

2010 No. 592

EXCISE

**The Excise Goods (Sales on Board Ships and Aircraft)
(Amendment) Regulations 2010**

<i>Made</i> - - - -	<i>3rd March 2010</i>
<i>Laid before Parliament</i>	<i>5th March 2010</i>
<i>Coming into force</i> - -	<i>1st April 2010</i>

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by sections 100G(1), 100H(1)(b), (c), (d), (g), (j), (k) and (2) and 118A of the Customs and Excise Management Act 1979(a) and section 1 of the Finance (No.2) Act 1992(b):

Citation, commencement and transitional

1.—(1) These Regulation may be cited as the Excise Goods (Sales on Board Ships and Aircraft) (Amendment) Regulations 2010 and come into force on 1st April 2010.

(2) These Regulations do not apply in the case of any ship or aircraft that is, at the time these Regulations come into force, making a voyage or flight that was scheduled to depart before they came into force.

Amendment

2. Amend the Excise Goods (Sales on Board Ships and Aircraft) Regulations 1999(c) as follows.

3.—(1) In paragraph (1) of regulation 2 (interpretation)—

(a) for the definition of “appropriate document” substitute—

““appropriate document” means the simplified accompanying document for the intra-Community movement of products which have been released for consumption in the member State of dispatch specified in Commission Regulation (EEC) No. 3649/92;”;

(b) after the definition of “appropriate document” insert —

““closed shop procedure” means a procedure whereby merchandise on board a ship or aircraft is not sold, or held out for sale, at any time during a relevant period;” and

(c) after the definition of “registered mobile operator” insert—

““relevant period” means a period of time starting—

(a) 1979 c.2; sections 100G and 100H were inserted by the Finance Act 1991 (c. 31), Schedule 4; section 118A was inserted by the Finance Act 1991, Schedule 5; section 1(1) of the Customs and Excise Management Act 1979 (substituted by the Commissioners for Revenue and Customs Act 2005 (c. 11), Schedule 4, paragraph 22) defines “the Commissioners” (as meaning the Commissioners for Revenue and Customs) “registered excise dealer and shipper” and “revenue trader”.

(b) 1992 c. 48.

(c) S.I. 1999/1565.

- (i) in the case of merchandise brought by sea, at the time of importation prescribed by section 5(2)(a) of the Act;
 - (ii) in the case of merchandise brought by air, at the time the aircraft enters the airspace above the United Kingdom (or, if earlier, the time the aircraft enters the airspace above the territorial sea of the United Kingdom),
- and ending at the time when the ship leaves the territorial sea of the United Kingdom or the aircraft leaves the United Kingdom (or, if later, the time when the aircraft leaves the airspace above the territorial sea of the United Kingdom);”.

4. In regulation 13 (application of Part IV), after paragraph (3) insert—

“(4) Paragraph (2) does not apply to any merchandise that is subject to the closed shop procedure.”.

5. In regulation 18 (excise duty points—merchandise)—

(a) in paragraph (2), for “paragraph (5)” substitute “paragraphs (5) to (9)”;

(b) after paragraph (5) insert —

“(6) Paragraph (2) shall not apply so as to prescribe an excise duty point for merchandise that is subject to the closed shop procedure.

(7) If merchandise that is subject to the closed shop procedure is sold, or held out for sale, during a relevant period, the excise duty point for the merchandise shall be the time when that merchandise is sold or held out for sale.

(8) If, during a relevant period, there is found to be a deficiency in the stock of merchandise that was on board the ship or aircraft at the start of the relevant period, the excise duty point for the merchandise that is missing shall be the time when the deficiency is discovered.

(9) Paragraph (8) shall not apply if it is shown to the satisfaction of the Commissioners that there is a legitimate reason for the deficiency.”.

6. For regulation 21 (accounting for duty) substitute—

“**21.**—(1) A registered mobile operator must each month make a return to the Commissioners on a form provided by them for the purpose or approved by them.

(2) The registered mobile operator must declare in the return the duty due in the month to which the return relates.

