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STATUTORY INSTRUMENTS

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**1995 No. 1046**

**CUSTOMS AND EXCISE**

**The Excise Goods (Drawback) Regulations 1995**

<i>Made</i>	- - - -	<i>2nd May 1995</i>
<i>Laid before Parliament</i>		<i>3rd May 1995</i>
<i>Coming into force</i>	- -	<i>1st June 1995</i>

The Commissioners of Customs and Excise, in exercise of the powers conferred upon them by section 93(1), (2)(a) and (3) of the Customs and Excise Management Act 1979(1) and section 2 of the Finance (No. 2) Act 1992(2) and of all other powers enabling them in that behalf, hereby make the following Regulations:

**PART I**  
**PRELIMINARY**

**Citation and commencement**

1. These Regulations may be cited as the Excise Goods (Drawback) Regulations 1995 and shall come into force on 1st June 1995.

**Revocation**

2. The Excise Goods (Drawback) Regulations 1992(3) are hereby revoked.

**Application**

3. These Regulations apply to goods chargeable with a duty of excise provided that those goods have not been, and will not be, consumed in the United Kingdom or the Isle of Man.

**Interpretation**

4. In these Regulations—

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(1) 1979 c. 2; section 93 was amended by the Finance Act 1981 (c. 35), section 11(1) and Schedule 8, paragraph 2, the Finance Act 1986 (c. 41), section 5 and Schedule 3, the Finance Act 1988 (c. 39), section 9(2), the Finance (No. 2) Act 1992 (c. 48), section 3 and Schedule 2, and the Finance Act 1994 (c. 9), section 9(9) and Schedule 4, paragraph 3; section 1(1) defines “the Commissioners” as meaning the Commissioners of Customs and Excise.  
(2) 1992 c. 48; section 2(5) defines “the Commissioners” as meaning the Commissioners of Customs and Excise.  
(3) S.I. 1992/3151.

- “the Act” means the Customs and Excise Management Act 1979;
- “accompanying document” means the document which in accordance with registered excise dealers and shippers regulations or, as the case may be, warehousing regulations will accompany the goods and will be endorsed with the certificate of receipt;
- “business day” has the meaning given in section 92 of the Bills of Exchange Act 1882(4);
- “certificate of receipt” means the certificate of receipt issued by the consignee;
- “dispatch” means any export of goods where, at the time of their exportation, they are consigned to a place to which Council Directive 92/12/EEC(5) applies;
- “drawback” means drawback of duty, and cognate expressions shall be construed accordingly;
- “duty” means duty of excise;
- “eligible claimant” has the meaning given in regulation 6 below;
- “eligible goods” has the meaning given in regulation 5 below;
- “planned destruction”—
- (a) means the destruction of goods which, by reason of faulty manufacture or subsequent deterioration or contamination, were at the time of their destruction not of satisfactory quality provided that, save as the Commissioners may otherwise allow, that destruction was carried out in accordance with the provisions of Schedule 1 to these Regulations, and
- (b) includes denaturing to the satisfaction of the Commissioners;
- “satisfactory quality” has the meaning given in section 14 of the Sale of Goods Act 1979(6);
- “single administrative document” and references to “copy 3” of the single administrative document have the meanings they bear in Commission Regulation (EEC) No. 2454/93(7);
- “warehouse” means an excise warehouse.

## PART II

### ENTITLEMENT TO DRAWBACK

#### Eligible goods

- 5.—(1) A claim for drawback may only be made in relation to eligible goods.
- (2) Subject to paragraphs (3) and (4) below, goods are eligible goods if duty has been paid and has not been remitted, repaid or drawn back and those goods have been—
- (a) exported,
- (b) warehoused for export, or
- (c) destroyed.
- (3) Goods shall not be eligible goods if they are destroyed either—
- (a) accidentally, unless—
- (i) the goods were being removed to a warehouse for export,

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(4) 1882 c. 61 (45 & 46 Vict); section 92 was amended by the Banking and Financial Dealings Act 1971 (c. 80), sections 3 and 4.

(5) OJ No. L76, 23.3.92, p.1; Article 2 of the Directive gives a description of the Directive’s territorial application; that description includes a reference to Article 227 of the EC Treaty; paragraph 1 of that Article has been amended by Article 27 of the Act concerning the accession of Austria, Finland and Sweden to the European Union (OJ No. C241, 29.8.94, p.21).

