application and approval procedures for duty deferment.

Regulation 19 is concerned with the payment of duty where duty deferment arrangements apply.

Regulation 20 provides for returns to be made in accordance with the Commissioners’ requirements.

Regulation 21 is concerned with fiscal marks and defines the “specified tobacco products” that may be required to carry a fiscal mark.

Regulation 22 stipulates when “specified tobacco products” are required to carry a fiscal mark and requires that the products in question be packaged in packets bearing a fiscal mark.

Regulation 23 lists the circumstances when “specified tobacco products” are not required to carry a fiscal mark and must not carry a fiscal mark.

Regulation 24 lists the circumstances under which “specified tobacco products” bearing a fiscal mark may be removed from registered premises or excise warehouses without payment of duty. It also deals with restrictions on removal to home use.

Regulation 25 details the circumstances under which a person who possesses, transports etc. unmarked product will not be guilty of the offence laid down in section 8G(4) of the Tobacco Products Duty Act 1979 (possession and sale etc. of unmarked tobacco).

Regulation 26 allows for the credit of duty, in certain circumstances, on tobacco products returned to registered premises and requires the destruction or obliteration of any fiscal marks when duty drawback is claimed.

Regulation 27 amends the Excise Warehousing (Etc.) Regulations 1988 (S.I. 1988/809).

Regulation 28 amends the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992 (S.I. 1992/3135) and, in relation to most tobacco products, disapplies Part II (determination of the duty) and Part III (payment of the duty) of those Regulations. Both Parts continue to apply to tobacco products in excise warehouses and Part III also continues to apply in the case of UK distance selling arrangements.

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