



CUSTOMS AND EXCISE ACTS (APPLICATION) (AMENDMENT) (NO. 3) ORDER 2018

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Statutory Document No. 2018/0136



Customs and Excise Act 1993

CUSTOMS AND EXCISE ACTS (APPLICATION) (AMENDMENT) (NO. 3) ORDER 2018

Approved by Tynwald: 19th June 2018

Coming into Operation: in accordance with article 2

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. 3) Order 2018.

2 Commencement

This Order comes into operation on 1 May 2018¹.

3 Interpretation

In this Order, “**the principal Order**” means the Customs and Excise Acts (Application) Order 1979².

4 Application of section 46 of the Finance Act 2018 (of Parliament) to the Island

- (1) Section 46 of the Finance Act 2018³ (of Parliament) is applied to the Island with the following modifications.
- (2) In sub-section (1) for “FA 1994 (power to enter premises and inspect goods)”, substitute **43** Finance Act 1994 (power to enter premises and inspect goods) as it has effect in the Island, **22**⁴.

¹ Section 3(1) of the Customs and Excise Act 1993 provides that an order made under section 1 or 2 of that Act shall be laid before Tynwald as soon as practicable after it is made and if at the sitting at which it is laid Tynwald fails to approve the order it shall cease to have effect.

² GC 38/79.

³ 2018 c.3.

⁴ Section 24 of the Finance Act 1994 (of Parliament) was applied in the Island by SD 369/94.

- (3) In sub-section (4), in both places where the words occur, for “Commissioners are”, substitute **“Treasury is”**.
- (4) In sub-section (4) for the words to be inserted as subsection (9) from “Section 159(2)” to “subsection (3)”, substitute, **“Subsection 166(2) of the Customs and Excise Management Act 1986 (examinations of goods to be at a place appointed by the Treasury) does not apply to an examination under subsection (3).”**
- (5) The text of section 46 as applied to the Island is annexed to this Order⁵.

5 Amendment to the principal Order

- (1) As a consequence of Article 4, the principal Order is amended as follows.
- (2) In Part IIIA of Schedule 1, in the entry relating to the Finance Act 1994 (c.9), after “Sections 7 to 44” insert **“(as amended by section 46 of the Finance Act 2018 (c.3))”**.
- (3) In Schedule 15 (exceptions, adaptations and modifications subject to which the Finance Act 1994 (c.9) shall have effect in the Island), in the entry relating to section 20, for the third column substitute —
 - (a)** Before subsection (1) insert —
 - (A1)** This chapter applies to those persons specified in subsections (1) and (2A). **”**
 - (b) In subsection (1), for “This Chapter applies to any”, substitute **“Any”**.
 - (c) In subsection (2) for “Community”, substitute **“Union”**.
 - (d) After subsection (2), insert —
 - (2A)** Any person involved in carrying on a trade or business which consists of or includes any of the following activities —
 - (a) importing or exporting, or removing to or from the Island, any goods of a class or description which may be liable to a duty of excise, or a prohibition or restriction on their import, export or removal under any statutory provision;
 - (b) producing, manufacturing or applying a process to them;
 - (c) buying, selling or dealing in them; handling or storing them;
 - (d) financing or facilitating any activity mentioned in paragraphs (a) to (c). **”**

⁵ As required by section 3(4) of the Customs and Excise Act 1993.

- (e) In subsection (3)(a), omit the word “and”.
- (f) After subsection (3)(a), insert —
 - 33(aa) “buying, selling or dealing” includes placing on the market in the Island or the United Kingdom; and 22.
- (g) In subsection (4) for “1979”, substitute 33 1986 22.
- (h) In subsection (5) —
 - (i) for “75A, 75B or 75C”, substitute 33 77A, 77B or 77C 22;
 - (ii) for “1979”, substitute 33 1986 22; and
 - (iii) for “77A, 77B or 77C”, substitute 33 78A, 78B or 78C 22, 22.
- (4) In Schedule 15 (exceptions, adaptations and modifications subject to which the Finance Act 1994 (c.9) shall have effect in the Island), in the entry relating to section 21, in the third column, after sub-paragraph (b) insert —
 - 33(ba) In subsection (2) for “they”, in both places where the word occurs, substitute 33 it 22.
 - (bb) In subsection (5) for “they” in both places where the word occurs, substitute 33 it 22, 22.
- (5) In Schedule 15 (exceptions, adaptations and modifications subject to which the Finance Act 1994 (c.9) shall have effect in the Island), in the entry relating to section 23, for the third column, substitute —
 - 33(a) For “Commissioners” wherever occurring, substitute 33 Treasury 22.
 - (b) In subsection (1) for “they” in both places where the word occurs, substitute 33 it 22.
 - (c) In subsection (5) for “they” in both places where the word occurs, substitute 33 it 22.
 - (d) In subsection (6) —
 - (i) for “section 21(3) above”, substitute 33 section 20(1) or (2A) 22;
 - (ii) for “importation or exportation of customs goods”, substitute 33 importation, exportation or removal of goods 22, 22.
- (6) In Schedule 15 (exceptions, adaptations and modifications subject to which the Finance Act 1994 (c.9) shall have effect in the Island), after the entry relating to section 23, insert —
 - 33 Section 24 Power of entry
 - (1) The existing text becomes subsection (1).
 - (2) In that subsection —

- (a) for “Where” substitute
☒ This section applies
where ☒;
 - (b) for subsection (b) substitute
☒ any goods to which
section 20(1) or (2A) apply
are on those premises. ☒
 - (c) omit the words after
paragraph (b).
- (3) After subsection (1) insert —
- ☒ (2) The officer may at any
reasonable time enter and
inspect the premises.
 - (3) The officer may inspect,
examine and take account
of any goods found on the
premises.
 - (4) The officer may require a
relevant person to provide
any assistance that is
reasonable for the purpose
of exercising the power in
subsection (3) including
requiring a relevant person
to move, open or unpack
goods and containers.
 - (5) The officer may, for the
purpose of exercising the
power in subsection (3) —
 - (a) move, open, or
unpack goods and
containers;
 - (b) search containers
and anything in
them;
 - (c) mark goods and
containers.
 - (6) The Treasury is not to bear
any costs incurred by a
relevant person in
complying with a
requirement under
subsection (4).

