



# Customs and Excise Management Act 1979

## 1979 CHAPTER 2

### PART X

#### DUTIES AND DRAWBACKS—GENERAL PROVISIONS

##### *General provisions relating to imported goods*

#### **119 Delivery of imported goods on giving of security for duty**

- (1) Where it is impracticable immediately to ascertain whether any or what duty is payable in respect of any imported goods which are entered for home use, whether on importation or from warehouse, the Commissioners may, if they think fit and notwithstanding any other provision of the Customs and Excise Acts 1979, allow those goods to be delivered upon the importer giving security by deposit of money or otherwise to their satisfaction for payment of any amount unpaid which may be payable by way of duty.
- (2) The Commissioners may for the purposes of subsection (1) above treat goods as entered for home use notwithstanding that the entry does not contain all the particulars required for perfect entry if it contains as many of those particulars as are then known to the importer, and in that event the importer shall supply the remaining particulars as soon as may be to the Commissioners.
- (3) Where goods are allowed to be delivered under this section, the Commissioners shall, when they have determined the amount of duty which in their opinion is payable, give to the importer a notice specifying that amount.
- (4) On the giving of a notice under subsection (3) above the amount specified in the notice or, where any amount has been deposited under subsection (1) above, any difference between those amounts shall forthwith be paid or repaid as the case may require.

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- (5) Subject to subsection (6) below, if the importer disputes the correctness of the amount specified in a notice given to him under subsection (3) above he may at any time within 3 months of the date of the notice make such a requirement for reference to arbitration or such an application to the court as is provided for by section 127 below, and that section shall have effect accordingly.
- (6) No requirement or application shall be made by virtue of subsection (5) above until any sum falling to be paid by the importer under subsection (4) above has been paid, and where any sum so falls to be paid no interest shall be paid under section 127(2) below in respect of any period before that sum is paid.

## **120 Regulations for determining origin of goods**

- (1) The Secretary of State may by regulations make provision for determining, for the purposes of any duty or customs or excise, the origin of any goods in cases where it does not fall to be determined under a Community regulation or any Act or other instrument having the force of law.
- (2) Regulations under this section may—
  - (a) make provision as to the evidence which is to be required or is to be sufficient or the purpose of showing that goods are of a particular origin, and
  - (b) make different provision for different purposes and in relation to goods of different descriptions.
- (3) Subject to the provisions of any regulations under this section, where in connection with a duty of customs or excise chargeable on any goods any question arises as to the origin of the goods, the Commissioners may require the importer of the goods to furnish to them, in such form as they may prescribe, proof of any statement made to them as to any fact necessary to determine that question; and if such proof is not furnished to their satisfaction, the question may be determined without regard to that statement.

## **121 Power to impose restrictions where duty depends on certain matters other than use**

Where any question as to the duties of customs or excise chargeable on any imported goods depends on any matter (other than the use to be made of the goods) not reasonably ascertainable from an examination of the goods, and that question is not in law conclusively determined by the production of any certificate or other document, then, on the importation of those goods, the Commissioners may impose such conditions as they see fit for the prevention of abuse or the protection of the revenue (including conditions requiring security for the observance of any conditions so imposed).

## **122 Regulations where customs duty depends on use**

- (1) The Commissioners may, in accordance with subsection (2) below, make regulations applying in cases where any question as to the duties of customs chargeable on any goods depends on the use to be made of them.
- (2) In cases in which a Community instrument makes provision for the purpose of securing that the relevant use is made of the goods, regulations under this section may make provision for any matter which under the instrument is required or authorised to be

dealt with by the authorities of member States or which otherwise arises out of the instrument; and in other cases regulations under this section may make such provision for that purpose as appears to the Commissioners to be necessary or expedient.

### **123 Repayment of duty where goods returned or destroyed by importer**

- (1) Subject to such conditions as the Commissioners see fit to impose, where it is shown to the satisfaction of the Commissioners—
  - (a) that goods were imported in pursuance of a contract of sale and that the description, quality, state or condition of the goods was not in accordance with the contract or that the goods were damaged in transit; and
  - (b) that the importer with the consent of the seller either—
    - (i) returned the goods unused to the seller and for that purpose complied with the provisions of section 53 above as to entry in like manner as if they had been dutiable or restricted goods for the purposes of Part V of this Act; or
    - (ii) destroyed the goods unused,the importer shall be entitled to obtain from the Commissioners repayment of any duty of customs or excise paid on the importation of the goods.
- (2) Nothing in this section shall apply to goods imported on approval, or on sale or return, or on other similar terms.

