



CUSTOMS AND EXCISE ACT 1993

**AIRCRAFT OPERATORS (ACCOUNTS AND RECORDS)
(AMENDMENT) REGULATIONS 1998 (APPLICATION) ORDER 1998**

Approved by Tynwald

28 April 1998

Coming into operation

11 February 1998

In exercise of the powers conferred on the Treasury by section 1 of the Customs and Excise Act 1993(a), and of all other powers enabling it in that behalf, the following Order is hereby made :-

Citation, commencement and construction

1. (1) This Order may be cited as the Aircraft Operators (Accounts and Records) (Amendment) Regulations 1998 (Application) Order 1998 and shall be construed as one with the Customs and Excise Acts (Application) Order 1979(b).
- (2) The applied legislation shall be deemed to have come into operation on the 11 February 1998.

Interpretation

2. In this Order, "the applied legislation" means the Aircraft Operators (Accounts and Records) (Amendment) Regulations 1998(c).

Application

3. The applied legislation shall apply to the Island, as part of the law of the Island, subject to the exceptions, modifications and adaptations specified in the Schedule.

(a) 1993 c.7.
(b) G.C. 38/79.
(c) S.I. 1998 No. 63.

SCHEDULE

EXCEPTIONS, MODIFICATIONS AND ADAPTATIONS SUBJECT TO WHICH THE AIRCRAFT OPERATORS (ACCOUNTS AND RECORDS) (AMENDMENT) REGULATIONS 1998 (S.I. 1998 No. 63) SHALL HAVE EFFECT IN THE ISLAND

<u>Article</u>	<u>Subject matter</u>	<u>Exceptions, modifications and adaptations</u>
1.	Commencement.	Omit the words from "and shall" onwards.
2.	Amendment.	<p>(a) For "137A", wherever occurring, substitute "144A".</p> <p>(b) For "1979", wherever occurring, substitute "1986".</p> <p>(c) For "Commissioners", wherever occurring, substitute "Treasury".</p> <p>(d) In new regulation 9 for "them" substitute "it".</p> <p>(e) In new regulation 10 for "them" substitute "it".</p> <p>(f) In new regulation 11 -</p> <p>(i) for "them" substitute "it"; and</p> <p>(ii) omit the words "of theirs".</p> <p>(g) In new regulation 14, on both occasions it occurs, omit the words "of theirs".</p>

Made this

4th day of

March

1998



Minister for the Treasury

EXPLANATORY NOTE
(This note is not part of the Order)

This Order applies in Island law Regulations which amend the Aircraft Operators (Accounts and Records) Regulations 1994^(d), and which come into operation with effect from 11th February 1998.

The new Regulations are concerned with reimbursement arrangements necessary when a person is making a claim for a refund of Air Passenger Duty (APD) under section 144A of the Customs and Excise Management Act 1986^(e).

(d) S.I. 1994/1737, applied in the Island by S.D. 360/94.

(e) 1986 c.34.

1998 No. 63

CUSTOMS AND EXCISE

AIRCRAFT OPERATORS (ACCOUNTS AND RECORDS)
(AMENDMENT) REGULATIONS 1998

<i>Made</i>	<i>20th January 1998</i>
<i>Laid before the House of Commons</i>	<i>21st January 1998</i>
<i>Coming into force</i>	<i>11th February 1998</i>

The Commissioners of Customs and Excise, in exercise of the powers conferred on them by paragraph 3(1), (3), (4), (5), (6) and (7) of Schedule 5 to the Finance Act 1997^(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

1. These Regulations may be cited as the Aircraft Operators (Accounts and Records) (Amendment) Regulations 1998 ~~and shall come into force on 11th February 1998.~~
2. After regulation 8 of the Aircraft Operators (Accounts and Records) Regulations 1994^(b) there shall be added the following regulations -

“Interpretation of regulations 9 to 16

9. In this regulation and in regulations 10 to 16 below -

“claim” means a claim made (irrespective of when it was made) under section ~~137A~~ 144A of the Customs and Excise Management Act ~~1979~~^(c) 1986 for repayment of an amount paid to the ~~Commissioners~~ Treasury by way of excise duty which was not due to ~~them~~ it; and “claimed” and “claimant” shall be construed accordingly;

“reimbursement arrangements” means any arrangements (whether made before, on or after 30th January 1998) for the purposes of a claim which -

- (a) are made by a claimant for the purpose of securing that he is not unjustly enriched by the repayment of any amount in pursuance of the claim; and
- (b) provide for the reimbursement of persons (consumers) who have, for practical purposes, borne the whole or any part of the cost of the original payment of that amount to the ~~Commissioners~~ Treasury;

^(a) 1997 c.16; paragraph 1(3) of Schedule 5 defines “the Commissioners” as meaning the Commissioners of Customs and Excise.

^(b) S.I. 1994/1737.

^(c) 1979 c.2; section 137A was inserted by section 20 of the Finance Act 1995 (c.4).

“relevant amount” means that part (which may be the whole) of the amount of a claim which the claimant has reimbursed or intends to reimburse to consumers.

Reimbursement arrangements - general

10. Without prejudice to regulation 16 below, for the purposes of section ~~137A(3)~~ 144A(3) of the Customs and Excise Management Act ~~1979~~ 1986 (defence by the ~~Commissioners~~ Treasury that repayment by ~~them~~ it of an amount claimed would unjustly enrich the claimant) reimbursement arrangements made by a claimant shall be disregarded except where they -

- (a) include the provisions described in regulation 11 below; and
- (b) are supported by the undertakings described in regulation 15 below.