(6) 1979 c. 54; section 14 was amended by section 1(1) of the Sale and Supply of Goods Act 1994 (c. 35).

(7) OJ No. L253, 11.10.93, p.1.

- (ii) the goods were being exported and destruction took place within the United Kingdom but after leaving the premises at which they were available for inspection before export, or
  - (iii) the destruction was occasioned in any of the circumstances set out in Schedule 2 to these Regulations; or
- (b) otherwise than accidentally, unless that destruction was a planned destruction.
- (4) In the case of dispatch, chewing tobacco shall not be eligible goods.

### **Eligible claimants**

- 6.—(1) A claim for drawback may only be made by an eligible claimant.
- (2) A claimant is an eligible claimant if he is a revenue trader—
- (a) in the course of whose business the export, removal to warehouse for export or, as the case may be, destruction took place; and
  - (b) in the case of planned destruction—
    - (i) who (except as the Commissioners may otherwise allow) paid the duty to be drawn back, and
    - (ii) whose business is not wholly or mainly the destruction of goods on which duty has been charged.

## **PART III**

### **CLAIMS, CONDITIONS AND CANCELLATION OF DRAWBACK**

#### **General conditions**

- 7.—(1) Subject to paragraph (2) below and without prejudice to any condition imposed by, or in accordance with section 133 of the Act, every eligible claimant shall—
- (a) save as the Commissioners may otherwise allow, comply with the conditions imposed by these Regulations; and
  - (b) in addition to those conditions, comply with such other conditions as the Commissioners see fit to impose in a notice published by them and not withdrawn by a further notice.
- (2) If the Commissioners consider it necessary for the protection of the revenue they may, by a notice in writing delivered to a revenue trader, require him to comply with such additional conditions as they think fit to impose.
- (3) Sections 14 to 16 of the Finance Act 1994<sup>(8)</sup> shall have effect in relation to any decision of the Commissioners to impose additional conditions under paragraph (2) above as if that decision were a decision of a description specified in Schedule 5 to that Act.
- (4) Subject to paragraph (5) below, no claim for drawback shall be made unless, taken together with any other claim being made at the same time, the total amount of duty to be drawn back is at least £500.
- (5) If—
- (a) during the six months immediately preceding the date upon which the claim for drawback is made the amounts of drawback which could be claimed by the eligible claimant amount in total to less than £500, and

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<sup>(8)</sup> 1994 c. 9.

(b) the eligible claimant has not made any other claim for drawback during that period, paragraph (4) above shall operate as if the reference to at least £500 were a reference to at least £50.

(6) No claim for drawback shall be made if the event giving rise to the claim occurred more than three years after the duty on the goods in question was paid.

### **Conditions to be complied with before export**

8.—(1) Where an eligible claimant intends to claim drawback on eligible goods warehoused for export he shall comply with the following conditions—

- (a) before removal to warehouse, he shall deliver to the Commissioners at such address as they shall specify a notice in writing stating that he intends to claim drawback and containing the following particulars—
  - (i) his name and address,
  - (ii) the address of the premises at which the goods may be inspected prior to their removal to warehouse,
  - (iii) the description of the goods, including their nature and quantity,
  - (iv) the amount of duty paid in respect of the goods, and
  - (v) the address of the warehouse to which the goods are being removed;
- (b) before removal to warehouse, he shall draw up a document (“warehousing advice note”) in such form and containing such particulars as the Commissioners may require;
- (c) before removal to warehouse, the goods and the warehousing advice note shall be available for inspection by the Commissioners, at any reasonable time, for not less than two clear business days following the day upon which the notice mentioned in sub-paragraph (a) above was received by the Commissioners; and
- (d) he shall ensure that, when the goods are removed to warehouse they are accompanied by two copies of the warehousing advice note.

