

Statutory Document No. 2021/0211



Customs and Excise Management Act 1986

CUSTOMS AND EXCISE MANAGEMENT ACT 1986 (AMENDMENT) (NO. 2) ORDER 2021

Approved by Tynwald:

Coming into Operation in accordance with article 2

The Treasury makes the following Order under section 180(3) and (4) of the Customs and Excise Management Act 1986.

1 Title

This Order is the Customs and Excise Management Act 1986 (Amendment) (No. 2) Order 2021.

2 Commencement

- (1) This Order comes into operation on the day it is approved by Tynwald¹.
- (2) However, when it is approved, it shall be deemed to have come into operation on IP completion day², except for article 3(5), which shall be deemed to have come into operation on 19 July 2021³.

3 Amendment of the Customs and Excise Management Act 1986

- (1) The Customs and Excise Management Act 1986 is amended as follows.

¹ Section 180(3) of the Customs and Excise Management Act 1986 provides that the Treasury may by order add to, amend, vary or repeal any provision of that Act in such manner as may appear to it expedient for the purpose of making that Act correspond (subject to such modifications, exceptions or adaptations as it considers appropriate) with the like legislation from time to time operating in the United Kingdom, but no such order shall come into operation until it has been approved by Tynwald.

² For the meaning of “IP completion day”, see paragraph 1A of the Schedule to the Interpretation Act 2015.

³ Section 180(4) of the Customs and Excise Management Act 1986 provides that any regulation or order made under any provision of that Act may be made retrospective and be deemed to have come into operation from such day or days as may be specified in the order, not being earlier than the date from which legislation corresponding to such regulation or, as the case may be, order has had effect in the United Kingdom.

- (2) Omit section 78C (information powers relating to goods subject to certain transit arrangements).
- (3) In section 182 (removal of goods from United Kingdom to Island) —
 - (a) in subsection (1), for “subsection (2)”, substitute **66** subsections (1A) and (2) **62**; and
 - (b) after subsection (1), insert —
 - 66**(1A) Subsection (1) does not apply to goods removed from Northern Ireland to the Island. **62**.
- (4) In section 183 (removal of goods from Island to United Kingdom) —
 - (a) in subsection (1), for “subsection (2)”, substitute **66** subsections (1A) and (2) **62**; and
 - (b) after subsection (1), insert —
 - 66**(1A) Subsection (1) does not apply to goods removed from the Island to Northern Ireland. **62**.
- (5) In Schedule 3 (provisions relating to forfeiture), after paragraph 17, insert —

66 *Unauthorised removal or disposal: penalties etc.*

17A

- (1) This paragraph applies where a thing is seized as liable to forfeiture and, with the agreement of a person within sub-paragraph (2) (“the responsible person”), the thing remains at the place where it is first seized.
- (2) A person is within this sub-paragraph if the person is —
 - (a) the person whose offence or suspected offence occasioned the seizure;
 - (b) the owner or any of the owners of the thing seized or any servant or agent of such an owner;
 - (c) a person who has (or appears to have) possession or control over the thing being seized;
 - (d) in the case of any thing seized on a ship or aircraft, the master or commander;
 - (e) in the case of any thing seized on any other vehicle, the vehicle operator; or
 - (f) a person whom the person who seizes the thing reasonably believes to be a person within any of paragraphs (a) to (e).
- (3) Where the thing is deemed to be seized as liable to forfeiture under paragraph 2(3) of Schedule 2A —

- (a) the offence or suspected offence that occasioned its detention is to be treated, for the purpose of sub-paragraph (2)(a), as having occasioned its seizure; and
 - (b) sub-paragraph (2)(f) has effect as if the reference to the person who seizes the thing were a reference to an officer.
- (4) If the responsible person fails to prevent the unauthorised removal or disposal of the thing from the place where it is seized, that failure attracts a penalty under section 9 (civil penalties) of the Finance Act 1994 (of Parliament), as it has effect in the Island⁴.
- (5) The removal or disposal of the thing is unauthorised unless it is done with the permission of an officer.
- (6) Where any duty of excise is payable in respect of the thing —
- (a) the penalty is to be calculated by reference to the amount of that duty (whether it has been paid or not); and
 - (b) section 9 of the Finance Act 1994, as it has effect in the Island, has effect as if in subsection (2)(a) the words “5 per cent. of” were omitted.
- (7) If no duty of excise is payable in respect of the thing, section 9 of the Finance Act 1994, as it has effect in the Island, has effect as if the penalty provided for by subsection (2)(b) of that section were whichever is the greater of —
- (a) the value of the thing at the time when it was first seized; or
 - (b) £250.

17B

- (1) This paragraph applies where —
- (a) a thing is seized at a revenue trader’s premises;
 - (b) the thing is liable to forfeiture under the customs and excise Acts; and
 - (c) without the permission of an officer, the thing is removed from the trader’s premises, or otherwise disposed of, by any person.
- (2) The Treasury may seize as liable to forfeiture goods of equivalent value to the thing from the revenue trader’s stock.
- (3) For the purposes of this paragraph, a revenue trader’s premises include any premises used to hold or store anything for the

⁴ Section 9 of the Finance Act 1994 (1994, c.9) was applied to the Island by SD 369/94, as amended by SD 22/01.

purposes of the revenue trader's trade, regardless of who owns or occupies the premises. **22**.

MADE 9 JULY 2021

A L CANNAN
Minister for the Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Customs and Excise Management Act 1986 (“the Act”) in order to meet the obligations in the Customs and Excise Agreement 1979 relating to customs and excise laws and procedures.

Section 78C (information powers relating to goods subject to certain transit arrangements) is omitted, as it is no longer required post-Brexit.

Sections 182 and 183 of the Act, which relate to the movement of goods between the Island and the United Kingdom, are amended to reflect that the movement of goods between Northern Ireland and the Island are now considered to be imports and exports post-Brexit, which aligns with the treatment of goods between Great Britain and Northern Ireland as part of the Northern Ireland Protocol.

Schedule 3 to the Act is amended to introduce a new penalty for the unauthorised removal or disposal of goods which have been seized by a customs officer, but which remain “in situ” where they were first seized. The minimum penalty applicable is £250. The amendment also provides that where seized items have been removed or disposed of without permission, the Treasury may seize goods from a revenue trader’s premises to the same value as the items that were removed or disposed of.