

CHAPTER 33

EXCISE WAREHOUSING

33.1 Introduction to legislation

Council Directive 92/12/EEC authorises member states to lay down conditions for the granting of approvals and controlling of excise warehouses. This directive has been re-written to improve clarity and **Council Directive 2008/118/EC** has replaced it.

[92/12/EEC](#)
2008/118/EC

It came into force on 15th January 2009 and Member States had until 1st January 2010 to adopt national laws to ensure compliance with it from 1st April 2010.

Some of the national legislation has already been put into legal effect because a lot of the provisions of the new directive exactly replicate the law as it stood in the old 1992 directive.

We'll cover these existing pieces of UK legislation shortly. However, as some of the provisions in the new 2008 directive are totally new a statutory instrument has been enacted. It is 2010/593 and is called the **Excise Goods Holding, Movement and Duty point regulations**.

SI 2010/593

This regulation revokes some of the existing UK statutory instruments - either totally or in part. Most of the provisions in the new SI take effect from 1st April 2010. Others come into effect on the 1st January 2011.

One of the key pieces of legislation contained in the new statutory instrument is the **Excise Movement & Control System** - or **EMCS** for short, which took effect from the 1st April 2010.

This is a **computerised monitoring system of the movements of excise goods in duty suspension within the EU** and replaces the paper based system that was contained in the old 1992 directive.

The new electronic system should help to **improve efficiency and reduce fraud**. Before we get into this new system and the rest of excise warehousing we'll introduce other pieces of UK legislation that you may need to become familiar with.

Regulation 2719/92 covers the documentation required to accompany excisable goods when held under excise duty suspension. In the UK the relevant legislation is contained in a variety of statutory instruments. For example, **SI 1988/809 (the Excise Warehousing Regulations)** contain many of the details about:

[SI 1988/809](#)

- how goods must be received into a warehouse,
- operations that may be carried out on them,
- conditions that must be satisfied when goods are removed from the warehouse,
- the types of returns,
- and records that a warehouse keeper must have.

The Excise Goods Holding, Movement, Warehousing and REDS Regulations used to contain rules about when excise duty was due and the documentation that was needed to accompany excise goods as they moved from a warehouse. These regulations have been revoked by our new 2010 statutory instrument.

The Warehousekeepers and Owners of Warehouse Goods Regulations SI 1999/1278 contain the rules about:

- approvals,
- registration of warehousekeepers,
- conditions, and
- restrictions that apply to them,

[SI 1999/1278](#)

and finally The Excise Goods Accompanying Documents Regulations used to contain details about the documentation that must accompany excise goods when they left a warehouse. Again the majority of this statutory instrument has been revoked by our 2010 regulations.

So far you can see there is quite a lot of legislation on excise warehouses! We will cover the relevant statutory references as we go along so you can look them up as we go along.

33.2 Excise Warehouses

First an introduction as to what an excise warehouse is. Essentially an excise warehouse is a place that is authorised by Customs where **excisable goods may be stored without being subject to excise duty**. In this regard they are often referred to as 'excise duty suspended goods.' The types of goods that can be held within an excise warehouse are products that contain **alcohol, hydrocarbon oils** and **tobacco** products; although in the latter case they must not be manufactured in the UK for home use.

We have already mentioned that the main point of an excise warehouse is that goods stored within it are covered by **duty suspension**. An excise warehouse can, therefore, be useful in the following scenario.

reg.34
SI 2010/593

Illustration 1

Imagine that you acquire excisable goods from another member state. Now some people might think why would we need an excise warehouse in this situation? Hasn't excise duty been paid in the other member state? Well, remember in one of our very first chapters we said that excise duties are member state specific, so even if excise duties have been paid in another member state - they are still due in the UK at the UK rates. Excise duties are due in the **country of consumption**. Also, if the goods are coming from an excise warehouse based in the other member state then they would not have had any excise duties paid on them at all yet! Becoming approved as an excise warehouse allows you to receive the goods **without having to pay the excise duty straight away**.

