



# Customs and Excise Management Act 1979

## 1979 CHAPTER 2

### PART XI

#### DETENTION OF PERSONS, FORFEITURE AND LEGAL PROCEEDINGS

##### *Forfeiture*

#### **139 Provisions as to detention, seizure and condemnation of goods, etc.**

- (1) Any thing liable to forfeiture under the customs and excise Acts may be seized or detained by any officer or constable or any member of Her Majesty's armed forces or coastguard.
- (2) Where any thing is seized or detained as liable to forfeiture under the customs and excise Acts by a person other than an officer, that person shall, subject to subsection (3) below, either—
  - (a) deliver that thing to the nearest convenient office of customs and excise; or
  - (b) if such delivery is not practicable, give to the Commissioners at the nearest convenient office of customs; and excise notice in writing of the seizure or detention with full particulars of the thing seized or detained.
- (3) Where the person seizing or detaining any thing as liable to forfeiture under the customs and excise Acts is a constable and that thing is or may be required for use in connection with any proceedings to be brought otherwise than under those Acts it may, subject to subsection (4) below, be retained in the custody of the police until either those proceedings are completed or it is decided that no such proceedings shall be brought.
- (4) The following provisions apply in relation to things retained in the custody of the police by virtue of subsection (3) above, that is to say—
  - (a) notice in writing of the seizure or detention and of the intention to retain the thing in question in the custody of the police, together with full particulars as

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- to that thing, shall be given to the Commissioners at the nearest convenient office of customs and excise ;
- (b) any officer shall be permitted to examine that thing and take account thereof at any time while it remains in the custody of the police ;
  - (c) nothing in the Police (Property) Act 1897 shall apply in relation to that thing.
- (5) Subject to subsections (3) and (4) above and to Schedule 3 to this Act, any thing seized or detained under the customs and excise Acts shall, pending the determination as to its forfeiture or disposal, be dealt with, and, if condemned or deemed to have been condemned or forfeited, shall be disposed of in such manner as the Commissioners may direct.
- (6) Schedule 3 to this Act shall have effect for the purpose of forfeitures, and of proceedings for the condemnation of any thing as being forfeited, under the customs and excise Acts.
- (7) If any person, not being an officer, by whom any thing is seized or detained or who has custody thereof after its seizure or detention, fails to comply with any requirement of this section or with any direction of the Commissioners given thereunder, he shall be liable on summary conviction to a penalty of £50.
- (8) Subsections (2) to (7) above shall apply in relation to any dutiable goods seized or detained by any person other than an officer notwithstanding that they were not so seized as liable to forfeiture under the customs and excise Acts.

#### **140 Forfeiture of spirits**

Where, by any provision of, or of any instrument made under, the Customs and Excise Acts 1979, any spirits become liable to forfeiture by reason of some offence committed by a revenue trader, then—

- (a) where that provision specifies the quantity of those spirits but does not specify the spirits so liable, the Commissioners may seize the equivalent of that quantity computed at proof from any spirits in the stock of that trader; and
- (b) where that provision specifies the spirits so liable the Commissioners may, if they think fit, seize instead of the spirits so specified an equivalent quantity computed at proof of any other spirits in the stock of that trader.

#### **141 Forfeiture of ships, etc. used in connection with goods liable to forfeiture**

- (1) Without prejudice to any other provision of the Customs and Excise Acts 1979, where any thing has become liable to forfeiture under the customs and excise Acts—
- (a) any ship, aircraft, vehicle, animal, container (including any article of passengers' baggage) or other thing whatsoever which has been used for the carriage, handling, deposit or concealment of the thing so liable to forfeiture, either at a time when it was so liable or for the purposes of the commission of the offence for which it later became so liable ; and
  - (b) any other thing mixed, packed or found with the thing so liable,
- shall also be liable to forfeiture.
- (2) Where any ship, aircraft, vehicle or animal has become liable to forfeiture under the customs and excise Acts, whether by virtue of subsection (1) above or otherwise, all tackle, apparel or furniture thereof shall also be liable to forfeiture.

- (3) Where any of the following, that is to say—
- (a) any ship not exceeding 100 tons register ;
  - (b) any aircraft; or
  - (c) any hovercraft,

becomes liable to forfeiture under this section by reason of having been used in the importation, exportation or carriage of goods contrary to or for the purpose of contravening any prohibition or restriction for the time being in force with respect to those goods, or without payment having been made of, or security given for, any duty payable thereon, the owner and the master or commander shall each be liable on summary conviction to a penalty equal to the value of the ship, aircraft or hovercraft or £500, whichever is the less.