(3) The duty due is the duty the registered mobile operator is liable to pay in accordance with these Regulations.

(4) The return must be made and, subject to paragraph (6) and any duty deferment arrangements, the duty due must be paid no later than the end of the fourth day immediately following the end of the month to which it relates.

(5) But if one of those days is not a business day the return and, subject to paragraph (6) and any duty deferment arrangements, payment of the duty due must be made no later than the end of the third consecutive business day following the end of the month to which it relates.

(6) The amount of duty which a registered mobile operator is required to pay in accordance with this regulation is the amount (if any) that remains after the registered mobile operator has set-off the amount of any drawback to which the registered mobile operator is entitled in accordance with regulation 12A of the Excise Goods (Drawback) Regulations 1995(a).

(7) In this regulation “business day” means any day except—

(a) S.I. 1995/1046, to which there are amendments not relevant to these Regulations. Regulation 12A is treated as inserted after regulation 12 by S.I. 1999/1565, regulation 22(3).

- (a) Saturday, Sunday, Good Friday or Christmas Day^(a);
- (b) a bank holiday^(b) under the Banking and Financial Dealings Act 1971^(c);
- (c) a day appointed by Royal proclamation as a public fast or thanksgiving day^(d);
- (d) a day declared by an order under section 2 of the Banking and Financial Dealings Act 1971 to be a non-business day^(e).”.

7. In paragraph (3) of regulation 22 (drawback) in regulation 12A that is treated as inserted after regulation 12 of the Excise Goods (Drawback) Regulations 1995—

- (a) in paragraphs (1) and (2) omit “REDS”;
- (b) for paragraph (4) substitute—
 - “(4) In this regulation “return” means the return a registered mobile operator is required to make in accordance with regulation 21 of the Excise Goods (Sales on Board Ships and Aircraft) Regulations 1999.”.

8. After Part VI (excise duty points and payment and drawback of excise duty) insert—

“PART 6A CLOSED SHOP PROCEDURE

Application of Part 6A

22A. This Part applies to merchandise imported by a registered mobile operator on board any ship or aircraft that is not making a voyage or flight from a place outside the Communities.

Notice and approval

22B.—(1) A registered mobile operator who intends to operate a closed shop procedure must notify the Commissioners of that intention and, at the time of the notification, inform them of how the procedure will operate.

(2) A registered mobile operator must not operate the procedure until it has been approved by the Commissioners.

(3) The Commissioners may refuse to grant approval if they are not satisfied about the way in which the procedure will operate.

(4) A registered mobile operator who intends to cease operating a closed shop procedure must notify the Commissioners of that intention and must not cease to operate the procedure until after the seventh day following the day on which such notification is given.

Change to an approved procedure

22C.—(1) A registered mobile operator who intends to make any change to a closed shop procedure that has been approved in accordance with regulation 22B must give the Commissioners no less than seven days notice of that intention.

(a) This follows the Bills of Exchange Act 1882 (c. 61) section 92(a) as read with the Banking and Financial Dealings Act 1971 (c. 80), section 3 (1).

(b) This follows the Bills of Exchange Act 1882 section 92(b), which was amended by the Banking and Financial Dealings Act 1971, section 4 (4).

(c) 1971 c. 80: section 1 of and Schedule 1 to that Act relate to bank holidays. Schedule 1 was amended by the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (asp 2).

(d) This follows the Bills of Exchange Act 1882, section 92(c).

(e) This follows the Bills of Exchange Act 1882, section 92(d), which was inserted by the Banking and Financial Dealings Act 1971. Section 4(3) of the latter Act makes further provision about such orders.

(2) At the time such notice is given the registered mobile operator must inform the Commissioners of the intended change to the procedure.

(3) A registered mobile operator must not make the change to the procedure until it has been approved by the Commissioners.

(4) The Commissioners may refuse to grant approval if they are not satisfied about the way in which the procedure will operate after the intended change is made.

