

**EXPLANATORY MEMORANDUM TO**  
**THE VALUE ADDED TAX (DRUGS AND MEDICINES) ORDER 2009**

**2009 No. 2972**

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs ('HMRC') and is laid before the House of Commons by Command of Her Majesty.

**2. Purpose of the instrument**

This instrument changes the statutory description of the supply of goods on prescription to an individual for that individual's own use. The supply is zero-rated for the purposes of value added tax by Section 30 of the Value Added Tax Act 1994 ('the Act') and is described in Group 12 of Schedule 8 to the Act. The current description of the supply refers only to goods prescribed by doctors and dentists. Other health professionals are now permitted to issue prescriptions and these new categories of prescribers have been added to the description of the supply. The references to the statutory provisions which permit doctors to dispense drugs have also been updated.

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

3.1 None.

**4. Legislative Context**

4.1 Item 1 of Group 12 of Schedule 8 to the Act zero-rates the supply of qualifying goods which are dispensed to an individual for his personal use when they are dispensed by a registered pharmacist on the prescription of a doctor or dentist. Item 1A of the same group zero-rates the supply of qualifying goods when they are dispensed by appropriately registered medical practitioners and in accordance with an authorisation or requirement under the legislative provisions specified in that Item. Such dispensing can only be done on prescription.

4.2 Since Items 1 and 1A were last amended the categories of health professionals who are permitted to issue prescriptions have been substantially extended. In addition the legislative provisions which authorise or require medical practitioners to dispense have been changed.

4.3 In order to maintain the zero-rate for prescribed goods, Items 1 and 1A have been replaced by a new Item 1 which zero-rates the supply of qualifying goods which have been dispensed on prescription to an individual for that individual's personal use by an appropriate practitioner where the dispensing is by a registered pharmacist or in accordance with a requirement or authorisation under a relevant provision. 'Appropriate practitioner' and 'relevant provision' have been defined in Notes 2B and 2D which have been inserted by this instrument.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

The Financial Secretary to the Treasury has made the following statement regarding Human Rights:

“In my view the provisions of the Value Added Tax (Drugs and Medicines) Order 2009 are compatible with the Convention rights.”

## **7. Policy background**

- **What is being done and why**

### **Review of Extra-statutory Concession**

7.1 This instrument results from HMRC’s ongoing review of its published Extra-statutory Concessions (ESCs).

7.2 ESCs have been a feature of the UK’s tax system for decades and will continue to be made and withdrawn as necessary. For this purpose the term ‘extra-statutory concession’ refers to any statement made by the Commissioners of HMRC made before the passing of the Finance Act 2008 on 21 July 2008, and having effect at that time, that they will treat persons as if they were entitled to a reduction to tax or duty, or any other concession relating to tax or duty to which they are not, or may not be, entitled in accordance with the law. Such statements might comprise extra-statutory concessions described as such in the former Inland Revenue booklet IR1 and the former HM Customs and Excise booklet Notice 48, or otherwise as a statement of practice, press release or a statement made in any other way.

7.3 The House of Lords’ decision in the *Wilkinson* case clarified the scope of HMRC’s administrative discretion to make concessions that depart from the strict statutory position.

7.4 In light of that decision, HMRC is reviewing its published concessions. The indications are that most ESCs will be able to continue in their current form as they are within the scope of HMRC’s administrative discretion. Where an existing concession exceeds the scope of the discretion of the *Wilkinson* judgment the effect of the concession will be maintained by putting it on to a legislative basis where it is appropriate to do so. Each concession will be considered carefully and, while the aim is to retain as many concessions as possible, some may no longer be required and it may not be possible to legislate.

7.5 Whilst the only published concession in connection with the provision of goods on prescription relates to nurse prescribing, it was considered appropriate to introduce all the changes implemented in this instrument as part of the ESC review exercise and as a

result the consultation on the effect of the measures introduced in this instrument has been dealt with within the ESC review.

7.6 Details of the individual concessions and explanations covered in the review can be found in the HMRC consultation document published on 15 July 2009 ‘Extra-statutory Concessions – Second Technical Consultation on Draft Legislation’<sup>1</sup> This instrument is made under powers which already existed within the Act. Other concessions are being legislated pursuant to Section 160 of Finance Act 2008 which provides a power allowing the tax treatment afforded by existing concessions to be legislated by Treasury order.

### **Amendment of Group 12 of Schedule 8 of the Act**

7.7 Since the inception of VAT the zero-rate has been applied to supplies of goods for medical and surgical treatment which are dispensed on prescription to an individual for his personal use.

7.8 The legal restraints on who may prescribe and who may dispense controlled drugs on prescription have altered on several occasions since that time. The Group was last updated in connection with such changes in 1997 when Item 1A was added to accommodate the effect of legislation permitting, and in some cases requiring, general practitioners to provide dispensing services to their patients.

7.9 Since that amendment there have been a number of further changes to rules governing prescribing and dispensing.

7.10 The categories of health professionals entitled to issue prescriptions have been substantially enlarged. Initially the power to prescribe was extended to suitably qualified nurses and the Commissioners expressly permitted the zero-rating of goods supplied pursuant to nurses’ prescriptions by a published extra-statutory concession. Thereafter the power to prescribe was extended to other health professionals who are appropriately registered such as midwives, pharmacists, chiropodists, physiotherapists and radiographers.

7.11 The statutory provisions which authorise and in some cases require general practitioners to dispense on prescription have also changed since the last amendment. The authorisations and requirements were repealed and re-enacted in a number of different statutes following the transfer of powers to the devolved administrations.

7.12 The changes made by this instrument to Group 12 ensure that the supplies of qualifying goods dispensed on prescription to an individual for that individual’s personal use are fully described so as to maintain the zero-rate which is applied to these supplies.

- **Consolidation**

Not applicable.

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<sup>1</sup> <http://www.hmrc.gov.uk/consultations/index.htm>

## **8. Consultation outcome**

8.1 A 12 week consultation<sup>2</sup>, published on 15 July 2009, was undertaken to seek views as to whether the legislation accurately translated the effect of 10 ESCs. The major overarching tax-bodies were consulted, as well as representative bodies from the particular sectors affected.

8.2 In respect of the zero-rating of nurses' prescriptions by pharmacists, one respondent asked that zero-rating should also apply to other supplies of medication made by pharmacists which do not involve the issue of a prescription. Such a move would amount to an extension of zero-rating to supplies not currently relieved, which is not permitted under EU agreements.

## **9. Guidance**

9.1 The instrument confirms existing treatment and so further guidance is not required.

## **10. Impact**

10.1 An impact assessment has not been prepared for this instrument because no impact on business, charities, voluntary bodies or the public sector is foreseen. The instrument puts the existing treatment of supplies of prescription goods on a statutory footing, and there is no change to the tax effect.

## **11. Regulating small business**

11.1 The legislation may apply to small business but a Small Firms Impact Test has not been undertaken because the legislation does not alter the existing tax effect.

## **12. Monitoring & review**

12.1 Monitoring and review is not required as the instrument confirms existing treatment.

## **13. Contact**

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<sup>2</sup> <http://www.hmrc.gov.uk/consultations/index.htm>