In addition to storing these types of goods without payment of excise duty, **certain home produced goods can also be stored there without excise duty being incurred**. For example, imagine that you are a distiller of spirits in the UK. Provided those goods are consigned upon production to an excise warehouse, then excise duty does not need to be paid at that point in time.

[s.92 CEMA 1979](#)

33.3 Payment of excise duty

So if all of these goods can be entered into an excise warehouse without excise duty becoming due, when does it have to be paid? Well, the **duty point is when the goods are removed from the warehouse**. There are some exceptions to this rule, which we will come onto later.

Reg.6
SI 2010/593

33.4 Obtaining an approval to operate an excise warehouse

Now we know the legislation relating to excise warehousing, and what goods can be stored in an excise warehouse, we need to look at how approval is obtained.

[s.92 CEMA 1979](#)

If a person wishes to operate an excise warehouse they must be **approved by Customs**.

An application for authorisation of an excise warehouse is made on **Form EX68** if you apply for a **general storage and distribution** warehouse, or **form EX69** if you apply for a **trade facility warehouse**. (You will see more on these types in a minute.) In addition, application for **warehouse premises approval** must also be made. In order to have your premises approved, Customs will require a plan showing the area and also a copy of a Health & Safety Risk Assessment.

[Public Notice 196](#)

Generally, a person should apply at least **30 days in advance** of wishing to become authorised. Authorisation may require the warehousekeeper to provide Customs with a **premises guarantee**. This guarantee is usually provided by a bank or insurance company. The guarantee will be called upon in the event of an irregularity occurring, e.g. where a loss of excise duty arises. The level of security required is **usually based on the excise duty due on the average end of month stock** contained within the premises

A trader can check Public Notice 196 for the amounts of security required. For

example, when the potential duty due on an average month-end stockholding is less than £100,000, no security is required. Where the potential duty is more than £100m the security required is £1m. The minimum level of security for a new **General Storage and Distribution** warehouse is £250,000. **Customs may offer a reduction in guarantee levels for established traders in certain circumstances.**

Public Notice 50

A movement security is also required to cover any loss of excise duty for goods whilst in transit, after leaving an excise warehouse and before arriving at their destination.

Once approved, a **Certificate of Registration** will be issued to the warehouse keeper. As part of the approval, a **warning poster**, which is contained in Public Notice 50, must be displayed at each entrance and exit to the warehouse site. The poster states that goods in the warehouse may not have had excise duty paid on them and that anybody who improperly removes the goods could be liable to criminal sanctions.

Where an excise warehouse keeper trades with excisable goods from other member states, his excise warehouse will also be called a **tax warehouse**. Generally, approval will be granted for a **12 month initial period**. Once Customs are happy that operations are running as they should be, they will renew for a further period. **Renewal should generally be made at least two months before the expiry date.**

Reg. 3
SI 2010/593

For applications from the 1st of April 2010, a trader wishing to become authorised as a warehousekeeper must also have registered for access to the **Excise Movement and Control System** - or EMCS for short - within the online services offered by HMRC. Access to EMCS will be required for receiving goods that are dispatched to a warehousekeeper on this system.

The EMCS is an electronic system for recording and validating all movements of duty-suspended excise goods within the EU. From the 1st of April 2010, the system will progressively replace the current paper-based system, which requires an AAD to accompany all movements. Instead of a paper AAD, under the EMCS an electronic record, known as an **electronic administrative document ("eAD")**, must be raised on the EMCS before the movement can commence. As already mentioned above, the new electronic system should help to improve efficiency and reduce fraud.

Some member states will already be able to electronically raise both 'dispatch' and 'receipt' documents. Other member states - which include the UK - are able to currently raise receipt documents through the electronic system but not dispatches yet. These dispatches will still be accompanied by a paper AAD - which you will learn more about shortly.

