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STATUTORY INSTRUMENTS

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**1998 No. 62**

**CUSTOMS AND EXCISE**

**The Revenue Traders (Accounts and Records) (Amendment) Regulations 1998**

<i>Made</i>	- - - -	<i>20th January 1998</i>
<i>Laid before the House of Commons</i>	- - - -	<i>21st January 1998</i>
<i>Coming into force</i>	- -	<i>11th February 1998</i>

The Commissioners of Customs and Excise, in exercise of the powers conferred on them by paragraph 3(1), (3), (4), (5), (6) and (7) of Schedule 5 to the Finance Act 1997<sup>(1)</sup> and of all other powers enabling them in that behalf, hereby make the following Regulations:

1. These Regulations may be cited as the Revenue Traders (Accounts and Records) (Amendment) Regulations 1998 and shall come into force on 11th February 1998.
2. After regulation 9 of the Revenue Traders (Accounts and Records) Regulations 1992<sup>(2)</sup> there shall be inserted the following regulations—

**“Interpretation of regulations 10 to 17**

**10.** In this regulation and in regulations 11 to 17 below—

“claim” means a claim made (irrespective of when it was made) under section 137A of the Customs and Excise Management Act 1979<sup>(3)</sup> for repayment of an amount paid to the Commissioners by way of excise duty which was not due to them; and “claimed” and “claimant” shall be construed accordingly;

“reimbursement arrangements” means any arrangements (whether made before, on or after 30th January 1998) for the purposes of a claim which—

- (a) are made by a claimant for the purpose of securing that he is not unjustly enriched by the repayment of any amount in pursuance of the claim; and
- (b) provide for the reimbursement of persons (consumers) who have, for practical purposes, borne the whole or any part of the cost of the original payment of that amount to the Commissioners;

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(1) 1997 c. 16; paragraph 1(3) of Schedule 5 defines “the Commissioners” as meaning the Commissioners of Customs and Excise.  
(2) S.I. 1992/3150, amended by S.I. 1995/2893.  
(3) 1979 c. 2; section 137A was inserted by section 20 of the Finance Act 1995 (c. 4).

“relevant amount” means that part (which may be the whole) of the amount of a claim which the claimant has reimbursed or intends to reimburse to consumers.

**Reimbursement arrangements—general**

**11.** Without prejudice to regulation 17 below, for the purposes of section 137A(3) of the Customs and Excise Management Act 1979 (defence by the Commissioners that repayment by them of an amount claimed would unjustly enrich the claimant) reimbursement arrangements made by a claimant shall be disregarded except where they—

- (a) include the provisions described in regulation 12 below; and
- (b) are supported by the undertakings described in regulation 16 below.

**Reimbursement arrangements—provisions to be included**

**12.** The provisions referred to in regulation 11(a) above are that—

- (a) reimbursement for which the arrangements provide will be completed by no later than 90 days after the repayment to which it relates;
- (b) no deduction will be made from the relevant amount by way of fee or charge (howsoever expressed or effected);
- (c) reimbursement will be made only in cash or by cheque;
- (d) any part of the relevant amount that is not reimbursed by the time mentioned in paragraph (a) above will be repaid by the claimant to the Commissioners;
- (e) any interest paid by the Commissioners on any relevant amount repaid by them will also be treated by the claimant in the same way as the relevant amount falls to be treated under paragraphs (a) and (b) above; and
- (f) the records described in regulation 14 below will be kept by the claimant and produced by him to the Commissioners, or to an officer of theirs in accordance with regulation 15 below.

**Repayments to the Commissioners**

**13.** The claimant shall, without prior demand, make any repayment to the Commissioners that he is required to make by virtue of regulation 12(d) and (e) above within 14 days of the expiration of the period of 90 days referred to in regulation 12(a) above.

**Records**

**14.** The claimant shall keep records of the following matters—

- (a) the names and addresses of those consumers whom he has reimbursed or whom he intends to reimburse;
- (b) the total amount reimbursed to each such consumer;
- (c) the amount of interest included in each total amount reimbursed to each consumer;
- (d) the date that each reimbursement is made.