(2) Where an eligible claimant intends to claim drawback after export he shall, before export, comply with the following conditions—

- (a) he shall deliver to the Commissioners at such address as they shall specify a notice in writing stating that he intends to claim drawback and containing the following particulars—
  - (i) his name and address,
  - (ii) the address of the premises at which the goods may be inspected prior to their export,
  - (iii) the description of the goods, including their nature and quantity,
  - (iv) the amount of duty paid in respect of the goods, and
  - (v) the address of the premises to which the goods are being exported;
- (b) if the export is a dispatch he shall complete an accompanying document;
- (c) if the export is not a dispatch he shall complete a single administrative document; and
- (d) the goods and the accompanying document or single administrative document shall be available for inspection by the Commissioners, at any reasonable time, for not less than two clear business days following the day upon which the notice mentioned in sub-paragraph (a) above was received by the Commissioners.

### **Conditions to be complied with after warehousing for export**

9. Where an eligible claimant claims drawback after warehousing for export the following conditions shall be complied with—

- (a) the eligible claimant shall include with his claim the certificate of receipt; and
- (b) the eligible claimant shall ensure that the goods are exported within six months of making his claim for drawback.

### **Conditions to be complied with after export**

10. Where an eligible claimant claims drawback after export he shall comply with the following conditions—

- (a) if the export is a dispatch, he shall include with his claim—
  - (i) unless duty is not payable on that description of goods in the place to which they have been exported, the document evidencing payment of duty in that place, and
  - (ii) the copy of the accompanying document which is endorsed with the certificate of receipt; or
- (b) if the export is not a dispatch, he shall include with his claim copy 3 of the single administrative document endorsed as described in Article 793 of Commission Regulation (EEC) No. 2454/93.

### **Conditions to be complied with where goods are accidentally destroyed**

11. Where an eligible claimant claims drawback in relation to goods which have been accidentally destroyed he shall comply with the following conditions—

- (a) he shall notify the Commissioners forthwith at such address as they shall specify that goods have been accidentally destroyed in circumstances where a claim for drawback may be made;
- (b) notification given in accordance with sub-paragraph (a) above shall include particulars of the goods and the amount of duty paid in respect of those goods or, if that amount cannot immediately be ascertained, an estimate of the amount of the duty so paid; and
- (c) he shall prove to the satisfaction of the Commissioners that the goods have been accidentally destroyed.

### **Payment of claim**

12.—(1) No drawbacks shall be payable unless it is shown to the satisfaction of the Commissioners that the claimant is an eligible claimant and that the goods are eligible goods.

(2) Without prejudice to section 133 of the Act, where the Commissioners are satisfied that duty may be drawn back in accordance with these Regulations they may set-off the amount due against any other debt then due to them from the eligible claimant.

(3) If the Commissioners are not satisfied that the amount of duty claimed may be drawn back but are satisfied that some lesser amount of duty may be drawn back they may, in such circumstances as they see fit, permit the drawback of that lesser sum.

### **Cancellation of drawback**

13.—(1) The Commissioners may at any time cancel drawback granted in accordance with these Regulations where they are satisfied that a contravention of any conditions (whether imposed by or under these Regulations or by or under section 133 of the Act) has taken place.

(2) Without prejudice to section 116 of the Act, where drawback has been cancelled in accordance with paragraph (1) above the person to whom drawback was paid or credited shall on demand made by the Commissioners be liable to repay to the Commissioners the sum so paid or credited.

## PART IV

### CIVIL PENALTIES

#### **Conduct attracting a civil penalty**

**14.**—(1) If any person who is not an eligible claimant makes a claim for drawback his conduct shall attract a penalty under section 9 of the Finance Act 1994 which shall be calculated by reference to the amount of the drawback claimed.

(2) If any eligible claimant makes a claim for drawback in respect of goods that are not eligible goods his conduct shall attract a penalty under section 9 of the Finance Act 1994 which shall be calculated by reference to the amount of the drawback claimed.

## PART V

### AMENDMENT OF WAREHOUSING REGULATIONS

#### **Amendment of the Excise Warehousing (Etc.) Regulations 1988**

**15.** The Excise Warehousing (Etc.) Regulations 1988<sup>(9)</sup> shall be amended as follows—

- (a) regulation 6 shall be omitted;
- (b) after regulation 11(4) there shall be inserted—

“(4A) Where goods are warehoused in circumstances where duty may be drawn back the certificate of receipt mentioned in paragraph (4) above shall—

- (a) be in such form and contain such particulars as the Commissioners may require, and
- (b) be endorsed on one of the copies of the warehousing advice note that accompanied the goods,

and in this paragraph “warehousing advice note” means a document (in such form and containing such particulars as the Commissioners may require) drawn up by the person to whom the certificate of receipt will be sent.”; and

- (c) in regulation 16(1), after the word “Man” there shall be inserted—

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provided that, where goods are warehoused in circumstances where duty may be drawn back they may not, under this paragraph, be entered for removal from warehouse for any purpose that may result in their being consumed in the United Kingdom or the Isle of Man”.

