

SCHEDULES

SCHEDULE 5

Section 12.

PROTECTION OF THE REVENUES DERIVED FROM EXCISE DUTIES

After Part IX of the Customs and Excise Management Act 1979 there shall be inserted—

“PART IXA

PROTECTION OF THE REVENUES DERIVED FROM EXCISE DUTIES

118A Duty of revenue traders to keep records

- (1) The Commissioners may by regulations require every revenue trader—
 - (a) to keep such records as may be prescribed in the regulations; and
 - (b) to preserve those records for such period not exceeding six years as may be prescribed in the regulations or for such lesser period as the Commissioners may require.
- (2) Regulations under this section—
 - (a) may make different provision for different cases; and
 - (b) may be framed by reference to such records as may be specified in any notice published by the Commissioners in pursuance of the regulations and not withdrawn by a further notice.
- (3) Any duty imposed under this section to preserve records may be discharged by the preservation of the information contained therein by such means as the Commissioners may approve.
- (4) Where any information is preserved in accordance with subsection (3) above, a copy of any document forming part of the records in question shall, subject to the following provisions of this section, be admissible in evidence in any proceedings, whether civil or criminal, to the same extent as the records themselves.
- (5) The Commissioners may, as a condition of approving under subsection (3) above any means of preserving information contained in any records, impose such reasonable requirements as appear to them necessary for securing that the information will be as readily available to them as if the records themselves had been preserved.
- (6) A statement contained in a document produced by a computer shall not by virtue of subsection (4) above be admissible in evidence—
 - (a) in civil proceedings in England and Wales, except in accordance with sections 5 and 6 of the Civil Evidence Act 1968;
 - (b) in criminal proceedings in England and Wales, except in accordance with sections 69 and 70 of the Police and Criminal Evidence Act 1984 and Part II of the Criminal Justice Act 1988;

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- (c) in civil proceedings in Scotland, except in accordance with sections 13 and 14 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968;
 - (d) in criminal proceedings in Scotland, except in accordance with the said sections 13 and 14, which shall, for the purposes of this section, apply with the necessary modifications to such proceedings;
 - (e) in civil proceedings in Northern Ireland, except in accordance with sections 2 and 3 of the Civil Evidence Act (Northern Ireland) 1971; and
 - (f) in criminal proceedings in Northern Ireland, except in accordance with Article 68 of the Police and Criminal Evidence (Northern Ireland) Order 1989 and Part II of the Criminal Justice (Evidence Etc.) (Northern Ireland) Order 1988.
- (7) Notwithstanding the preceding provisions of this section, in criminal proceedings the court may, for special cause, require oral evidence to be given of any matter of which evidence could ordinarily be given by means of a certificate under—
- (a) section 5(4) of the Civil Evidence Act 1968,
 - (b) section 13(4) of the Law Reform (Miscellaneous Provisions) Scotland Act 1968, or
 - (c) section 2(4) of the Civil Evidence Act (Northern Ireland) 1971.

118B Duty of revenue traders and others to furnish information and produce documents

- (1) Every revenue trader shall—
- (a) furnish to the Commissioners, within such time and in such form as they may reasonably require, such information relating to—
 - (i) any goods or services supplied by or to him in the course or furtherance of a business, or
 - (ii) any goods in the importation or exportation of which he is concerned in the course or furtherance of a business,
 as they may reasonably specify; and
 - (b) upon demand made by an officer, produce or cause to be produced for inspection by that officer—
 - (i) at the principal place of business of the revenue trader or at such other place as the officer may reasonably require, and
 - (ii) at such time as the officer may reasonably require,
 any documents relating to the goods or services or to the supply, importation or exportation.
- (2) Where, by virtue of subsection (1) above, an officer has power to require the production of any documents from a revenue trader—
- (a) he shall have the like power to require production of the documents concerned from any other person who appears to the officer to be in possession of them; but
 - (b) if that other person claims a lien on any document produced by him, the production shall be without prejudice to the lien.
- (3) For the purposes of this section, the documents relating to the supply of goods or services, or the importation or exportation of goods, in the course or furtherance of any business shall be taken to include—
- (a) any profit and loss account and balance sheet, and
 - (b) any records required to be kept by virtue of section 118A above,

relating to that business.