All member states are required from the 1st of January 2011 to be able to record **both** dispatches and receipts through the EMCS.

33.5 Types of Excise Warehouse

Excise warehouses can take one of three forms.

- 1 A general storage and distribution warehouse;
- 2 A trade facility excise warehouse; and
- 3 A motor and heating fuels warehouse

In order to be authorised for a general storage and distribution warehouse, a person must have a **minimum potential duty of £0.5m on their average monthly stockholding**, or a **minimum duty liability of £2m annually**.

If either of these is not satisfied the person will not be authorised for this particular type of excise warehouse. A trade facility warehouse will be authorised where goods are stored for certain purposes:

- 1 The maturation of spirits produced at an associated distillery, or
- 2 goods that will not suffer excise duty. For example, goods that are destined for export or use in pharmaceuticals, or use in food stuffs, or
- 3 for performing an allowable operation on the goods, or
- 4 for any other purposes allowed by Customs.

To be authorised as a trade facility warehouse you **do not need those minimum throughput levels** as we saw for general storage and distribution. These levels are not listed anywhere in the legislation, but can be found in Public Notice 196.

[Public Notice 196](#)

33.6 Operations in the warehouse

Once the goods have arrived in the excise warehouse, can any operations be carried out on them? **Customs may allow the operations described in Schedule 1 of SI 1988/809** and other operations where they feel that the collection of excise duty will not be prejudiced in any way.

[Reg.14 & sch.1
SI 1988/809](#)

Schedule 1 contains the following operations:

- Sorting, separating, packing or repacking and such other operations as are necessary for preservation, sale, shipment or disposal of the goods,
- rectifying and compounding of spirits,
- rendering sparkling of wine and made wine,
- the mixing of a fermented liquor or a liquor derived from a fermented liquor with any other liquor or substance so as to produce made wine,
- the mixing of lime or lemon juice with spirits for shipment as stores or for exportation,
- denaturing, reducing, marrying and blending.

Under Regulation 14(2), Public Notice 196 also gives a list of other types of operations that they will allow. These include **cask rinsing, colouring, filtering, sweetening, and priming of beer**.

[Reg.14\(2\) SI
1988/809](#)

33.7 Receipt of goods into the warehouse

Now we are going to look at the warehouse keepers responsibilities when goods are received into an excise warehouse. It is important to note that not just anybody can deposit goods into an excise warehouse. Subject to a few exceptions, **goods can only be received from registered owners.**

[reg.9\(1\)&\(2\) SI 1999/1278](#)

Take the following illustration.

Illustration 2

The goods arrive by lorry to the excise warehouse. The warehousekeeper must ensure that he can comply with his legal obligations.

These require the warehousekeeper to:

- **physically check** the goods on arrival,
- **enter the goods** into his stock records and
- the goods then must be put into the warehouse.

[reg.11 SI 1988/809](#)

A **Certificate of Safe Receipt** should be sent back to the consignor **within 5 days** of the goods being warehoused.

Note that Customs can allow derogations from these requirements. Where the warehousekeeper fails to comply with his conditions, the goods can be liable to **forfeiture**.

Warehouse goods should be kept **secure and marked** so that they can be identified in the stock records. Typically the stock records should contain the following information:

- A full description of the goods, including alcoholic strength and quantity where alcohol is stored,
- the location of the goods so that they can be identified in the warehouse,
- a stock number that has been allocated to the goods so that they can be identified,
- details about the owner of the goods, and
- details of any sales or transfers of the goods that have taken place whilst the goods were in the warehouse.

33.8 Stock control

Once the goods have been received into the warehouse, the warehousekeeper needs to keep a close eye on the goods to ensure that **losses and tampering do not occur**, except those that are due to accidental or natural causes. This requires them to ensure a good system of stock control. We'll imagine that our warehousekeeper is warehousing alcoholic goods for the following illustration.