### **124 Forfeiture for breach of certain conditions**

- (1) Where—
  - (a) any imported goods have been relieved from customs or excise duty chargeable on their importation or have been charged with duty at a reduced rate ; and
  - (b) any condition or other obligation required to be complied with in connection with the relief or with the charge of duty at that rate is not complied with,the goods shall be liable to forfeiture.
- (2) The provisions of this section shall apply whether or not any undertaking or security has been given for compliance with the condition or obligation or for the payment of the duty payable apart therefrom, and the forfeiture of any goods under this section shall not affect any liability of any person who has given any such undertaking or security.

### **125 Valuation of goods for purpose of ad valorem duties**

- (1) For the purposes of any duty for the time being chargeable on any imported goods by reference to their value (whether a Community customs duty or not), the value of the goods shall, subject to subsection (2) below, be taken according to the rules applicable in the case of Community customs duties, and duty shall be paid on that value.
- (2) In relation to an importation in the course of trade within the Communities the value of any imported goods for the purposes mentioned in subsection (1) above shall be determined on the basis of a delivery to the buyer at the port or place of importation into the United Kingdom.

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- (3) The Commissioners may make regulations for the purpose of giving effect to the foregoing provisions of this section, and in particular for requiring any importer or other person concerned with the importation of goods—
- (a) to furnish to the Commissioners in such form as they may require, such information as is necessary for a proper valuation of the goods and
  - (b) to produce any books of account or other documents of whatever nature relating to the purchase, importation or sale of the goods by that person.
- (4) If any person contravenes or fails to comply with any regulation made under subsection (3) above he shall be liable on summary conviction to a penalty of , $\pounds$ 50

### **126 Charge of excise duty on manufactured or composite imported articles**

- (1) Subject to subsections (2) to (4) below, if any imported goods contain as a part or ingredient thereof any article chargeable with excise duty, excise duty shall be chargeable on the goods in respect of each article according to the quantity thereof appearing to the Commissioners to be used in the manufacture or preparation of the goods
- (2) Where, in the opinion of the Treasury, it is necessary for the protection of the revenue, such imported goods shall be chargeable with the amount of excise duty with which they would be chargeable if they consisted wholly of the chargeable article or, if the goods contain more than one such article, of that one of the chargeable articles which will yield the highest amount of excise duty.
- (3) Schedule 2 to this Act shall have effect with respect to the excise duties to be charged, and the excise drawbacks to be allowed, on imported composite goods containing a dutiable part or ingredient and with respect to rebates and drawbacks of excise duties charged in accordance with that Schedule.
- (4) Subsections (1) and (2) above do not apply where other provision is made by any other enactment relating to excise duties on imported goods.
- (5) Any rebate which can be allowed by law on any article when separately charged shall be allowed in charging goods under subsection (1) or (2) above in respect of any quantity of that article used in the manufacture or preparation of the goods.

### **127 Determination of disputes as to duties on imported goods**

- (1) If, before the delivery of any imported goods out of charge, any dispute arises as to whether any or what duty is payable on those goods, the importer shall pay the amount demanded by the proper officer but may, not later than 3 months after the date of the payment—
  - (a) if the dispute is in relation to the value of the goods, require the question to be referred to the arbitration of a referee appointed by the Lord Chancellor (not being an official of any government department), whose decision shall be final and conclusive; or
  - (b) in any other case, apply to the High Court or, in Scotland, to the Court of Session for a declaration as to the amount of duty, if any, properly payable on the goods.
- (2) If on any such reference or application the referee or court determines that a lesser or no amount was properly payable in respect of duty on the goods, the amount overpaid

shall be repaid by the Commissioners, together with interest thereon from the date of the overpayment at such rate as the referee or court may determine; and any sum so repaid shall be accepted by the importer in satisfaction of all claims in respect of the importation of the goods in question and the duty payable thereon and of all damages and expenses incidental to the dispute other than the costs of the proceedings.

- (3) The procedure on any reference to a referee under this section shall be such as may be determined by the referee.

*General provisions relating to charge of duty on and delivery of goods*

**128 Restriction of delivery of goods**

- (1) During any period not exceeding 3 months specified at any time by order of the Commissioners for the purposes of this section, the Commissioners may refuse to allow the removal for home use on payment of duty, or the sending out for home use after the charging of duty, of goods of any class or description chargeable with a duty of customs or excise, notwithstanding payment of that duty, in quantities exceeding those which appear to the Commissioners to be reasonable in the circumstances.
- (2) Where the Commissioners have during any such period exercised their powers under this section with respect to goods of any class or description, then, in the case of any such goods which are removed or sent out for home use after the end of that period, the duties of customs or excise and the rates thereof chargeable on those goods shall, notwithstanding any other provision of the customs and excise Acts relating to the determination of those duties and rates, be those in force at the date of the removal or sending out of the goods.