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(9) S.I. 1988/809.

New King's Beam House, 22 Upper Ground, London SE1 9PJ

2nd May 1995

*D. J. Howard*  
Commissioner of Customs and Excise

## SCHEDULE 1

Regulation 4

## PLANNED DESTRUCTION: CONDITIONS

**Conditions to be complied with before destruction**

1. The eligible claimant shall deliver to the Commissioners at such address as they shall specify notice in writing of his intention to carry out a planned destruction of goods.

2. A notice delivered in accordance with paragraph 1 above shall contain the following particulars

- (a) the name and address of the eligible claimant;
- (b) the address of the premises at which the goods to be destroyed may be inspected prior to destruction;
- (c) the description of the goods to be destroyed including their nature and amount;
- (d) the amount of duty paid in respect of those goods;
- (e) the date and time when destruction will take place; and
- (f) the method of destruction which is to be employed.

3. The goods shall be available for inspection by the Commissioners at any reasonable time for not less than two clear business days following the day upon which the notice mentioned in paragraph 1 above was received by the Commissioners provided that if the place where the goods are available for inspection is different from the address mentioned in sub-paragraph (a) of paragraph 2 above, for the reference to two clear business days in this paragraph there shall be substituted a reference to five clear business days.

**Conditions to be complied with at the time of destruction**

4. Destruction shall take place on the day and at the time appointed.

5. Destruction shall take place at the address mentioned in sub-paragraph (b) of paragraph 2 above; provided that the Commissioners may, on the application of the eligible claimant, permit, subject to such conditions as they deem necessary or expedient, destruction to take place at a different address.

6. The eligible claimant shall permit the Commissioners to attend the destruction.

7. The goods shall be destroyed in accordance with the method specified in the notice mentioned in paragraph 1 above save that if the Commissioners give notice that such method is not in their opinion satisfactory, the goods shall be destroyed in accordance with such other method as the Commissioners may approve.

## SCHEDULE 2

Regulation 5

*ACCIDENTAL DESTRUCTION: CIRCUMSTANCES IN  
WHICH GOODS MAY BE ELIGIBLE FOR DRAWBACK*

Where the goods are destroyed by, or as a result of—

- (a) civil commotion;
- (b) riot;
- (c) terrorism;

- (d) war;
- (e) explosion;
- (f) earthquake;
- (g) any other fortuitous event; provided that, in the opinion of the Commissioners, it would not have been reasonable to insure the goods against the risk of destruction by or as a result of that event.

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### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations come into force on 1st June 1995, and replace the Excise Goods (Drawback) Regulations 1992 (S.I.1992/3151) which provided for repayment of excise duty on duty paid goods —

- (a) exported to other member States;
- (b) destroyed in the U.K. as part of a planned destruction; and
- (c) accidentally destroyed (in certain circumstances).

The new Regulations implement the reimbursement provisions of Council Directive 92/12/EEC (OJ No. L76, 23.9.92, p.1), as amended by Council Directive 92/108/EEC (OJ No. L390, 31.12.92, p.124), they permit refunds in the circumstances mentioned in Council Directive 92/83/EEC (OJ No. L316, 31.10.92, p.21) and extend the provision for drawback of excise duties to goods exported to non-member States and to goods warehoused for export.

They permit claims for drawback where excise goods are—

- (a) exported;
- (b) warehoused for export;
- (c) destroyed because they are not of satisfactory quality; and
- (d) in certain circumstances, accidentally destroyed.

They also introduce a liability to a civil penalty where an ineligible claimant makes a claim for drawback and where an eligible claimant submits a claim for drawback for ineligible goods.

Part V amends the Excise Warehousing (Etc.) Regulations 1988 (S.I. 1988/809) to accommodate the extension of drawback to goods warehoused for export. Regulation 15(a) omits regulation 6 of those Regulations in consequence of the introduction of civil penalties for excise contraventions.