- (4) An officer may take copies of, or make extracts from, any document produced under subsection (1) or (2) above.
- (5) If it appears to an officer to be necessary to do so, he may, at a reasonable time and for a reasonable period, remove any document produced under subsection (1) or (2) above and shall, on request, provide a receipt for any document so removed.
- (6) Where a lien is claimed on a document produced under subsection (2) above, the removal of the document under subsection (5) above shall not be regarded as breaking the lien.
- (7) Where a document removed by an officer under subsection (5) above is reasonably required for the proper conduct of a business he shall, as soon as practicable, provide a copy of the document, free of charge, to the person by whom it was produced or caused to be produced.
- (8) Where any documents removed under the powers conferred by this section are lost or damaged, the Commissioners shall be liable to compensate their owner for any expenses reasonably incurred by him in replacing or repairing the documents.

118C Entry and search of premises and persons

- (1) For the purpose of exercising any powers under the customs and excise Acts an officer may at any reasonable time enter premises used in connection with the carrying on of a business.
- (2) Where an officer has reasonable cause to believe that any premises are used in connection with the supply, importation or exportation of goods of a class or description chargeable with a duty of excise and that any such goods are on those premises, he may at any reasonable time enter and inspect those premises and inspect any goods found on them.
- (3) If a justice of the peace or, in Scotland, a justice (within the meaning of section 462 of the Criminal Procedure (Scotland) Act 1975) is satisfied on information on oath—
 - (a) that there is reasonable ground for suspecting that a fraud offence which appears to be of a serious nature is being, has been or is about to be committed on any premises, or
 - (b) that evidence of the commission of such an offence is to be found there,he may issue a warrant in writing authorising, subject to subsections (6) and (7) below, any officer to enter those premises, if necessary by force, at any time within the period of one month beginning with the date of the issue of the warrant and search them.
- (4) Any officer who enters premises under the authority of a warrant under subsection (3) above may—
 - (a) take with him such other persons as appear to him to be necessary;
 - (b) seize and remove any documents or other things whatsoever found on the premises which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of a fraud offence which appears to him to be of a serious nature; and
 - (c) search or cause to be searched any person found on the premises whom he has reasonable cause to believe to be in possession of any such documents or other things;

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but no woman or girl shall be searched by virtue of this subsection except by a woman.

- (5) In subsections (3) and (4) above “a fraud offence” means an offence under any provision of section 167(1), 168 or 170 below.
- (6) The powers conferred by a warrant under this section shall not be exercisable—
- (a) by more than such number of officers as may be specified in the warrant; nor
 - (b) outside such times of day as may be so specified; nor
 - (c) if the warrant so provides, otherwise than in the presence of a constable in uniform.
- (7) An officer seeking to exercise the powers conferred by a warrant under this section or, if there is more than one such officer, that one of them who is in charge of the search shall provide a copy of the warrant endorsed with his name as follows—
- (a) if the occupier of the premises concerned is present at the time the search is to begin, the copy shall be supplied to the occupier;
 - (b) if at the time the occupier is not present but a person who appears to the officer to be in charge of the premises is present, the copy shall be supplied to that person; and
 - (c) if neither paragraph (a) nor paragraph (b) above applies, the copy shall be left in a prominent place on the premises.

118D Order for access to recorded information, etc

- (1) Where, on an application by an officer, a justice of the peace or, in Scotland, a justice (within the meaning of section 462 of the Criminal Procedure (Scotland) Act 1975) is satisfied that there are reasonable grounds for believing—
- (a) that an offence in connection with a duty of excise is being, has been or is about to be committed, and
 - (b) that any recorded information (including any document of any nature whatsoever) which may be required as evidence for the purpose of any proceedings in respect of such an offence is in the possession of any person,
- he may make an order under this section.
- (2) An order under this section is an order that the person who appears to the justice to be in possession of the recorded information to which the application relates shall—
- (a) give an officer access to it, and
 - (b) permit an officer to remove and take away any of it which he reasonably considers necessary,
- not later than the end of the period of seven days beginning with the date of the order or the end of such longer period as the order may specify.
- (3) The reference in subsection (2)(a) above to giving an officer access to the recorded information to which the application relates includes a reference to permitting the officer to take copies of it or to make extracts from it.
- (4) Where the recorded information consists of information contained in a computer, an order under this section shall have effect as an order to produce the information in a form in which it is visible and legible and, if the officer wishes to remove it, in a form in which it can be removed.
- (5) This section is without prejudice to sections 118B and 118C above.