**129 Power to remit or repay duty on denatured goods**

- (1) Subject to subsection (2) below, where any goods—
- (a) which have been imported but not yet cleared for any purpose for which they may be entered on importation ; or
  - (b) which are warehoused,
- have by reason of their state or condition ceased to be worth the full duty chargeable thereon and have been denatured in such manner as the Commissioners may direct and in accordance with such conditions as they see fit to impose, the Commissioners may remit or repay the whole or part of any duty chargeable or paid thereon, or waive repayment of the whole or part of any drawback paid on their warehousing, upon the delivery of the goods for use for such purposes as the Commissioners may allow.
- (2) Subsection (1) above does not apply in relation to spirits.
- (3) Where, whether under subsection (1) above or otherwise, any goods chargeable with duty have gone into home use after having been denatured by mixture with some other substance, any person who separates the goods from that other substance shall be guilty of an offence under this subsection and may be detained, and the goods shall be liable to forfeiture.
- (4) A person guilty of an offence under subsection (3) above shall be liable—
- (a) on summary conviction, to a penalty of the prescribed sum or of three times the value of the goods, whichever is the greater, or to imprisonment for a term not exceeding 6 months, or to both ; or

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- (b) on conviction on indictment, to a penalty of any amount, or to imprisonment for a term not exceeding 2 years, or to both.

**130 Power to remit or repay duty on goods lost or destroyed, etc.**

- (1) Where it is shown to the satisfaction of the Commissioners that any goods chargeable with any duty have been lost or destroyed by unavoidable accident—
- (a) after importation but before clearance for any purpose for which they might be entered on importation; or
  - (b) in the case of goods chargeable with a duty of excise on their manufacture or production or on their removal from the place of their manufacture or production, at any time before their removal from that place; or
  - (c) while in a warehouse or Queen's warehouse ; or
  - (d) at any time while that duty is otherwise lawfully unpaid, except when payment of that duty has become due but has been allowed by the Commissioners to be deferred; or
  - (e) at any time after drawback of that duty has been paid,
- the Commissioners may remit or repay any duty chargeable or paid thereon or waive repayment of any drawback paid on their warehousing.
- (2) The Commissioners may, at the request of the proprietor of the goods in question and subject to compliance with such conditions as the Commissioners see fit to impose, permit the destruction of, and waive payment of duty or repayment of drawback on—
- (a) any part of any warehoused goods which becomes damaged or surplus by reason of the carrying out of any permitted operation on those goods in warehouse, and any refuse resulting from any such operation ; and
  - (b) any imported goods not yet cleared for any purpose for which they might be entered on importation or any warehoused goods, being in either case goods which have by reason of their state or condition ceased to be worth the full duty chargeable thereon.

**131 Enforcement of bond in respect of goods removed without payment of duty**

If any goods which have been lawfully permitted to be removed for any purpose without payment of duty are unlawfully taken from any ship, aircraft, vehicle or place before that purpose is accomplished, the Commissioners may if they see fit enforce any bond given in respect thereof notwithstanding that any time prescribed in the bond for accomplishing that purpose has not expired.

*Drawback, allowances, duties, etc.—general*

**132 Extension of drawback**

- (1) Without prejudice to any other provision of the Customs and Excise Acts 1979 or any other Act, where drawback is allowable on the shipment of any goods as stores, the like drawback shall, subject to such conditions and restrictions as the Commissioners see fit to impose, be allowed on the warehousing in an excise warehouse of those goods for use as stores.
- (2) Without prejudice to any other provision of the Customs and Excise Acts 1979 or any other Act, where drawback would be payable on the exportation of any goods, or on

the warehousing of any goods for exportation, then, subject to such conditions and restrictions as the Commissioners see fit, the like drawback shall be payable on the shipment of any such goods as stores or, as the case may be, on their warehousing in an excise warehouse for use as stores.

### **133 General provisions as to claims for drawback**

- (1) Any claim for drawback shall be made in such form and manner and contain such particulars as the Commissioners may direct.
- (2) Where drawback has been claimed in the case of any goods subsections (3) to (6) below shall apply in relation to the claim.
- (3) No drawback shall be payable unless it is shown to the satisfaction of the Commissioners that duty in respect of the goods or of the article contained therein or used in the manufacture or preparation thereof in respect of which the claim is made has been duly paid and has not been drawn back.
- (4) No drawback shall be paid until the person entitled thereto or his agent has made a declaration in such form and manner and containing such particulars as the Commissioners may direct that the conditions on which the drawback is payable have been fulfilled.
- (5) The Commissioners may require any person who has been concerned at any stage with the goods or article—
  - (a) to furnish such information as may be reasonably necessary to enable the Commissioners to determine whether duty has been duly paid and not drawn back and for enabling a calculation to be made of the amount of drawback payable; and
  - (b) to produce any book of account or other document of whatever nature relating to the goods or article.
- (6) If any person fails to comply with any requirement made under subsection (5) above, he shall be liable on summary conviction to a penalty of £50.