[reg.12 SI 1988/809](#)

Illustration 3

Every month the warehouse keeper must **submit a stock return** to Customs for the type of alcoholic goods being warehoused. In addition an **annual stocktake** is usually required to reconcile the number of goods in the warehouse to the trader's account. Any errors between the annual stocktake and the trader's records need to be reported to Customs. If the warehouse keeper fails to carry out these duties then the goods are once again liable to forfeiture.

33.9 Removals from the warehouse

What happens when excise goods are removed from the warehouse? The procedure for removals depends on where the goods are destined for. Some of the goods may be destined for export to a non-EU member state. Where this happens **normal export procedures** must be followed.

[reg.16-17 SI 1998/809](#)

For instance, the appropriate **export declaration**, or C88, would need to be completed. No excise duty is due where goods are exported directly from the excise warehouse. Before the export occurs, the warehouse keeper must **take account of the goods** and check that the goods leaving correspond to the export declaration and he must **write the goods out of the stock account** and keep details of the goods that have been removed.

He must also **supervise the removal** to ensure that there is no tampering before the goods are exported. Commercial evidence of export must be kept by the warehousekeeper and Customs may want to inspect this to prove that no excise duty was due on the goods. Where goods are removed to **home use**, i.e. they are going to be consumed in the UK, then **excise duty will be paid** and the rate applicable is that at the time the goods are removed from the warehouse.

[reg.26 SI 1998/809](#)

A daily list of removals needs to be provided to Customs and the duty paid on them. However, paying duty daily can be an administrative burden. Therefore, a **duty deferment account** can be used to ensure that payment of excise duty happens once every month. Payment is made by the 29th day of the month for charges deferred between the 15th to the 14th of the month.

Usually a guarantee is required. However, under the Excise Payment Security System ("EPSS") deferred payment can be made without the need for a guarantee.

Illustration 4

For example, excise duty deferred between the 15th of March to the 14th of April is due by the 29th April.

Alternatively, a trader may be authorised for 'scheduling' which negates the need for daily removals as well as allowing deferment of payment.

Continuing with the types of removal, goods may be **transferred between excise**

warehouses without duty becoming due. As goods travelling between excise warehouses have not yet had excise duty paid on them, various procedures must be carried out. We'll look at the current paper-based system. This must be used unless the movement takes place under EMCS. Firstly, the goods must be accompanied by a **form W8**, or a commercial equivalent. This document must give information about the goods, such as:

- the date the goods were removed from the warehouse,
- details of the dispatching and receiving excise warehouse,
- a description of the goods including their commodity code,
- the value of the goods, the quantity, strength of the goods and
- the stock number.

If the goods should go missing on the journey, then excise duty will be payable, and it is payable by whoever has guaranteed the movement.

Provided the goods arrive safely at the recipient's warehouse and the warehousekeeper has checked that the goods correspond with their delivery document, he will send back a certificate of safe receipt to the dispatching warehouse within 5 days. This **certificate must be kept** as it confirms that the excise movement was carried out correctly and **excise duty is not due on it**.

As well as goods being sent between excise warehouses, **goods can be sent to another EU member state** under the **duty suspension** regime. This can only be done if the person who is receiving the goods is an **authorised person**. If the person in the other member state is not authorised, then the goods cannot be dispatched until the UK warehouse keeper receives evidence from the consignee that they have paid the excise duty in the other member state. This evidence must be received by the dispatching warehouse and then travel with the goods.

For goods being consigned to an authorised person the goods must travel with an accompanying administrative document or **AAD** for short. 4 copies are usually required, copies 2 to 4 will travel with the goods and copy 1 is kept by the consignor. When the goods arrive the consignee endorses copy 3 and returns it to the consignor by the **15th of the month following** which the goods were received. Upon receipt of that endorsed copy 3 the consignor's liability is discharged.

