

Statutory Document No. 2021/0253



*Customs and Excise Act 1993*

## **CUSTOMS AND EXCISE ACTS (APPLICATION) (AMENDMENT) (NO. 2) ORDER 2021**

*Approved by Tynwald:*

*Coming into operation in accordance with article 2*

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The Treasury makes the following Order under sections 1 and 3 of the Customs and Excise Act 1993.

### **1 Title**

This Order is the Customs and Excise Acts (Application) (Amendment) (No. 2) Order 2021.

### **2 Commencement**

- (1) This Order comes into operation when it is approved by Tynwald<sup>1</sup>.
- (2) However, when it is approved, it shall be deemed to have come into operation on 5 July 2021<sup>2</sup>.

### **3 Amendment of Schedule 15 to the Customs and Excise Acts (Application) Order 1979**

- (1) Schedule 15 (exceptions, adaptations and modifications subject to which the Finance Act 1994<sup>3</sup> shall have effect in the Island) to the Customs and Excise Acts (Application) Order 1979<sup>4</sup>, is amended as follows.

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<sup>1</sup> Section 3(1) of the Customs and Excise Act 1993 provides that an order made under section 1 of that Act shall be laid before Tynwald as soon as practicable after it is made (and in any case not later than the second sitting of Tynwald following the making of the order) and if at the sitting at which it is laid Tynwald fails to approve the order it shall cease to have effect.

<sup>2</sup> Section 3(2) of the Customs and Excise Act 1993 provides that an order made under section 1 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 on which the corresponding provision had effect in the United Kingdom. In this case, the corresponding provision came into force in the United Kingdom on 5 July 2021.

<sup>3</sup> 1994 c.9 (of Parliament).

(2) After the entry relating to section 16 (appeals to a tribunal)<sup>5</sup>, insert —

**Sections 16A to 16C** Temporary approvals etc pending review or appeal: eligibility

After section 16 (appeals to a tribunal), insert —

**16A Temporary approvals etc pending review or appeal: eligibility**

- (1) Section 16B applies where the Isle of Man Treasury notifies P of an approval decision and —
- (a) the Isle of Man Treasury is required to review the decision under section 15C or 15E; or
  - (b) the decision, or the decision on a review under that section, has been appealed to an appeal tribunal under section 16.
- (2) An approval decision is a decision as to whether or not, and in which respects, any person or place (as the case may be) is to be or is to continue to be —
- (a) approved under section 93 of the Customs and Excise Management Act 1986 (of Tynwald) (warehousekeepers and owners of warehouses goods regime: approval of excise warehouses);
  - (b) approved and registered under section 107A of the Customs and Excise Management Act 1986 (of Tynwald)<sup>6</sup> by virtue of —
    - (i) regulation 3 of the Warehousekeepers and Owners of Warehoused Goods Regulations 1999 (of Tynwald) (authorized warehousekeepers)<sup>7</sup>;
    - (ii) regulation 5 of those Regulations (registered owners);
    - (iii) regulation 6 of those

<sup>4</sup> GC 38/79, as amended.

<sup>5</sup> Section 16 of the Finance Act 1994 (of Parliament) was applied to the Island by SD 369/94, as amended by SD 217/09, SD 2014/0216 and SD 2019/0083.

<sup>6</sup> Section 107A of the Customs and Excise Management Act 1986 was inserted by GC 296/91.

<sup>7</sup> SD 347/99, as amended.

- Regulations (duty representatives);
- (iv) regulation 4 of the Hydrocarbon Oil (Registered Dealers in Controlled Oil) Regulations 2003 (of Tynwald) (registered dealers in controlled oil)<sup>8</sup>;
- (c) approved and registered to carry on a controlled activity under section 71C of the Alcoholic Liquor Duties Act 1986 (of Tynwald) (alcohol wholesalers registration scheme)<sup>9</sup>;
- (d) approved to carry on a controlled activity under section 7J of the Tobacco Products Duty Act 1986 (of Tynwald) (raw tobacco scheme)<sup>10</sup>;
- (e) approved and registered under section 18H of the Value Added Tax Act 1996 (of Tynwald) (fulfilment houses due diligence scheme)<sup>11</sup>;
- (f) licensed to carry out a regulated activity under the Tobacco Products Manufacturing Machinery (Licensing Scheme) Regulations 2018 (of Tynwald) (tobacco machinery scheme)<sup>12</sup>.
- (3) The Isle of Man Treasury may by regulations amend subsection (2) so as to add, vary or remove a paragraph of that subsection.  
Tynwald procedure - negative.

**16B Temporary approvals etc pending review or appeal: process**

- (1) On an application by P, the Isle of Man Treasury may grant temporary approval if it is satisfied that –
- (a) P has demonstrated that if temporary approval were not granted the review

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<sup>8</sup> SD 64/03, as amended by SD 232/08.

