



# Finance Act 1994

## 1994 CHAPTER 9

### PART I

#### CUSTOMS AND EXCISE

#### CHAPTER III

##### CUSTOMS: ENFORCEMENT POWERS

### 20 Interpretation, etc.

- (1) This Chapter applies to any person carrying on a trade or business which consists of or includes any of the following activities—
  - (a) importing or exporting any goods of a class or description subject to a duty of customs (whether or not in fact chargeable with that duty);
  - (b) producing, manufacturing or applying a process to them;
  - (c) buying, selling or dealing in them;
  - (d) handling or storing them;
  - (e) financing or facilitating any activity mentioned in paragraphs (a) to (d) above.
- (2) In subsection (1) above “duty of customs” includes any agricultural levy of the European Community.
- (3) In this Chapter—
  - (a) “customs goods” means any goods mentioned in paragraph (a) of subsection (1) above; and
  - (b) any reference to the business of a person to whom this Chapter applies is a reference to the trade or business carried on by him as mentioned in that subsection.
- (4) This Chapter shall have effect and be construed as if it were contained in the <sup>M1</sup>Customs and Excise Management Act 1979.

*Status: Point in time view as at 31/08/1994.*

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- (5) In consequence of the provision made by sections 21 to 27 below, any power under—
- (a) section 75A, 75B or 75C of the Customs and Excise Management Act 1979 to require a person importing or exporting goods to keep or preserve records, or
  - (b) section 77A, 77B or 77C of that Act to require a person to furnish information or produce documents relating to imported or exported goods,
- shall cease to be exercisable in relation to a person to the extent that the goods in question are customs goods.

#### Marginal Citations

M1 1979 c. 2.

## 21 Requirements about keeping records.

- (1) The Commissioners may by regulations require any person to whom this Chapter applies—
  - (a) to keep such records as may be prescribed in the regulations; and
  - (b) to preserve those records—
    - (i) for such period not exceeding four years as may be prescribed in the regulations, or
    - (ii) for such lesser period as the Commissioners may require.
- (2) The Commissioners may also require any person mentioned in subsection (3) below—
  - (a) to keep such records as they may specify; and
  - (b) to preserve those records for such period not exceeding four years as they may require.
- (3) The person referred to is any person who—
  - (a) is not carrying on a trade or business which consists of or includes the importation or exportation of customs goods, but
  - (b) is concerned in some other capacity in such importation or exportation.
- (4) A duty imposed under subsection (1)(b) or (2)(b) above to preserve records may be discharged by the preservation of the information contained in them by such means as the Commissioners may approve.
- (5) On giving approval under subsection (4) above, the Commissioners may 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) Regulations under this section may—
  - (a) make different provision for different cases; and
  - (b) 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.
- (7) Any person who fails to comply with a requirement imposed by virtue of this section shall be liable on summary conviction to a penalty not exceeding level 3 on the standard scale.

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## 22 Records and rules of evidence.

- (1) Where any information is preserved by approved means as mentioned in section 21(4) above, a copy of any document in which it is contained shall, subject to subsection (2) below, be admissible in evidence in any proceedings, whether civil or criminal, to the same extent as the records themselves.
- (2) A statement contained in a document produced by a computer shall not by virtue of subsection (1) above be admissible in evidence—
  - (a) in civil proceedings in England and Wales, except in accordance with sections 5 and 6 of the <sup>M2</sup>Civil Evidence Act 1968;
  - (b) in criminal proceedings in England and Wales, except in accordance with sections 69 and 70 of the <sup>M3</sup>Police and Criminal Evidence Act 1984 and Part II of the <sup>M4</sup>Criminal Justice Act 1988;
  - (c) in civil proceedings in Scotland, except in accordance with sections 5 and 6 of the <sup>M5</sup>Civil Evidence (Scotland) Act 1988;
  - (d) in criminal proceedings in Scotland, except in accordance with Schedule 3 to the <sup>M6</sup>Prisoners and Criminal Proceedings (Scotland) Act 1993;
  - (e) in civil proceedings in Northern Ireland, except in accordance with sections 2 and 3 of the <sup>M7</sup>Civil Evidence Act (Northern Ireland) 1971; and
  - (f) in criminal proceedings in Northern Ireland, except in accordance with Article 68 of the <sup>M8</sup>Police and Criminal Evidence (Northern Ireland) Order 1989 and Part II of the <sup>M9</sup>Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988.