**Production of records**

**15.—**(1) Where a claimant is given notice in accordance with paragraph (2) below, he shall, in accordance with such notice produce to the Commissioners, or to an officer of theirs, the records that he is required to keep pursuant to regulation 14 above.

- (2) A notice given for the purposes of paragraph (1) above shall—
- (a) be in writing;
  - (b) state the place and time at which, and the date on which the records are to be produced; and
  - (c) be signed and dated by the Commissioners, or by an officer of theirs,
- and may be given before or after, or both before and after the Commissioners have paid the relevant amount to the claimant.

### **Undertakings**

**16.**—(1) Without prejudice to regulation 17(b) below, the undertakings referred to in regulation 11(b) above shall be given to the Commissioners by the claimant no later than the time at which he makes the claim for which the reimbursement arrangements have been made.

(2) The undertakings shall be in writing, shall be signed and dated by the claimant, and shall be to the effect that—

- (a) at the date of the undertakings he is able to identify the names and addresses of those consumers whom he has reimbursed or whom he intends to reimburse;
- (b) he will apply the whole of the relevant amount repaid to him, without any deduction by way of fee or charge or otherwise, to the reimbursement in cash or by cheque, of such consumers by no later than 90 days after his receipt of that amount (except insofar as he has already so reimbursed them);
- (c) he will apply any interest paid to him on the relevant amount repaid to him wholly to the reimbursement of such consumers by no later than 90 days after his receipt of that interest;
- (d) he will repay to the Commissioners without demand the whole or such part of the relevant amount repaid to him or of any interest paid to him as he fails to apply in accordance with the undertakings mentioned in sub-paragraphs (b) and (c) above;
- (e) he will keep the records described in regulation 14 above; and
- (f) he will comply with any notice given to him in accordance with regulation 15 above concerning the production of such records.

### **Reimbursement arrangements made before 11th February 1998**

**17.** Reimbursement arrangements made by a claimant before 11th February 1998 shall not be disregarded for the purposes of section 137A(3) of the Customs and Excise Management Act 1979 if, not later than 11th March 1998—

- (a) he includes in those arrangements (if they are not already included) the provisions described in regulation 12 above; and
- (b) gives the undertakings described in regulation 16 above.”.

New King's Beam House 22 Upper Ground  
London SE1 9PJ  
20th January 1998

*Martin Brown*  
Commissioner of Customs and Excise

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, which come into force on 11th February 1998, further amend the Revenue Traders (Accounts and Records) Regulations 1992 (S.I.1992/3150) (the principal Regulations) by inserting regulations 10 to 17 in the principal Regulations.

The new regulations describe the provisions that must be included in reimbursement arrangements made by a person making a claim under section 137A of the Customs and Excise Management Act 1979 (c. 2) (recovery of overpaid excise duty), the undertakings that he must give and the other requirements with which he must comply, in order that his reimbursement arrangements are not to be disregarded for the purposes of determining whether he would be unjustly enriched if his claim is met.

Regulation 10 of the principal Regulations defines certain terms used in regulations 10 to 17 of the principal Regulations.

Regulation 11 of the principal Regulations describes, in general terms, the provisions which a claimant's reimbursement arrangements must include, and the undertakings which he must give, in order that his arrangements are not to be disregarded when determining whether he would be unjustly enriched if his claim is met.

Regulation 12 of the principal Regulations describes the detailed provisions that must be included in reimbursement arrangements, in order that the arrangements are not to be disregarded when determining whether a claimant would be unjustly enriched if his claim is met.

Regulation 13 of the principal Regulations requires a claimant to repay to the Commissioners of Customs and Excise any amount which he received in order to reimburse consumers, but which he had failed to apply to that purpose within 14 days of his receipt of that amount.

Regulation 14 of the principal Regulations describes the records that the claimant must keep relating to his reimbursement arrangements.

Regulation 15 of the principal Regulations provides for the production of such records.

Regulation 16 of the principal Regulations describes in detail the undertakings that the claimant must give to comply with his reimbursement arrangements.

Regulation 17 of the principal Regulations contains provisions relating to reimbursement arrangements made before these Regulations came into force.