

2002 No. 2692

CUSTOMS AND EXCISE

**The Excise Goods, Beer and Tobacco Products
(Amendment) Regulations 2002**

Made - - - - - 28th October 2002

Laid before Parliament 29th October 2002

Coming into force - - 1st December 2002

The Commissioners of Customs and Excise, in exercise of the powers conferred upon them by section 1 of the Finance (No. 2) Act 1992^(a), and all other powers enabling them in that behalf, hereby make the following regulations:

Citation and commencement

1. These Regulations may be cited as the Excise Goods, Beer and Tobacco Products (Amendment) Regulations 2002 and come into force on 1 December 2002.

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

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

(2) In the definition of “duty” in regulation 2(1), before the word “means” insert—

“, except in regulation 4(1B)(d) below,”.

(3) In regulation 4,

(a) in paragraph (1), for “(2)” substitute “(1A)”;

(b) after paragraph (1) insert—

“(1A) In the case of excise goods acquired by a person in another member State for his own use and transported by him to the United Kingdom, the excise duty point is the time when those goods are held or used for a commercial purpose by any person.

(1B) For the purposes of paragraph (1A) above—

(a) “member State” includes the Principality of Monaco and San Marino, but does not include the Island of Heligoland and the territory of Büsingen in the Federal Republic of Germany, Livigno, Campione d’Italia and the waters of Lake Lugano in the Italian Republic, Ceuta, Melilla and the Canary Islands in the Kingdom of Spain, or the overseas departments of the French Republic,

(b) “own use” includes use as a personal gift,

(c) if the goods in question are—

(i) transferred to another person for money or money’s worth (including any reimbursement of expenses incurred in connection with obtaining them), or

(ii) the person holding them intends to make such a transfer,

those goods are to be regarded as being held for a commercial purpose,

^(a) 1992 c. 48.

^(b) S.I. 1992/3135, amended by S.I. 1993/1228, 1999/1278, 2001/1712, 2001/3022, 2002/501.

- (d) if the goods are not duty and tax paid in the member State at the time of acquisition, or the duty and tax that was paid will be or has been reimbursed, refunded or otherwise dispensed with, those goods are to be regarded as being held for a commercial purpose,
- (e) without prejudice to sub-paragraphs (c) and (d) above, in determining whether excise goods are held or used for a commercial purpose by any person regard shall be taken of—
 - (i) that person’s reasons for having possession or control of those goods,
 - (ii) whether or not that person is a revenue trader (as defined in section 1(1) of the Customs and Excise Management Act 1979(a)),
 - (iii) that person’s conduct, including his intended use of those goods or any refusal to disclose his intended use of those goods,
 - (iv) the location of those goods,
 - (v) the mode of transport used to convey those goods,
 - (vi) any document or other information whatsoever relating to those goods,
 - (vii) the nature of those goods including the nature and condition of any package or container,
 - (viii) the quantity of those goods, and in particular, whether the quantity exceeds any of the following quantities—

10 litres of spirits,

20 litres of intermediate products (as defined in Article 17(1) of Council Directive 92/83/EEC(b)),

90 litres of wine,

- (ix) whether that person personally financed the purchase of those goods,
- (x) any other circumstance that appears to be relevant,
- (f) “excise goods” do not include any goods chargeable with excise duty by virtue of any provision of the Hydrocarbon Oil Duties Act 1979(c) or of any order made under section 10 of the Finance Act 1993(d).”

(4) In regulation 5, after paragraph (6), insert—

“(6A) The person liable to pay the duty when the excise duty point specified in paragraph (1A) or (2)(b) of regulation 4 above occurs is the person holding the excise goods at the excise duty point.”

The Beer Regulations 1993

3.—(1) Amend the Beer Regulations 1993(e) as follows.

(2) In the definition of “duty” in regulation 4, before the word “means” insert—
 “, except in regulation 15(1B)(d) below.”

(3) In regulation 15,

- (a) in paragraph (1), after the word “Save” insert—
 “in the case specified in paragraph (1A) below or”;
- (b) after paragraph (1) insert—

“(1A) In the case of beer acquired by a person in another member State for his own use and transported by him to the United Kingdom, the duty point is the time when that beer is held or used for a commercial purpose by any person.

(1B) For the purposes of paragraph (1A) above—

- (a) “member State” includes the Principality of Monaco and San Marino, but does not include the Island of Heligoland and the territory of Büsingen in the Federal

(a) 1979 c. 2; the definition of a “revenue trader” was amended by the Finance Act 1981 (c. 35), Schedule 8, Part I, paragraph 1(1), the Finance Act 1991 (c. 31), section 11(2), the Finance Act 1993 (c. 34), section 30(3), and the Finance Act 1997 (c. 16), Schedule 2, paragraph 2(3) and (4).

(b) OJ No. L316, 31.10.1992, p.21.

(c) 1979 c. 5.

(d) 1993 c. 34.

(e) S.I. 1993/1228, to which there are amendments not relevant to these Regulations.

