



# Customs and Excise Management Act 1979

## 1979 CHAPTER 2

### PART XI

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

##### *Detention of persons*

#### **138 Provisions as to detention of persons**

- (1) Any person who has committed, or whom there are reasonable grounds to suspect of having committed, any offence for which he is liable to be detained under the customs and excise Acts may be detained by any officer or constable or any member of Her Majesty's armed forces or coastguard at any time within 3 years from the date of the commission of the offence.
- (2) Where it was not practicable to detain any person so liable at the time of the commission of the offence, or where any such person having been then or subsequently detained for that offence has escaped, he may be detained by any officer or constable or any member of Her Majesty's armed forces or coastguard at any time and may be proceeded against in like manner as if the offence had been committed at the date when he was finally detained.
- (3) Where any person who is a member of the crew of any ship in Her Majesty's employment or service is detained by an officer for an offence under the customs and excise Acts, the commanding officer of the ship shall, if so required by the detaining officer, keep that person secured on board that ship until he can be brought before a court and shall then deliver him up to the proper officer.
- (4) Where any person has been detained by virtue of this section otherwise than by an officer, the person detaining him shall give notice of the detention to an officer at the nearest convenient office of customs and excise.

### *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 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.

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- (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 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.

#### *General provisions as to legal proceedings*

#### **145 Institution of proceedings**

- (1) Subject to the following provisions of this section, no proceedings for an offence under the customs and excise Acts or for condemnation under Schedule 3 to this Act shall be instituted except by order of the Commissioners.
- (2) Subject to the following provisions of this section, any proceedings under the customs and excise Acts instituted in a magistrates' court, and any such proceedings instituted in a court of summary jurisdiction in Northern Ireland, shall be commenced in the name of an officer.
- (3) Subsections (1) and (2) above shall not apply to proceedings on indictment in Scotland.
- (4) In the case of the death, removal, discharge or absence of the officer in whose name any proceedings were commenced under subsection (2) above, those proceedings may be continued by any officer authorised in that behalf by the Commissioners.
- (5) Nothing in the foregoing provisions of this section shall prevent the institution of proceedings for an offence under the customs and excise Acts by order and in the name of a law officer of the Crown in any case in which he thinks it proper that proceedings should be so instituted.
- (6) Notwithstanding anything in the foregoing provisions of this section, where any person has been detained for any offence for which he is liable to be detained under the customs and excise Acts, any court before which he is brought may proceed to deal with the case although the proceedings have not been instituted by order of the Commissioners or have not been commenced in the name of an officer.

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## 146 Service of process

- (1) Any summons or other process issued anywhere in the United Kingdom for the purpose of any proceedings under the customs and excise Acts may be served on the person to whom it is addressed in any part of the United Kingdom without any further endorsement, and shall be deemed to have been duly served—
  - (a) if delivered to him personally ; or
  - (b) if left at his last known place of abode or business or, in the case of a body corporate, at their registered or principal office; or
  - (c) if left on board any vessel or aircraft to which he may belong or have lately belonged.

- (2) Any summons, notice, order or other document issued for the purposes of any proceedings under the customs and excise Acts, or of any appeal from the decision of the court in any such proceedings, may be served by an officer.

In this subsection " appeal" includes an appeal by way of case stated.

- (3) This section shall not apply in relation to proceedings instituted in the High Court or Court of Session.

## 147 Proceedings for offences

- (1) Save as otherwise expressly provided in the customs and excise Acts and notwithstanding anything in any other enactment, any proceedings for an offence under those Acts—
  - (a) may be commenced at any time within 3 years from the date of the commission of the offence; and
  - (b) shall not be commenced later than 3 years from that date.
- (2) Where, in England or Wales, a magistrates' court has begun to inquire into an information charging a person with an offence under the customs and excise Acts as examining justices the court shall not proceed under section 25(3) of the Criminal Law Act 1977 to try the information summarily without the consent of—
  - (a) the Attorney General, in a case where the proceedings were instituted by his order and in his name; or
  - (b) the Commissioners, in any other case.
- (3) In the case of proceedings in England or Wales, without prejudice to any right to require the statement of a case for the opinion of the High Court, the prosecutor may appeal to the Crown Court against any decision of a magistrates' court in proceedings for an offence under the customs and excise Acts.
- (4) In the case of proceedings in Northern Ireland, without prejudice to any right to require the statement of a case for the opinion of the High Court, the prosecutor may appeal to the county court against any decision of a court of summary jurisdiction in proceedings for an offence under the customs and excise Acts.
- (5) In the application of the customs and excise Acts to Scotland, and subject to any express provision made by the enactment in question, any offence which is made punishable on summary conviction—
  - (a) shall if prosecuted summarily be prosecuted in the sheriff court;
  - (b) may be also prosecuted by any other method.