### **134 Drawback and allowance on goods damaged or destroyed after shipment**

- (1) Where it is proved to the satisfaction of the Commissioners that any goods after being duly shipped for exportation have been destroyed by accident on board the exporting ship or aircraft, any amount payable in respect of the goods by way of drawback, allowance or repayment of duty shall be payable in the same manner as if the goods had been exported to their destination.
- (2) Where it is proved to the satisfaction of the Commissioners that any goods, after being duly shipped for exportation, have been materially damaged by accident on board the exporting ship or aircraft, and the goods are with the consent of and in accordance with any conditions imposed by the Commissioners reloaded or unloaded again in or brought back into the United Kingdom and either abandoned to the Commissioners or destroyed, any amount payable in respect of the goods by way of drawback, allowance or repayment of duty shall be paid as if they had been duly exported and not so reloaded, unloaded or brought back.
- (3) Notwithstanding any provision of the Customs and Excise Acts 1979 or any other Act relating to the reimportation of exported goods, the person to whom any amount is

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payable or has been paid under subsection (2) above shall not be required to pay any duty in respect of any goods relanded, unloaded or brought back under that subsection.

### **135 Time limit on payment of drawback or allowance**

No payment shall be made in respect of any drawback or allowance unless the debenture or other document authorising payment is presented for payment within 2 years from the date of the event on the happening of which the drawback or allowance became payable.

### **136 Offences in connection with claims for drawback, etc.**

- (1) If any person obtains or attempts to obtain, or does anything whereby there might be obtained by any person, any amount by way of drawback, allowance, remission or repayment of, or any rebate from, any duty in respect of any goods which is not lawfully payable or allowable in respect thereof or which is greater than the amount so payable or allowable, he shall be guilty of an offence under this subsection.
- (2) A person guilty of an offence under subsection (1) above shall be liable on summary conviction—
  - (a) if the offence was committed with intent to defraud Her Majesty, to a penalty of three times the value of the goods or £200, whichever is the greater;
  - (b) in any other case, to a penalty of three times the amount improperly obtained or allowed or which might have been improperly obtained or allowed or £100, whichever is the greater.
- (3) Any goods in respect of which an offence under subsection (1) above is committed shall be liable to forfeiture; but in the case of a claim for drawback, the Commissioners may, if they see fit, instead of seizing the goods either refuse to allow any drawback thereon or allow only such drawback as they consider proper.
- (4) Without prejudice to the foregoing provisions of this section, if, in the case of any goods upon which a claim for drawback, allowance, remission or repayment of duty has been made, it is found that those goods do not correspond with any entry made thereof in connection with that claim, the goods shall be liable to forfeiture and any person by whom any such entry or claim was made shall be liable on summary conviction to a penalty of three times the amount claimed or £100, whichever is the greater.
- (5) Subsection (4) above applies in the case of any goods upon which a claim for drawback, allowance, remission or repayment of duty has been made where it is found that the goods, if sold for home use, would realise less than the amount claimed as it applies where the finding specified in that subsection is made except that it does not apply by virtue of this subsection to any claim under—
  - (a) section 123 or 134(2) above ; or
  - (b) section 46, 61 or 64 of the Alcoholic Liquor Duties Act 1979 (remission or repayment of duty on certain spoilt liquors).

### **137 Recovery of duties and calculation of duties, drawbacks, etc.**

- (1) Without prejudice to any other provision of the Customs and Excise Acts 1979, any amount due by way of customs or excise duty may be recovered as a debt due to the Crown.



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- (2) Any duty, drawback, allowance or rebate the rate of which is expressed by reference to a specified quantity or weight of any goods shall, subject to subsection (3) below, be chargeable or allowable on any fraction of that quantity or weight of the goods, and the amount payable or allowable on any such fraction shall be calculated proportionately.
- (3) The Commissioners may for the purposes of subsection (2) above determine the fractions to be taken into account in the case of any weight or quantity.
- (4) For the purpose of calculating any amount due from or to any person under the customs and excise Acts by way of duty, drawback, allowance, repayment or rebate any fraction of a penny in that amount shall be disregarded.