We can also receive goods from an excise warehouse in another Member State. The documentation described in the above paragraph then works in reverse i.e. we endorse copy 3 of the AAD and sent it back to the consignor in the other Member State.

So we have described what currently happens using the paper-based system. Under the EMCS, **the paper based copies referred to above will be replaced with an eAD**. This eAD must be raised on EMCS before the movement can commence. **EMCS will provide an Administrative Reference Code (ARC) that uniquely identifies the movement**. The **ARC must be noted on either a printed copy of the eAD or a commercial document**, which must accompany the goods.

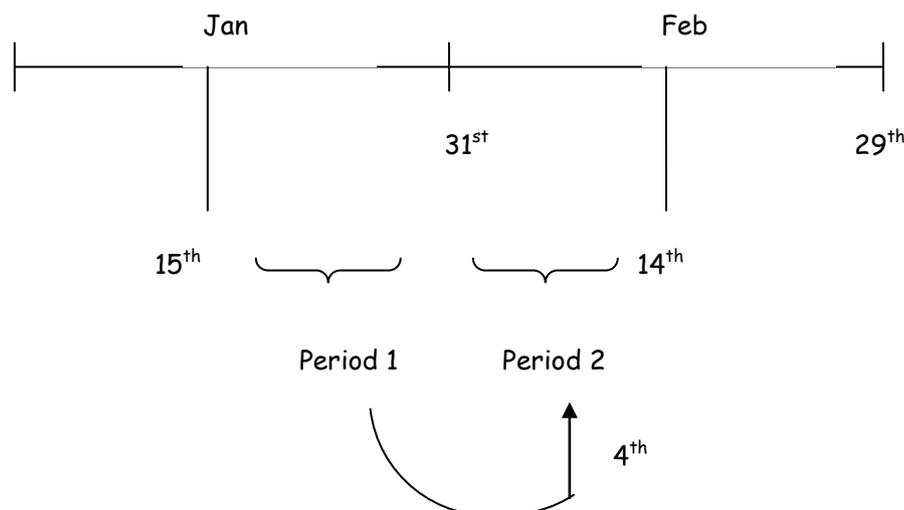
33.10 Scheduling

As already stated, a daily list of removals must be completed and sent to Customs and unless the warehouse keeper is paying the duty under duty deferment, he must pay the duty daily.

Where Customs authorise a warehouse keeper to carry out **scheduling** he gets the best of both worlds. Although he still has to keep a daily record of removals from his warehouse, the list does not need to be submitted daily. Scheduling simply allows the warehouse keeper to submit a **schedule of removals twice a month**. In addition, payment does not need to be made daily.

This is how it works:

Each month is split into two, so in the following diagram we have the months of January and February. The months are divided into two around the 15th and the period from the 15th to the end of the month is called period one. The period from the beginning of the month to the following 14th is then called period two.



A Return must be sent for period one by the 4th of the month following that period, so in our example by the 4th of February and the Schedule for period two must be sent on a Return by the 15th of the month, i.e. by the 15th of February. The payment will be taken by direct debit on the 29th of the second month. The removal form for alcohol products is a **W5D**.

33.11 Losses

Losses are quite often discovered when the warehouse keeper is carrying out his stock take. Where the warehousekeeper discovers that losses have occurred he must **inform Customs** of that fact.

[reg.28 SI 1988/809](#)

[s.94 CEMA 1979](#)
[reg.12\(7\) SI 1988/809](#)

The warehousekeeper should **give reasons** for those losses and if the losses are

[s.94 CEMA 1979](#)

due to natural causes, or accident, then Customs may not require him to pay the duty. The losses may also occur whilst the goods are in transit from the Excise warehouse to their intended destination. Where these losses occur and Customs are not satisfied that they are due to natural causes or accidents, then the person responsible for paying the duty is the person who has guaranteed the movement.

Where goods are travelling towards another member state then duty will be due in the member state where the loss has occurred.