#### **142 Special provision as to forfeiture of larger ships**

- (1) Notwithstanding any other provision of the Customs and Excise Acts 1979, a ship of 250 or more tons register shall not be liable to forfeiture under or by virtue of any provision of the Customs and Excise Acts 1979, except under section 88 above, unless the offence in respect of or in connection with which the forfeiture is claimed—
- (a) was substantially the object of the voyage during which the offence was committed ; or
  - (b) was committed while the ship was under chase by a vessel in the service of Her Majesty after failing to bring to when properly summoned to do so by that vessel.
- (2) For the purposes of this section, a ship shall be deemed to have been properly summoned to bring to—
- (a) if the vessel making the summons did so by means of an international signal code or other recognised means and while flying her proper ensign ; and
  - (b) in the case of a ship which is not a British ship, if at the time when the summons was made the ship was within 3 nautical miles of the coast of the United Kingdom.
- (3) For the purposes of this section, all hovercraft (of whatever size) shall be treated as ships of less than 250 tons register.
- (4) The exemption from forfeiture of any ship under this section shall not affect any liability to forfeiture of goods carried therein.

#### **143 Penalty in lieu of forfeiture of larger ship where responsible officer implicated in offence**

- (1) Where any ship of 250 or more tons register would, but for section 142 above, be liable to forfeiture for or in connection with any offence under the customs and excise Acts and, in the opinion of the Commissioners, a responsible officer of the ship is implicated either by his own act or by neglect in that offence, the Commissioners may fine that ship such sum not exceeding £50 as they see fit.
- (2) For the purposes of this section, all hovercraft (of whatever size) shall be treated as ships of less than 250 tons register.
- (3) Where any ship is liable to a fine under subsection (1) above but the Commissioners consider that fine an inadequate penalty for the offence, they may take proceedings in

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accordance with Schedule 3 to this Act, in like manner as they might but for section 142 above have taken proceedings for the condemnation of the ship if notice of claim had been given in respect thereof, for the condemnation of the ship in such sum not exceeding £500 as the court may see fit.

- (4) Where any fine is to be imposed or any proceedings are to be taken under this section, the Commissioners may require such sum as they see fit, not exceeding £50 or, as the case may be, £500, to be deposited with them to await their final decision or, as the case may be, the decision of the court, and may detain the ship until that sum has been so deposited.
- (5) No claim shall lie against the Commissioners for damages in respect of the payment of any deposit or the detention of any ship under this section.
- (6) For the purposes of this section—
  - (a) "responsible officer", in relation to any ship, means the master, a mate or an engineer of the ship and, in the case of a ship carrying a passenger certificate, the purser or chief steward and, in the case of a ship manned wholly or partly by Asiatic seamen, the serang or other leading Asiatic officer of the ship;
  - (b) without prejudice to any other grounds upon which a responsible officer of any ship may be held to be implicated by neglect, he may be so held if goods not owned to by any member of the crew are discovered in a place under that officer's supervision in which they could not reasonably have been put if he had exercised proper care at the time of the loading of the ship or subsequently.

#### **144 Protection of officers, etc. in relation to seizure and detention of goods, etc.**

- (1) Where, in any proceedings for the condemnation of any thing seized as liable to forfeiture under the customs and excise Acts, judgment is given for the claimant, the court may, if it sees fit, certify that there were reasonable grounds for the seizure.
- (2) Where any proceedings, whether civil or criminal, are brought against the Commissioners, a law officer of the Crown or any person authorised by or under the Customs and Excise Acts 1979 to seize or detain any thing liable to forfeiture under the customs and excise Acts on account of the seizure or detention of any thing, and judgment is given for the plaintiff or prosecutor, then if either—
  - (a) a certificate relating to the seizure has been granted under subsection (1) above ; or
  - (b) the court is satisfied that there were reasonable grounds for seizing or detaining that thing under the customs and excise Acts,
 the plaintiff or prosecutor shall not be entitled to recover any damages or costs and the defendant shall not be liable to any punishment.
- (3) Nothing in subsection (2) above shall affect any right of any person to the return of the thing seized or detained or to compensation in respect of any damage to the thing or in respect of the destruction thereof.
- (4) Any certificate under subsection (1) above may be proved by the production of either the original certificate or a certified copy thereof purporting to be signed by an officer of the court by which it was granted.