## 148 Place of trial for offences

- (1) Proceedings for an offence under the customs and excise Acts may be commenced—
- (a) in any court having jurisdiction in the place where the person charged with the offence resides or is found; or
  - (b) if any thing was detained or seized in connection with the offence, in any court having jurisdiction in the place where that thing was so detained or seized or was found or condemned as forfeited; or
  - (c) in any court having jurisdiction anywhere in that part of the United Kingdom, namely—
    - (i) England and Wales,
    - (ii) Scotland, or
    - (iii) Northern Ireland,in which the place where the offence was committed is situated.
- (2) Where any such offence was committed at some place outside the area of any commission of the peace, the place of the commission of the offence shall, for the purposes of the jurisdiction of any court, be deemed to be any place in the United Kingdom where the offender is found or to which he is first brought after the commission of the offence.
- (3) The jurisdiction under subsection (2) above shall be in addition to and not in derogation of any jurisdiction or power of any court under any other enactment.

## 149 Non-payment of penalties, etc.: maximum terms of imprisonment

- (1) Where, in any proceedings for an offence under the customs and excise Acts, a magistrates' court in England or Wales or a court of summary jurisdiction in Scotland, in addition to ordering the person convicted to pay a penalty for the offence—
- (a) orders him to be imprisoned for a term in respect of the same offence; and
  - (b) further (whether at the same time or subsequently) orders him to be imprisoned for a term in respect of non-payment of that penalty or default of a sufficient distress to satisfy the amount of that penalty,
- the aggregate of the terms for which he is so ordered to be imprisoned shall not exceed 15 months.
- (2) Where the sum adjudged to be paid by the conviction of a court of summary jurisdiction in Scotland under the customs and excise Acts (including any expenses adjudged to be paid by the conviction whose amount is ascertained by the conviction) exceeds £50 the maximum period of imprisonment that may be imposed in respect of the non-payment of that sum shall, notwithstanding anything in section 199 of the Criminal Procedure (Scotland) Act 1975, be fixed in accordance with the following scale, that is to say—

Where the amount of the sum adjudged to be paid by the conviction—	The said period shall be a period not exceeding—
exceeds £50 but does not exceed £100	90 days
exceeds £100 but does not exceed £250	6 months
exceeds £250 but does not exceed £500	9 months
exceeds £500	12 months.

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- (3) Where, under any enactment for the time being in force in Northern Ireland, a court of summary jurisdiction has power to order a person to be imprisoned in respect of the non-payment of a penalty, or of the default of a sufficient distress to satisfy the amount of that penalty, for a term in addition and succession to a term of imprisonment imposed for the same offence as the penalty, then in relation to a sentence for an offence under the customs and excise Acts the aggregate of those terms of imprisonment may, notwithstanding anything in any such enactment, be any period not exceeding 15 months.

### **150 Incidental provisions as to legal proceedings**

- (1) Where liability for any offence under the customs and excise Acts is incurred by two or more persons jointly, those persons shall each be liable for the full amount of any pecuniary penalty and may be proceeded against jointly or severally as the Commissioners may see fit.
- (2) In any proceedings for an offence under the customs and excise Acts instituted in England, Wales or Northern Ireland, any court by whom the matter is considered may mitigate any pecuniary penalty as they see fit.
- (3) In any proceedings for an offence or for the condemnation of any thing as being forfeited under the customs and excise Acts, the fact that security has been given by bond or otherwise for the payment of any duty or for compliance with any condition in respect of the non-payment of which or non-compliance with which the proceedings are instituted shall not be a defence.

### **151 Application of penalties**

The balance of any sum paid or recovered on account of any penalty imposed under the customs and excise Acts, after paying any such compensation or costs as are mentioned in section 114 of the Magistrates' Courts Act 1952 to persons other than the Commissioners shall, notwithstanding any local or other special right or privilege of whatever origin, be accounted for and paid to the Commissioners or as they direct.

### **152 Power of Commissioners to mitigate penalties, etc.**

The Commissioners may, as they see fit—

- (a) stay, sist or compound any proceedings for an offence or for the condemnation of any thing as being forfeited under the customs and excise Acts ; or
- (b) restore, subject to such conditions (if any) as they think proper, any thing forfeited or seized under those Acts; or
- (c) after judgment, mitigate or remit any pecuniary penalty imposed under those Acts ; or
- (d) order any person who has been imprisoned to be discharged before the expiration of his term of imprisonment, being a person imprisoned for any offence under those Acts or in respect of the non-payment of a penalty or other sum adjudged to be paid or awarded in relation to such an offence or in respect of the default of a sufficient distress to satisfy such a sum;

but paragraph (a) above shall not apply to proceedings on indictment in Scotland.