### Marginal Citations

<b>M2</b>	1968 c. 64.
<b>M3</b>	1984 c. 60.
<b>M4</b>	1988 c. 33.
<b>M5</b>	1988 c. 32.
<b>M6</b>	1993 c. 9.
<b>M7</b>	1971 c. 36 (N.I.).
<b>M8</b>	S.I. 1989/1341 (N.I. 12).
<b>M9</b>	S.I. 1988/1847 (N.I. 17).

## 23 Furnishing of information and production of documents.

- (1) Every person to whom this Chapter applies shall furnish the Commissioners, within such time and in such form as they may reasonably require, with such information relating to his business as they may reasonably specify.
- (2) Every person to whom this Chapter applies shall, if required to do so by an officer, produce or cause to be produced for inspection by the officer—
  - (a) at that person's principal place of business or at such other place as the officer may reasonably require, and
  - (b) at such time as the officer may reasonably require, any documents which relate to his business.
- (3) Where it appears to an officer that any documents which relate to a business of a person to whom this Chapter applies are in the possession of another person, the officer may

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require that other person, at such time and place as the officer may reasonably require, to produce those documents or cause them to be produced.

- (4) For the purposes of this section, the documents which relate to a business of a person to whom this Chapter applies shall be taken to include—
- (a) any profit and loss account and balance sheet, and
  - (b) any documents required to be kept by virtue of section 21(1) above.
- (5) Every person mentioned in section 21(3) above shall furnish the Commissioners, within such time and in such form as they may reasonably require, with such information relating to the importation or exportation of customs goods in which he is concerned as they may reasonably specify.
- (6) Every person mentioned in section 21(3) above shall, if required to do so by an officer, produce or cause to be produced for inspection by the officer at such time and place as the officer may reasonably require, any documents which relate to the importation or exportation of customs goods in which he is concerned.
- (7) An officer may take copies of, or make extracts from, any document produced under this section.
- (8) 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 this section.
- (9) Where a document is removed under subsection (8) above—
- (a) if the person from whom the document is removed so requests, he shall be given a record of what was removed;
  - (b) if the document is reasonably required for the proper conduct of any business, the person by whom the document was produced or caused to be produced shall be provided as soon as practicable with a copy of the document free of charge;
  - (c) if the document is lost or damaged, the Commissioners shall be liable to compensate the owner of it for any expenses reasonably incurred by him in replacing or repairing it.
- (10) If a person claims a lien on any document produced by him under subsection (3) or (6) above—
- (a) the production of the document shall be without prejudice to the lien; and
  - (b) the removal of the document under subsection (8) above shall not be regarded as breaking the lien.
- (11) Any person who fails to comply with a requirement imposed under this section shall be liable on summary conviction to a penalty not exceeding level 3 on the standard scale.

## **24 Power of entry.**

Where an officer has reasonable cause to believe that—

- (a) any premises are used in connection with a business of a person to whom this Chapter applies, and
- (b) any customs goods are on those premises,

he may at any reasonable time enter and inspect those premises and inspect any goods found on them.

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## 25 Order for production of documents.

- (1) Where, on an application by an officer, a justice is satisfied that there are reasonable grounds for believing—
  - (a) that an offence in connection with a duty of customs is being, has been or is about to be committed, and
  - (b) that any information or documents 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 information or documents to which the application relates shall—
  - (a) furnish an officer with the information or produce the document,
  - (b) permit an officer to take copies of or make extracts of any document produced, and
  - (c) permit an officer to remove any document 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) In this section “justice” means a justice of the peace or, in relation to Scotland, a justice within the meaning of section 462 of the<sup>M10</sup>Criminal Procedure (Scotland) Act 1975.

### Marginal Citations

M10 1975 c. 21.

## 26 Procedure when documents are removed.

- (1) An officer who removes any document in the exercise of a power conferred under section 25 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 any document 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 charge of the investigation by a person who had custody or control of the document 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 document is made to the officer in charge of the investigation by a person who had

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- custody or control of the document 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 any document 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, any document if the officer in 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 document 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 charge of the investigation is a reference to the person whose name and address are endorsed on the order concerned as being the officer in charge of it.

**27 Failure of officer to comply with requirements under section 26.**

- (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 imposed by section 26 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 26 above, by the occupier of the premises from which the document 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 <sup>M11</sup>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 upon complaint.
- (5) Sections 21 and 42(2) of the <sup>M12</sup>Interpretation Act (Northern Ireland) 1954 (rules and orders regulating procedure of courts etc and assignment of business to particular

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courts) shall apply as if any reference in those provisions to any enactment included a reference to this section.

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**Marginal Citations**

**M11** S.I. 1981/1675 (N.I. 26).

**M12** 1954 c. 33 (N.I.).

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