118E Procedure when documents etc. are removed

- (1) An officer who removes anything in the exercise of a power conferred by or under section 118C or 118D above shall, if so requested by a person showing himself—
 - (a) to be the occupier of premises from which it was removed, or
 - (b) to have had custody or control of it immediately before the removal,provide that person with a record of what he removed.
- (2) The officer shall provide the record within a reasonable time from the making of the request for it.
- (3) Subject to subsection (7) below, if a request for permission to be granted access to anything which—
 - (a) has been removed by an officer, and
 - (b) is retained by the Commissioners for the purposes of investigating an offence,is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed or by someone acting on behalf of such a person, the officer shall allow the person who made the request access to it under the supervision of an officer.
- (4) Subject to subsection (7) below, if a request for a photograph or copy of any such thing is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed, or by someone acting on behalf of such a person, the officer shall—
 - (a) allow the person who made the request access to it under the supervision of an officer for the purpose of photographing it or copying it, or
 - (b) photograph or copy it, or cause it to be photographed or copied.
- (5) Where anything is photographed or copied under subsection (4)(b) above, the photograph or copy shall be supplied to the person who made the request.
- (6) The photograph or copy shall be supplied within a reasonable time from the making of the request.
- (7) There is no duty under this section to grant access to, or to supply a photograph or copy of, anything if the officer in overall charge of the investigation for the purposes of which it was removed has reasonable grounds for believing that to do so would prejudice—
 - (a) that investigation;
 - (b) the investigation of an offence other than the offence for the purposes of the investigation of which the thing was removed; or
 - (c) any criminal proceedings which may be brought as a result of—
 - (i) the investigation of which he is in charge; or
 - (ii) any such investigation as is mentioned in paragraph (b) above.
- (8) Any reference in this section to the officer in overall charge of the investigation is a reference to the person whose name and address are endorsed on the warrant or order concerned as being the officer so in charge.

118F Failure of officer to comply with requirements under section 118E

- (1) Where, on an application made as mentioned in subsection (2) below, the appropriate judicial authority is satisfied that a person has failed to comply with a requirement

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imposed by section 118E above, the authority may order that person to comply with the requirement within such time and in such manner as may be specified in the order.

- (2) An application under subsection (1) above shall be made—
- (a) in the case of a failure to comply with any of the requirements imposed by subsections (1) and (2) of section 118E above, by the occupier of the premises from which the thing in question was removed or by the person who had custody or control of it immediately before it was so removed, and
 - (b) in any other case, by the person who has such custody or control.
- (3) In this section “the appropriate judicial authority” means—
- (a) in England and Wales, a magistrates' court;
 - (b) in Scotland, the sheriff; and
 - (c) in Northern Ireland, a court of summary jurisdiction, as defined in Article 2(2) (a) of the Magistrates' Courts (Northern Ireland) Order 1981.
- (4) Any application for an order under this section—
- (a) in England and Wales, shall be made by way of complaint; or
 - (b) in Northern Ireland, shall be made by way of civil proceedings on complaint.
- (5) Sections 21 and 42(2) of the Interpretation Act (Northern Ireland) 1954 (rules and orders regulating procedure of courts etc and assignment of business to particular courts) shall apply as if any reference in those provisions to any enactment included a reference to this section.

118G Offences under Part IXA

If any person fails to comply with any requirement imposed under section 118A(1) or section 118B above, he shall be liable on summary conviction to a penalty of any amount not exceeding level 5 on the standard scale.”