### **153 Proof of certain documents**

- (1) Any document purporting to be signed either by one or more of the Commissioners, or by their order, or by any other person with their authority, shall, until the contrary is proved, be deemed to have been so signed and to be made and issued by the Commissioners, and may be proved by the production of a copy thereof purporting to be so signed.
- (2) Without prejudice to subsection (1) above, the Documentary Evidence Act 1868 shall apply in relation to—
  - (a) any document issued by the Commissioners ;
  - (b) any document issued before 1st April 1909, by the Commissioners of Customs or the Commissioners of Customs and the Commissioners of Inland Revenue jointly;
  - (c) any document issued before that date in relation to the revenue of excise by the Commissioners of Inland Revenue,as it applies in relation to the documents mentioned in that Act.
- (3) That Act shall, as applied by subsection (2) above, have effect as if the persons mentioned in paragraphs (a) to (c) of that subsection were included in the first column of the Schedule to that Act, and any of the Commissioners or any secretary or assistant secretary to the Commissioners were specified in the second column of that Schedule in connection with those persons.

### **154 Proof of certain other matters**

- (1) An averment in any process in proceedings under the customs and excise Acts—
  - (a) that those proceedings were instituted by the order of the Commissioners; or
  - (b) that any person is or was a Commissioner, officer or constable, or a member of Her Majesty's armed forces or coastguard; or
  - (c) that any person is or was appointed or authorised by the Commissioners to discharge, or was engaged by the orders or with the concurrence of the Commissioners in the discharge of, any duty ; or
  - (d) that the Commissioners have or have not been satisfied as to any matter as to which they are required by any provision of those Acts to be satisfied ; or
  - (e) that any ship British ship; or
  - (f) that any goods thrown overboard, staved or destroyed were so dealt with in order to prevent or avoid the seizure of those goods,shall, until the contrary is proved, be sufficient evidence of the matter in question.
- (2) Where in any proceedings relating to customs or excise any question arises as to the place from which any goods have been brought or as to whether or not—
  - (a) any duty has been paid or secured in respect of any goods; or
  - (b) any goods or other things whatsoever are of the description or nature alleged in the information, v/rit or other process; or
  - (c) any goods have been lawfully imported or lawfully unloaded from any ship or aircraft; or
  - (d) any goods have been lawfully loaded into any ship or aircraft or lawfully exported or were lawfully water-borne ; or
  - (e) any goods were lawfully brought to any place for the purpose of being loaded into any ship or aircraft or exported; or

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- (f) any goods are or were subject to any prohibition of or restriction on their importation or exportation,

then, where those proceedings are brought by or against the Commissioners, a law officer of the Crown or an officer, or against any other person in respect of anything purporting to have been done in pursuance of any power or duty conferred or imposed on him by or under the customs and excise Acts, the burden of proof shall lie upon the other party to the proceedings.

### **155 Persons who may conduct proceedings**

- (1) Any officer or any other person authorised in that behalf by the Commissioners may, although he is not a barrister, advocate or solicitor, conduct any proceedings before any magistrates' court in England or Wales or court of summary jurisdiction in Scotland or Northern Ireland or before any examining justices, being proceedings under any enactment relating to an assigned matter or proceedings arising out of the same circumstances as any proceedings commenced under any such enactment, whether or not the last mentioned proceedings are persisted in.
- (2) Any person who has been admitted as a solicitor and is employed by the Commissioners may act as a solicitor in any proceedings in England, Wales or Northern Ireland relating to any assigned matter notwithstanding that he does not hold a current practising certificate.

*Saving for outlying enactments of certain general provisions as to offences*

### **156 Saving for outlying enactments of certain general provisions as to offences**

- (1) In subsections (2), (3) and (4) below (which reproduce certain enactments not required as general provisions for the purposes of the enactments re-enacted in the Customs and Excise Acts 1979) " the outlying provisions of the customs and excise Acts " means—
  - (a) the Betting and Gaming Duties Act 1972, as for the time being amended ; and
  - (b) all other provisions of the customs and excise Acts, as for the time being amended, which were passed before the commencement of this Act and are not re-enacted in the Customs and Excise Acts 1979.
- (2) It is hereby declared that any act or omission in respect of which a pecuniary penalty (however described) is imposed by any of the outlying provisions of the customs and excise Acts is an offence under that provision; and accordingly in this Part of this Act any reference to an offence under the customs and excise Acts includes a reference to such an act or omission.
- (3) Subject to any express provision made by the enactment in question, an offence under any of the outlying provisions of the customs and excise Acts—
  - (a) where it is punishable with imprisonment for a term of 2 years, with or without a pecuniary penalty, shall be punishable either on summary conviction or on conviction on indictment;
  - (b) in any other case, shall be punishable on summary conviction.

This subsection does not apply to Scotland.

- (4) Without prejudice to any other method of prosecution and subject to any express provision made by the enactment in question, it shall be competent in Scotland to prosecute an offence under any of the outlying provisions of the customs and excise

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Acts summarily in the sheriff court; but no sentence of the sheriff court on summary conviction shall impose any term of imprisonment exceeding 6 months.