Republic of Germany, Livigno, Campione d'Italia and the waters of Lake Lugano in the Italian Republic, Ceuta, Melilla and the Canary Islands in the Kingdom of Spain, or the overseas departments of the French Republic,

- (b) “own use” includes use as a personal gift,
- (c) if the beer in question is—
 - (i) transferred to another person for money or money’s worth (including any reimbursement of expenses incurred in connection with obtaining them), or
 - (ii) the person holding it intends to make such a transfer,that beer is to be regarded as being held for a commercial purpose,
- (d) if the beer is not duty and tax paid in the member State at the time of acquisition, or the duty and tax that was paid will be or has been reimbursed, refunded or otherwise dispensed with, that beer is to be regarded as being held for a commercial purpose,
- (e) without prejudice to sub-paragraphs (c) and (d) above, in determining whether beer is held or used for a commercial purpose by any person regard shall be taken of—
 - (i) that person’s reasons for having possession or control of that beer,
 - (ii) whether or not that person is a revenue trader (as defined in section 1(1) of the Customs and Excise Management Act 1979),
 - (iii) that person’s conduct, including his intended use of that beer or any refusal to disclose his intended use of that beer,
 - (iv) the location of that beer,
 - (v) the mode of transport used to convey that beer,
 - (vi) any document or other information whatsoever relating to that beer,
 - (vii) the nature of that beer including the nature and condition of any package or container,
 - (viii) the quantity of that beer, and in particular, whether the quantity exceeds 110 litres,
 - (ix) whether that person personally financed the purchase of that beer,
 - (x) any other circumstance that appears to be relevant.”

The Tobacco Products Regulations 2001

4.—(1) Amend the Tobacco Products Regulations 2001(a) as follows.

- (2) In the definition of “duty” in regulation 3(1), before the word “means” insert—
“, except in regulation 12(1B)(d) below,”.
- (3) In regulation 12, after paragraph (1) insert—

“(1A) In the case of tobacco products acquired by a person in another member State for his own use and transported by him to the United Kingdom, the excise duty point is the time when those products are held or used for a commercial purpose by any person.

(1B) For the purposes of paragraph (1A) above—

- (a) “member State” includes the Principality of Monaco and San Marino, but does not include the Island of Heligoland and the territory of Büsingen in the Federal Republic of Germany, Livigno, Campione d'Italia and the waters of Lake Lugano in the Italian Republic, Ceuta, Melilla and the Canary Islands in the Kingdom of Spain, or the overseas departments of the French Republic,
- (b) “own use” includes use as a personal gift,
- (c) if the tobacco products in question are—
 - (i) transferred to another person for money or money’s worth (including any reimbursement of expenses incurred in connection with obtaining them), or
 - (ii) the person holding them intends to make such a transfer,those products are to be regarded as being held for a commercial purpose,
- (d) if the products are not duty and tax paid in the member State at the time of

(a) S.I. 2001/1712.

acquisition, or the duty and tax that was paid will be or has been reimbursed, refunded or otherwise dispensed with, those products are to be regarded as being held for a commercial purpose,

(e) without prejudice to sub-paragraphs (c) and (d) above, in determining whether tobacco products are held or used for a commercial purpose by any person regard shall be taken of—

- (i) that person's reasons for having possession or control of those products,
- (ii) whether or not that person is a revenue trader (as defined in section 1(1) of the Customs and Excise Management Act 1979),
- (iii) that person's conduct, including his intended use of those products or any refusal to disclose his intended use of those products,
- (iv) the location of those products,
- (v) the mode of transport used to convey those products,
- (vi) any document or other information whatsoever relating to those products,
- (vii) the nature of those products including the nature and condition of any package or container,
- (viii) the quantity of those products, and in particular, whether the quantity exceeds any of the following quantities—

3,200 cigarettes,

400 cigarillos (cigars weighing no more than 3 grammes each),

200 cigars,

3 kilogrammes of any other tobacco products,

- (ix) whether that person personally financed the purchase of those products,
- (x) any other circumstance that appears to be relevant.”

(4) In regulation 23(1), after paragraph (a), insert—

“(aa) they were acquired by a person in another member State for his own use and transported by him to the United Kingdom.”

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28 October 2002

M J Eland
Commissioner of Customs and Excise

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations come into force on 1 December 2002. They implement the requirements of Council Directive 92/12/EEC (OJ No L76, 23.3.1992, p.1) (to which there are no relevant amendments) in respect of the right of individuals to import excise goods which they have acquired duty-paid in another member State for their own use and which they have transported to the UK. They amend the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992 (S.I. 1992/3135), the Beer Regulations 1993 (S.I. 1993/1228), and the Tobacco Products Regulations 2001 (S.I. 2001/1712) to provide for an excise duty point (the time when a requirement to pay excise duty takes effect) where such goods are held or used in the UK for a commercial purpose; and make other ancillary amendments. A transposition note setting out how these Regulations implement the requirements of Council Directive 92/12/EEC is available at www.hmce.gov.uk.

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