- (7) But the Treasury is to bear the costs of anything done by the officer under subsection (5).
- (8) In this section “**relevant person**” means —
- (a) the person to whom this Chapter applies;
 - (b) the occupier of the premises;
 - (c) a person who has (or appears to have) possession or control of the goods;
 - (d) a person who is (or appears to be) acting on behalf of a person within any of paragraphs (a) to (c).
- (9) Section 166(2) of the Customs and Excise Management Act 1986 (examinations of goods to be at a place appointed by the Treasury) does not apply to an examination under subsection (3). ~~22~~. ~~22~~
- (7) In Schedule 15 (exceptions, adaptations and modifications subject to which the Finance Act 1994 (c.9) shall have effect in the Island), in the entry relating to section 25, for the third column, substitute —
- ~~22~~(1) For subsection (1)(a) substitute —
 - ~~22~~(a) that an offence in connection with a duty of customs or excise, or a prohibition or restriction relating to goods imported, exported or removed to or from the Island is being, has been or is about to be committed, and ~~22~~.
 - (2) In subsection (3) omit the words from “or, in relation” to the end. ~~22~~.

MADE 30 APRIL 2018

A L CANNAN
Minister for the Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies section 46 of the Finance Act 2018 (of Parliament) to the Island with modifications and amends Schedule 15 to the Customs and Excise Acts (Application) Order 1979⁶ (the “principal Order”). The principal Order is an instrument used to apply certain provisions of United Kingdom law to the Island relating to customs and excise. In this instance, the United Kingdom law is sections 20 to 25 of the Finance Act 1994⁷.

The amendments extend the scope of powers of a customs officer to enable the officer to inspect, examine and take account of goods held on a premises which that officer reasonably believes is used for the purposes of carrying on a trade or business in respect of goods which may be liable to a duty of customs, excise, or a prohibition or restriction relating to goods imported, exported or removed to or from the Island.

The new provisions may require specified individuals to provide the officer with reasonable assistance for the purposes of exercising those powers, such as moving, opening and unpacking goods and containers.

The basic power to examine and take account of goods is contained in section 166 of the Customs and Excise Management Act 1986 (“CEMA”). However, this basic power is restricted to use at places appointed by the Treasury for the purposes of doing so, such as ports, airports, approved warehouses etc. Customs officers now are faced with sophisticated frauds involving customs or excise goods, the majority of which are inland, at a trader’s premises, as well as undertaking routine compliance visits. The use of the basic power under CEMA is not permitted in these cases. The only power available to officers is section 24 of the Finance Act 1994 (of Parliament), as it has effect in the Island, and the amendments being made will bring the scope of the power under section 24 into line with the power which the Treasury has to inspect imported goods and warehoused goods, and goods loaded for export as stores under section 166 of CEMA.

⁶ GC 38/79.

⁷ SD 638/08. There are previous amendments to Schedule 21 to GC 38/79, but none are relevant.

Annex

46 Power to enter premises and inspect goods

- (1) Section 24 of ~~FA 1994 (power to enter premises and inspect goods)~~ **Finance Act 1994 (power to enter premises and inspect goods), as it has effect in the Island**, is amended as follows.
- (2) The existing text becomes subsection (1).
- (3) In that subsection—
 - (a) at the beginning insert “This section applies”;
 - (b) omit the words after paragraph (b).
- (4) After that subsection insert—
 - “(2) The officer may at any reasonable time enter and inspect the premises.
 - (3) The officer may inspect, examine and take account of any goods found on the premises.
 - (4) The officer may require a relevant person to provide any assistance that is reasonable for the purpose of exercising the power in subsection (3) including requiring a relevant person to move, open or unpack goods and containers.
 - (5) The officer may, for the purpose of exercising the power in subsection (3)—
 - (a) move, open, or unpack goods and containers;
 - (b) search containers and anything in them;
 - (c) mark goods and containers.
 - (6) ~~The Commissioners are~~ **Treasury is** not to bear any costs incurred by a relevant person in complying with a requirement under subsection (4).
 - (7) ~~But the Commissioners are~~ **Treasury is** to bear the costs of anything done by the officer under subsection (6).
 - (8) In this section “relevant person” means—
 - (a) the person to whom this Chapter applies;
 - (b) the occupier of the premises;
 - (c) a person who has (or appears to have) possession or control of the goods;
 - (d) a person who is (or appears to be) acting on behalf of a person within any of paragraphs (a) to (c).

(9) ~~Section 159(2) of the Customs and Excise Management Act 1979 (examinations of goods to be at a place appointed by the Commissioners) does not apply to an examination under subsection (3).~~

Section 166(2) of the Customs and Excise Management Act 1986 (examinations of goods to be at a place appointed by the Treasury) does not apply to an examination under subsection (3)."