<sup>9</sup> Section 71C of the Alcoholic Liquor Duties Act 1986 was inserted by SD 2015/0162.

<sup>10</sup> Section 7J of the Tobacco Products Duty Act 1986 was inserted by SD 2017/0045.

<sup>11</sup> Section 18H of the Value Added Tax Act 1996 was inserted by SD 2018/0111.

<sup>12</sup> SD 2018/0071.

- or appeal in respect of the approval decision, or the appeal from a decision on review of that decision, would be rendered nugatory by virtue of P being unable to continue as a going concern or otherwise; and
- (b) it is appropriate in all the circumstances to grant temporary approval (despite the approval decision).
- (2) In determining whether it would be appropriate to grant temporary approval, the Isle of Man Treasury must have regard to —
- (a) the prospect of the review or appeal in respect of the approval decision, or appeal from a decision on review of that decision, being determined in P's favour;
- (b) any alternative steps available to, and taken by, P to protect P's position pending the final determination of the review or appeal;
- (c) whether P has acted expeditiously in requiring the review or in bringing and progressing the appeal.
- (3) Subject to any provision made in regulations under section 16C, temporary approval has effect as an approval, registration or licence (as the case may be) under the relevant provision listed in section 16A(2) that —
- (a) commences on the day on which the application for temporary approval is granted;
- (b) expires on the day determined in accordance with subsection (4); and
- (c) is subject to any conditions or restrictions imposed on the temporary approval.
- (4) The day on which a temporary approval expires is —
- (a) in a case where the approval decision is cancelled on a review, the day on which it is cancelled;
- (b) in a case where the approval decision is upheld on a review, the last day on which an appeal could be brought

- against that decision (ignoring any possibility of an appeal brought out of time with permission), unless paragraph (4)(c) applies;
- (c) in a case where an appeal (other than an appeal brought out of time with permission) is brought in respect of an approval decision or a decision on a review of that decision, the day on which the appeal is finally determined.
- (5) The Isle of Man Treasury may revoke a temporary approval, or vary the conditions or restrictions to which it is subject, if it is satisfied that a change in circumstances justifies doing so.
- (6) The Isle of Man Treasury may by notice published in such form as it considers appropriate make provision about the timing, form, content and determination of applications under subsection (1).
- (7) Subsection (8) applies if the Isle of Man Treasury —
- (a) refuse an application under subsection (1);
- (b) grant an application under that subsection subject to conditions or restrictions;
- (c) vary the conditions or restrictions to which a temporary approval is subject; or
- (d) revoke a temporary approval, and the approval decision, or the decision on a review of that decision under section 15C or 15E, has been appealed to an appeal tribunal under section 16.
- (8) If, on an application by P, the appeal tribunal decides that the Isle of Man Treasury should not have (as the case may be) —
- (a) refused the application;
- (b) granted the application subject to particular conditions or restrictions;
- (c) varied the conditions or restrictions to which the temporary approval is subject; or
- (d) revoked the temporary approval, the appeal tribunal may order the Isle of Man

Treasury to make any decision that it would have been open to the Isle of Man Treasury to make under this section.

- (9) If the appeal tribunal makes an order under subsection (8), the Isle of Man Treasury or P may apply to the appeal tribunal to vary or revoke that order.
- (10) The Isle of Man Treasury must notify P of any decision to grant or revoke a temporary approval or to vary the conditions or restrictions to which such approval is subject.

**16C Temporary approvals etc pending review or appeal: modifications**

- (1) The Isle of Man Treasury may by regulations make such provision as it considers appropriate in consequence of provision made in sections 16A and 16B (including by virtue of regulations under section 16A(3)).  
Tynwald procedure - negative.
- (2) Regulations under this section may amend, repeal, revoke or otherwise modify any enactment. **22. 22.**

**MADE 28 JULY 2021**

**A L CANNAN**  
*Minister for the Treasury*

*EXPLANATORY NOTE*

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

This Order amends Schedule 15 to the Customs and Excise Acts (Application) Order 1979 by inserting sections 16A to 16C of the Finance Act 1994 (of Parliament), as that Act has effect in the Isle of Man. The amendment corresponds with provisions made in the United Kingdom, as required under the Customs and Excise Agreement 1979.

The inserted sections introduce a new power for the Treasury to grant temporary approval to a business seeking review of, or appealing a decision to, remove, or reject, certain customs, excise or VAT trading approvals. Where the Treasury has revoked or refused an approval to trade, a business has a right to appeal that decision. Without this temporary approval in place, the relevant business may not survive the appeal process on account of being unable to trade, making its appeal right rendered ineffective.