



# Vehicle Excise and Registration Act 1994

## 1994 CHAPTER 22

### PART III

#### OFFENCES

##### *Offence of not paying duty chargeable at higher rate*

#### **37 Penalty for not paying duty chargeable at higher rate**

(1) Where—

- (a) a vehicle licence has been taken out for a vehicle at any rate of vehicle excise duty,
  - (b) at any time while the licence is in force the vehicle is so used that duty at a higher rate becomes chargeable in respect of the licence for the vehicle under section 15, and
  - (c) duty at that higher rate was not paid before the vehicle was so used,
- the person so using the vehicle is guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction (or, in Scotland, on indictment or on summary conviction) to an excise penalty of—

- (a) level 3 on the standard scale (or, in Scotland, the statutory maximum), or
- (b) five times the difference between the duty actually paid on the licence and the amount of the duty at the higher rate,

whichever is the greater.

#### **38 Additional liability for keeper of vehicle chargeable at higher rate**

(1) Where the person convicted of an offence under section 37 is the person by whom the vehicle in respect of which the offence was committed was kept at the time at which it was committed, the court shall (in addition to any penalty which it may impose under that section) order him to pay the amount specified in subsection (2).

- (2) The amount referred to in subsection (1) is an amount equal to one-twelfth of the difference between—
- (a) the rate of duty at which the licence in relation to which the offence was committed was taken out, and
  - (b) the relevant higher rate of duty (within the meaning of section 39) in relation to the vehicle,
- for each month, or part of a month, in the relevant period (within the meaning of section 40).
- (3) A vehicle is to be taken for the purposes of subsection (2) to have belonged throughout the relevant period to the description of vehicle to which it belonged for the purposes of vehicle excise duty at the date on which the offence was committed, except so far as it is proved to have fallen within some other description for the whole of any month or part of a month in that period.
- (4) Where a person is convicted of more than one offence under section 37 in respect of the same vehicle (whether or not in the same proceedings), the court shall (in calculating the amount payable under this section in respect of any of the offences) reduce the amount in relation to any period by any amount ordered to be paid under this section in relation to the period in respect of any other such offence.

### **39 Relevant higher rate of duty for purposes of section 38**

- (1) For the purposes of section 38 the relevant higher rate of duty in relation to a vehicle is the rate provided by this section.
- (2) Where—
- (a) at the time of the offence the vehicle had a plated gross weight or plated train weight (or, in Northern Ireland, a relevant maximum weight or relevant maximum train weight) which exceeded that which it had when the licence in relation to which the offence was committed was taken out, and
  - (b) the licence was taken out at the rate applicable to the previous weight,
- the relevant higher rate of duty is the rate which would have been applicable had the licence been taken out by reference to the higher weight.
- (3) Where—
- (a) the vehicle is a tractive unit,
  - (b) the licence in relation to which the offence was committed was taken out at a rate applicable to the use of the vehicle—
    - (i) only with semi-trailers having not fewer than two axles, or
    - (ii) only with semi-trailers having not fewer than three axles, and
  - (c) the offence consisted in using the vehicle with a semi-trailer with a smaller number of axles,
- the relevant higher rate of duty is the rate which would have been applicable had the licence been taken out by reference to the use of the vehicle which constituted the offence.
- (4) Where—
- (a) the licence in relation to which the offence was committed was taken out at a rate applicable, by virtue of paragraph 13 of Schedule 1, to a weight lower than

the plated gross weight or plated train weight (or, in Northern Ireland, relevant maximum weight or relevant maximum train weight) of the vehicle, and

- (b) the offence consisted in using the vehicle in contravention of a condition imposed under or by virtue of sub-paragraph (2) of that paragraph,

the relevant higher rate of duty is the rate which would have been applicable had the licence been taken out by reference to the plated gross weight or plated train weight (or relevant maximum weight or relevant maximum train weight) of the vehicle.

(5) Where—

- (a) the licence in relation to which the offence was committed was taken out at a rate lower than that applicable to it by reference to its plated gross weight or plated train weight (or, in Northern Ireland, relevant maximum weight or relevant maximum train weight), and

- (b) none of subsections (2) to (4) apply,

the relevant higher rate of duty is the rate which would have been applicable had the licence been taken out by reference to the plated gross weight or plated train weight (or relevant maximum weight or relevant maximum train weight) of the vehicle.

(6) Where—

- (a) the licence in relation to which the offence was committed was taken out at a rate lower than that at which duty was chargeable in respect of the condition, manner or purpose of use of the vehicle which constituted the offence, and

- (b) none of subsections (2) to (5) apply,

the relevant higher rate of duty is the rate which would have been applicable had the licence been taken out by reference to the condition, manner or purpose of use of the vehicle which constituted the offence.

#### **40 Relevant period for purposes of section 38**

(1) For the purposes of section 38 the relevant period is the period—

- (a) ending with the date on which the offence was committed, and

- (b) beginning as provided by subsection (2) or (3).

(2) If the offence consists in the vehicle having a plated gross weight or a plated train weight (or, in Northern Ireland, a relevant maximum weight or relevant maximum train weight) which exceeds that which it had when the licence in relation to which the offence was committed was taken out, the relevant period begins with the date on which the vehicle was plated with (or rated at) the higher weight.

(3) In any other case, the relevant period begins with the date on which the licence in relation to which the offence was committed first took effect.

(4) Where the person convicted proves—

- (a) that throughout any month or part of a month in the relevant period the vehicle was not kept by him, or

- (b) that he has paid the duty due (or an amount equal to the duty due) at the relevant higher rate in respect of the vehicle for any such month or part of a month,

any amount which the person is ordered to pay under section 38 is to be calculated as if that month or part of a month were not in the relevant period.

**41 Sections 37 to 40: supplementary**

- (1) Where in the case of an offence under section 37 there is made against a person—
- (a) an order under section 1A of the Powers of Criminal Courts Act 1973 discharging him absolutely or conditionally,
  - (b) an order under section 182 or 383 of the Criminal Procedure (Scotland) Act 1975 discharging him absolutely or under section 183 or 384 of that Act placing him on probation, or
  - (c) an order under the Probation Act (Northern Ireland) 1950 discharging him absolutely or conditionally or placing him on probation,
- he is to be treated for the purposes of sections 38 to 40 as having been convicted.
- (2) Section 38 has effect subject to the provisions (applying with the necessary modifications) of any enactment relating to the imposition of fines by magistrates' courts and courts of summary jurisdiction, other than any conferring a discretion as to their amount.
- (3) Where a sum is payable by virtue of an order under section 38—
- (a) in England and Wales, the sum is to be treated as a fine, and the order as a conviction, for the purposes of Part III of the Magistrates' Courts Act 1980 (including any enactment having effect as if contained in that Part) and of any other enactment relating to the recovery or application of sums ordered to be paid by magistrates' courts,
  - (b) in Scotland, the sum is to be treated as a fine, and the order as a conviction, for the purposes of any enactment relating to the recovery or application of sums ordered to be paid by courts of summary jurisdiction, and
  - (c) in Northern Ireland, the sum is recoverable as a sum adjudged to be paid by a conviction and is to be treated for all purposes as a fine within the meaning of section 20 of the Administration of Justice Act (Northern Ireland) 1954.