Customs are likely to carry out **periodic checks** on the trader's premises, the controls put in place and the computer accounting system to ensure that excise duty has been properly accounted for and to ensure that losses do not occur.

33.12 Removals to ships stores

Our penultimate look at excise warehousing, concerns the removal of goods to ship stores. A vessel with authority from Customs can **receive excisable goods duty free where they are to be kept as stores**.

When these goods are removed from the excise warehouse for use as ships stores they are **treated as an export** and therefore no excise duty is payable. Documentation must be completed in order that no excise duty is payable. This can be in the form of **commercial documentation** which must contain the reference number of the supplier, a description of the goods including their commodity code, the date of removal of the goods, the vessel name and the destination of the vessel.

This document needs to be made out in 4 copies, copies 1, 2 and 3 travel with the goods and copy 4 is kept by the warehouse keeper. Copy 1 will be for use by Customs before the goods actually board the ship, copy 2 is signed by the Master of the ship and returned as a receipt to Customs and copy 3 is kept by the Master of the ship.

33.13 Case Law

Our final look in this chapter is at a House of Lords case. It concerned the point at which excise duty would be due.

The facts were as follows: The warehouse keeper delivered vodka from its excise warehouse to carriers acting for a company which exported vodka to Belgium and Spain. Duty wasn't paid as the goods were destined for consumption in another member state. The documents provided to the warehouse keeper were fraudulent and the vodka never reached its intended destination.

[Greenalls
Management
Ltd v C&E
12/5/05](#)

Article 6(1) of Council Directive 92/12 provides that excise duty is chargeable at 'the time of release for consumption'. This includes 'any departure, including irregular departure, from a suspension arrangement'.

The relevant UK legislation, according to Customs, was regulation 4(2)(a) of the Excise Goods (Holding, Movement, Warehousing and REDs) regulations which said that the duty point was 'the time when the excise goods are delivered for home use from a tax warehouse or are otherwise made available for consumption...'. The tribunal agreed with Customs and held that the warehouse keeper was liable to pay the duty.

The case went all the way to the House of Lords, which agreed with Customs that the warehouse keeper was liable for the duty.

The goods were made available for consumption. The identity of the person who made them available was unknown, but the regulation did not require them to be 'made available' by anyone in particular. This gave effect to article 6(1) of the European directive.

Once regulation 4(2)(a) had been identified as the correct regulation specifying the duty point, regulation 5 said that the person liable for the duty was the warehouse keeper.

Example 1

Albert's average potential duty liability on his average monthly stockholding is £250,000 and his actual duty liability for the year is £1.75m.

What type of excise warehouse may he be authorised to operate?

Example 2

What types of operations can be carried out in an excise warehouse?

Answer 1

He cannot be authorised for a general storage and distribution warehouse as his potential monthly duty is too low. It should be at least £0.5m. His annual duty liability is too low as well. It should be at least £2m.

He could obtain approval for a trade facility excise warehouse, as these minimums do not apply. However, he would need to be using the warehouse for maturation of spirits at an associated distillery, excise goods for export or use in pharmaceuticals or foodstuffs, or for performing an operation on the goods.

It is not clear whether Albert satisfies one of these conditions.

Answer 2

The operations that can be carried out in a warehouse are listed in schedule 1 of SI 1988/809 and Public Notice 196. They include:

- Sorting, separating, packing or repacking and such other operations as are necessary for preservation, sale, shipment or disposal of the goods,
- rectifying and compounding of spirits,
- rendering sparkling of wine and made wine,
- the mixing of a fermented liquor or a liquor derived from a fermented liquor with any other liquor or substance so as to produce made wine,
- the mixing of lime or lemon juice with spirits for shipment as stores or for exportation,
- denaturing, reducing, marrying and blending
- cask rinsing,
- colouring,
- filtering,
- sweetening, and
- priming of beer