Unshipping of merchandise

22D.—(1) Subject to such conditions and restrictions as the Commissioners may prescribe in a notice, merchandise subject to the closed shop procedure may be unshipped in the United Kingdom.

(2) If merchandise is unshipped in accordance with paragraph (1) and, at any time before it is re-loaded into a ship or aircraft,—

- (a) it is sold or held out for sale, the excise duty point for the merchandise shall be the time when that merchandise is sold or held out for sale; or
- (b) there is found to be a deficiency in the stock of merchandise that was on board the ship or aircraft from which it was unshipped at the start of the relevant period, the excise duty point for the merchandise that is missing shall be the time when the deficiency is discovered.

(3) The person liable to pay the duty at the excise duty point is the registered mobile operator who unshipped the merchandise.

(4) Any other person who caused the merchandise to reach an excise duty point shall be jointly and severally liable to pay the excise duty at the excise duty point.

(5) Regulation 18(1) shall not apply so as to prescribe an excise duty point for merchandise that has been unshipped in accordance with paragraph (1) and is subsequently re-loaded into a ship or aircraft.”.

9. In paragraph (1) of regulation 23 (application of part VII) for “Article 7(9) of Council Directive 92/12/EEC” substitute “Article 35(2) of Council Directive 2008/118/EC”.

10. In regulation 25 (procedure) omit paragraphs (4) and (5).

*Dave Hartnett
Bernadette Kenny*

3rd March 2010

Two of the Commissioners for Her Majesty’s Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 1st April 2010, amend the Excise Goods (Sales on Board Ships and Aircraft) Regulations 1999 (“the principal Regulations”).

They provide for a procedure (“closed shop procedure”) whereby liability to pay excise duty on the importation into the United Kingdom from another member State of excise goods on board a ship or aircraft that are intended for sale by retail to persons carried on the ship or aircraft (other than goods intended for consumption during the voyage or flight) does not arise if those goods are not sold, or held out for sale, at any time after stock is required to be taken on the importation of those goods into the United Kingdom and before the ship leaves the territorial sea of the United Kingdom or the aircraft leaves the United Kingdom (or, if later, the time when the aircraft leaves the airspace above the territorial sea of the United Kingdom) (“relevant period”).

Regulation 3 amends regulation 2 of the principal Regulations (interpretation) to amend the definition of “appropriate document” and to insert definitions of “closed shop procedure” and “relevant period”.

Regulation 4 amends regulation 13 of the principal Regulations (application of Part IV) so that excise goods subject to the closed shop procedure on board a ship or aircraft that is making a voyage or flight to an immediate destination in another member State are not treated for the purposes of the principal Regulations as having been loaded into the ship or aircraft immediately before the ship sailed or the aircraft took off.

Regulation 5 amends regulation 18 of the principal Regulations (excise duty points-merchandise) to provide that an excise duty point does not arise on the importation of excise goods that are subject to the closed shop procedure and to prescribe excise duty points if such goods are sold, or held out for sale, during the relevant period or if there is found to be a deficiency in those goods after stock has been taken on importation.

Regulation 6 substitutes a new regulation 21 and provides for the making of monthly returns and specifies the time by which payment of the duty due in accordance with the principal Regulations must be made.

Regulation 7 makes a consequential amendment to regulation 22(3) of the principal Regulations.

Regulation 8 inserts a new Part 6A into the principal Regulations to provide for the closed shop procedure.

Regulations 9 makes a consequential amendment to regulation 23(1) of the principal Regulations as a result of the repeal of Council Directive 92/12/EEC(a) by Council Directive 2008/118/EC(b).

Regulation 10 revokes regulation 25(4) and (5) of the principal Regulations.

The closed shop procedure implements Article 33(5) of Council Directive 2008/118/EC. A transposition note setting out how the requirements of that Directive are implemented is available at www.hmrc.gov.uk.

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.

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(a) OJ: L 076, 23.03.92, p.1.

(b) OJ L 09, 14.01.2009, p.12.

STATUTORY INSTRUMENTS

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