



# Customs and Excise Management Act 1979

## 1979 CHAPTER 2

### PART X

#### DUTIES AND DRAWBACKS—GENERAL PROVISIONS

##### *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 [<sup>F1</sup>subsections (4)to(6)]below shall apply in relation to the claim.

<sup>F2</sup>(3) .....

*Status: Point in time view as at 14/03/2018.*

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- (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 [<sup>F3</sup>level 3 on the standard scale].

#### Textual Amendments

- F1** Words in s. 133(2) substituted (24.7.2002) 2002 c. 23, s. 21(1)(a)
- F2** S. 133(3) repealed (24.7.2002) by 2002 c. 23, ss. 21(1)(b), 141, Sch. 40 Pt.I(6)
- F3** Words substituted by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), ss. 38, 46 and (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), ss. 289F, 289G and (N.I.) by S.I. 1984/703, (N.I. 3) arts. 5, 6

### 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 relanded 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 relanded, 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 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.

#### Modifications etc. (not altering text)

- C1** S. 134 amended by S.I. 1990/2167, art. 4, Sch. para. 20

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### **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.

### **[<sup>F4</sup>136 Offences in connection with claims for drawback, etc.**

(1) If any person, with intent to defraud Her Majesty, 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—

- (a) is not lawfully payable or allowable in respect thereof; or
- (b) is greater than the amount so payable or allowable,

he shall be guilty of an offence under this subsection.

(1A) If any person, without such intent as is mentioned in subsection (1) above, does any of the things there mentioned, he shall be guilty of an offence under this subsection.

(2) A person guilty of an offence under subsection (1) above shall be liable—

- (a) on summary conviction, to a penalty of [<sup>F5</sup>the prescribed sum][<sup>F5</sup>£20,000] 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
- (b) on conviction on indictment, to a penalty of any amount, or to imprisonment for a term not exceeding 7 years, or to both;

and a person guilty of an offence under subsection (1A) above shall be liable on summary conviction to a penalty of level 3 on the standard scale or three times the amount which was or might have been improperly obtained or allowed, whichever is the greater.]

(3) Any goods in respect of which an offence under subsection (1) [<sup>F6</sup>or (1A)] 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 [<sup>F7</sup>level 3 on the standard scale], 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 <sup>M1</sup>Alcoholic Liquor Duties Act 1979 (remission or repayment of duty on certain spoilt liquors).

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[<sup>F8</sup>(6) Without prejudice to section 6(5) of the European Communities Act 1972 (which provides for the application of certain enactments, including this section, if the Commissioners are charged or entrusted with the performance of certain duties in relation to the payment of refunds or allowances on goods exported or to be exported from the United Kingdom)—

- (a) references in this section to amounts by way of drawback include amounts payable by or on behalf of the Secretary of State, the Scottish Ministers, the National Assembly for Wales or (in relation to Northern Ireland) the Department of Agriculture and Rural Development by virtue of Community arrangements to which section 6(3) of the European Communities Act 1972 applies; and
- (b) in relation to such amounts, subsection (3) above shall have effect with the omission of the words from “but in the case” onwards.]

#### Textual Amendments

- F4** S. 136(1)(1A)(2) substituted for s. 136(1)(2) by [Finance Act 1988 \(c. 39, SIF 40:1\)](#), **s. 12(3)(6)**
- F5** S. 136(2)(a): sum substituted for words (E.W.) (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), **Sch. 2 para. 1(16)** (with reg. 5(1))
- F6** Words inserted by [Finance Act 1988 \(c. 39, SIF 40:1\)](#), **s. 12(3)(6)**
- F7** Words substituted by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 38, 46** and (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289F, 289G** and (N.I.) by S.I. 1984/703, (N.I. 3) arts. 5, 6
- F8** S. 136(6) substituted (15.11.2001) by S.I. 2001/3686, **reg. 6(7)(b)**

#### Marginal Citations

- M1** 1979 c. 4

### 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.
- (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.

<sup>F9</sup>(4) . . . . .

#### Textual Amendments

- F9** S. 137(4) omitted (21.7.2008) by virtue of [Finance Act 2008 \(c. 9\)](#), **s. 162**

#### Modifications etc. (not altering text)

- C2** S. 137(1) modified (19.3.1997) by 1997 c. 16, **ss. 12(6)(c)**, 15

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**[<sup>F10</sup>137A Recovery of overpaid excise duty.**

- (1) Where a person pays to the Commissioners an amount by way of excise duty which is not due to them, the Commissioners are liable to repay that amount.
- (2) The Commissioners shall not be required to make any such repayment unless a claim is made to them in such form, and supported by such documentary evidence, as may be prescribed by them by regulations; and regulations under this subsection may make different provision for different cases.
- (3) It is a defence to a claim for repayment that the repayment would unjustly enrich the claimant.

[ The Commissioners shall not be liable, on a claim made under this section, to repay <sup>F11</sup>(4) any amount paid to them more than [<sup>F12</sup>4 years] before the making of the claim.]

- (5) Except as provided by this section the Commissioners are not liable to repay an amount paid to them by way of excise duty by reason of the fact that it was not due to them.

[ This section does not apply in a case where the Commissioners are—

- <sup>F13</sup>(6) (a) entitled to pay an amount under Part 1 of Schedule 3 to the Finance Act 2001,  
or  
(b) required to repay an amount under Part 3 of that Schedule.]]

**Textual Amendments**

- F10** S. 137A inserted (1.12.1995) by 1995 c. 4, s. 20(1)(5); S.I. 1995/2892, art. 2  
**F11** S. 137A(4) substituted (19.3.1997) by 1997 c. 16, s. 50(1), Sch. 5 para. 5(1)  
**F12** Words in s. 137A(4) substituted (1.4.2011) by Finance (No. 3) Act 2010 (c. 33), s. 29(2), Sch. 13 para. 7; S.I. 2011/777, art. 2 (with art. 7)  
**F13** S. 137(6) inserted (1.11.2001) by 2001 c. 9, s. 15, Sch. 3 para. 15; S.I. 2001/3300, art. 2

**Modifications etc. (not altering text)**

- C3** S. 137A modified (19.3.1997) by 1997 c. 16, ss. 12(6), 15  
power to modify conferred (19.3.1997) by 1997 c. 16, s. 50(1), Sch. 5 Pt. I para. 3  
**C4** S. 137A(1) modified (1.4.2010) by The Excise Goods (Holding, Movement and Duty Point) Regulations 2010 (S.I. 2010/593), regs. 2, 82(4), 85(5)  
**C5** S. 137A(1) modified (28.9.2001) by S.I. 2001/3022, reg. 6  
**C6** S. 137(3) amended (19.3.1997) by 1997 c. 16, s. 50(1), Sch. 5 Pt. I para. 1(a)

**Status:**

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**Changes to legislation:**

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