Reimbursement arrangements - provisions to be included

11. The provisions referred to in regulation 10(a) above are that -

- (a) reimbursement for which the arrangements provide will be completed by no later than 90 days after the repayment to which it relates;
- (b) no deduction will be made from the relevant amount by way of fee or charge (howsoever expressed or effected);
- (c) reimbursement will be made only in cash or by cheque;
- (d) any part of the relevant amount that is not reimbursed by the time mentioned in paragraph (a) above will be repaid by the claimant to the ~~Commissioners~~ Treasury;
- (e) any interest paid by the ~~Commissioners~~ Treasury on any relevant amount repaid by ~~them~~ it will also be treated by the claimant in the same way as the relevant amount falls to be treated under paragraphs (a) and (b) above; and
- (f) the records described in regulation 13 below will be kept by the claimant and produced by him to the ~~Commissioners~~ Treasury, or to an officer of ~~theirs~~ in accordance with regulation 14 below.

Repayments to the ~~Commissioners~~ Treasury

12. The claimant shall, without prior demand, make any repayment to the ~~Commissioners~~ Treasury that he is required to make by virtue of regulation 11(d) and (e) above within 14 days of the expiration of the period of 90 days referred to in regulation 11(a) above.

Records

13. The claimant shall keep records of the following matters -

- (a) the names and addresses of those consumers whom he has reimbursed or

whom he intends to reimburse;

- (b) the total amount reimbursed to each such consumer;
- (c) the amount of interest included in each total amount reimbursed to each consumer;
- (d) the date that each reimbursement is made.

Production of records

14. (1) Where a claimant is given notice in accordance with paragraph (2) below, he shall, in accordance with such notice produce to the ~~Commissioners~~ Treasury, or to an officer ~~of theirs~~, the records that he is required to keep pursuant to regulation 13 above.

(2) A notice given for the purposes of paragraph (1) above shall -

- (a) be in writing;
- (b) state the place and time at which, and the date on which the records are to be produced; and
- (c) be signed and dated by the ~~Commissioners~~ Treasury, or by an officer ~~of theirs~~,

and may be given before or after, or both before and after the ~~Commissioners~~ Treasury have paid the relevant amount to the claimant.

Undertakings

15. (1) Without prejudice to regulation 16(b) below, the undertakings referred to in regulation 10(b) above shall be given to the ~~Commissioners~~ Treasury by the claimant no later than the time at which he makes the claim for which the reimbursement arrangements have been made.

(2) The undertakings shall be in writing, shall be signed and dated by the claimant, and shall be to the effect that -

- (a) at the date of the undertakings he is able to identify the names and addresses of those consumers whom he has reimbursed or whom he intends to reimburse;
- (b) he will apply the whole of the relevant amount repaid to him, without any deduction by way of fee or charge or otherwise, to the reimbursement in cash or by cheque, of such consumers by no later than 90 days after his receipt of that amount (except insofar as he has already so reimbursed them);
- (c) he will apply any interest paid to him on the relevant amount repaid to him wholly to the reimbursement of such consumers by no later than 90 days after his receipt of that interest;

- (d) he will repay to the ~~Commissioners~~ Treasury without demand the whole or such part of the relevant amount repaid to him or of any interest paid to him as he fails to apply in accordance with the undertakings mentioned in sub-paragraphs (b) and (c) above;
- (e) he will keep the records described in regulation 13 above; and
- (f) he will comply with any notice given to him in accordance with regulation 14 above concerning the production of such records.

Reimbursement arrangements made before 11th February 1998

16. Reimbursement arrangements made by a claimant before 11th February 1998 shall not be disregarded for the purposes of section ~~137A(3)~~ 144A(3) of the Customs and Excise Management Act ~~1979~~ 1986 if, not later than 11th March 1998 -

- (a) he includes in those arrangements (if they are not already included) the provisions described in regulation 11 above; and
- (b) gives the undertakings described in regulation 15 above.”.

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

20th January 1998

Signed by Martin Brown
Commissioner of Customs and Excise

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 11th February 1998, further amend the Aircraft Operators (Accounts and Records) Regulations 1994 (S.I. 1994/1737) (the principal Regulations) by adding regulations 9 to 16 to the principal Regulations.

The new regulations describe the provisions that must be included in reimbursement arrangements made by a person making a claim under section 137A of the Customs and Excise Management Act 1979 (c.2) (recovery of overpaid excise duty), the undertakings that he must give and the other requirements with which he must comply, in order that his reimbursement arrangements are not to be disregarded for the purposes of determining whether he would be unjustly enriched if his claim is met.

Regulation 9 of the principal Regulations defines certain terms used in regulations 9 to 16 of the principal Regulations.

Regulation 10 of the principal Regulations describes, in general terms, the provisions which a claimant's reimbursement arrangements must include, and the undertakings which he must give, in order that his arrangements are not to be disregarded when determining whether he would be unjustly enriched if his claim is met.

Regulation 11 of the principal Regulations describes the detailed provisions that must be included in reimbursement arrangements, in order that the arrangements are not to be disregarded when determining whether a claimant would be unjustly enriched if his claim is met.

Regulation 12 of the principal Regulations requires a claimant to repay to the Commissioners of Customs and Excise any amount which he received in order to reimburse consumers, but which he had failed to apply to that purpose within 14 days of his receipt of that amount.

Regulation 13 of the principal Regulations describes the records that the claimant must keep relating to his reimbursement arrangements.

Regulation 14 of the principal Regulations provides for the production of such records.

Regulation 15 of the principal Regulations describes in detail the undertakings that the claimant must give to comply with his reimbursement arrangements.

Regulation 16 of the principal Regulations contains provisions relating to reimbursement arrangements made before these Regulations came into force.