



CUSTOMS AND EXCISE MANAGEMENT ACT 1986

CUSTOMS AND EXCISE MANAGEMENT ACT 1986
(AMENDMENT) ORDER 2011

Approved by Tynwald

17 May 2011

Coming into operation in accordance with article 2

The Treasury makes this Order under section 180 of the Customs and Excise Management Act 1986⁽¹⁾.

- 1 Title**

This Order is the Customs and Excise Management Act 1986 (Amendment) Order 2011.
- 2 Commencement**
 - (1) This Order comes into operation when it is approved by Tynwald.
 - (2) However, when it is approved it shall be deemed to have come into operation on 1 April 2011.
- 3 Amendment of the Customs and Excise Management Act 1986**
 - (1) The Customs and Excise Management Act 1986 is amended as follows.
 - (2) In section 117 (power of entry upon premises etc of revenue traders), at the end add—
 - “(7) For the purposes of subsection (1)—
 - (a) it does not matter if the premises in question are owned or used partly for the purposes of the trade and partly for other purposes (including as a dwelling); but
 - (b) the officer may not enter or inspect any part of the premises that is used solely as a dwelling.

⁽¹⁾ 1986 c.34

(8) Premises used to hold or store anything for the purposes of a revenue trader's trade are taken to be used by the revenue trader for the purposes of that trade, regardless of who owns or occupies the premises."

(3) After section 117 insert—

"117A Section 117: supplementary powers

(1) The power in section 117(1) includes power to inspect any business documents that are on the premises.

(2) "Business documents" means documents (or copies of documents) that relate to the carrying on of the revenue trader's trade, whether or not ones that a person may be required to produce under section 124B.

(3) Subsections (4) to (8) of section 124B apply to documents inspected under section 117(1) as they apply to documents produced under section 124B.

(4) The power in section 117(1) will also include power—

(a) to mark items that have been examined or inspected, and anything containing such items, for the purpose of indicating that they have been examined or inspected; and

(b) to obtain and record information (whether electronically or otherwise) relating to the premises, items and documents that have been examined or inspected."

(4) In section 124A (duty of revenue traders to keep records⁽²⁾)—

(a) in subsection (1)(b), for "require" substitute "specify in writing (and different lesser periods may be specified).";

(b) for subsection (3) substitute—

"(3) A duty imposed by this section to preserve records may be discharged—

(a) by preserving them in any form and by any means; or

⁽²⁾ Section 124A inserted by SD 458/94. No further relevant amendments have been made

(b) by preserving the information contained in them in any form and by any means,

subject to any conditions or exceptions specified in writing by the Treasury.”; and

(c) omit subsections (4) and (5).

(5) After section 124B⁽³⁾ insert—

“124BA Further duty to provide information and documents

(1) An officer may by notice in writing require a person to provide documents if—

(a) they are reasonably required by the officer for the purpose of protecting, securing, collecting or managing revenues derived from duties of excise; and

(b) the officer has reasonable cause to believe that the person is in possession or control of them.

(2) An officer may not give a notice under this section without the approval of the tribunal.

(3) An application for approval may be made without notice (except as required under subsection (4)).

(4) The tribunal may not give its approval unless—

(a) it is satisfied that, in the circumstances, the officer proposing to give the notice is justified in doing so;

(b) the person to whom the notice is to be given has been told that the documents are required and given a reasonable opportunity to make representations to an officer; and

(c) the tribunal has been given a summary of any representations made by that person.

(5) Paragraphs (b) and (c) of subsection (4) do not apply to the extent that the tribunal is satisfied that taking the action specified in those paragraphs might prejudice the protection, security, collection or management of revenues derived from duties of excise.

⁽³⁾ Section 124B inserted by GC 296/91, with subsequent amendments by SD 225/97

- (6) A decision of the tribunal under this section is final.
- (7) The following provisions of Schedule 36 to the Finance Act 2008 (of Parliament)⁽⁴⁾ apply to a notice under this section as they apply to an information notice—
- (a) paragraphs 7 and 8 (complying with notices and producing copies of documents);
 - (b) paragraphs 15 and 16 (powers to copy and remove documents);
 - (c) Part 4 (restrictions on powers), except paragraph 28; and
 - (d) Part 9 (miscellaneous provisions and interpretation) so far as relevant to the provisions listed above.
- (8) The powers in this section apply to the information as they apply to documents (and “documents” is to be read accordingly).
- (9) Nothing in this section affects or limits section 124B.

124BB Inspection powers: goods-based duties

- (1) This section applies to premises if an officer has reasonable cause to believe that—
- (a) the premises are used in connection with the supply, importation or exportation of goods of a class or description chargeable with a duty of excise; and
 - (b) any such goods, or documents relating to any such goods, are on the premises.
- (2) The officer may at any reasonable time enter and inspect the premises and inspect—
- (a) any goods found on the premises; and
 - (b) any documents found on the premises that appear to the officer to relate to the supply, importation or exportation of goods of a class or description chargeable to duty of excise.

⁽⁴⁾ 2008 c.9 (of Parliament). Schedule 36 was applied in the Island by SD 638/08

- (3) For the purposes of this section—
- (a) it does not matter if the premises are used partly for a purpose mentioned in subsection (1)(a) and partly for other purposes (including as a dwelling); but
 - (b) the officer may not enter or inspect any part of the premises that is used as a dwelling.
- (4) Premises used to hold or store goods in connection with their supply, importation or exportation are taken to be premises used in connection with the supply, importation or exportation of goods, regardless of who owns or occupies the premises.

124BC Inspection powers: online gambling duty

- (1) This section applies to premises if an officer has reasonable cause to believe that section 5 gambling is taking place, has taken place or is about to take place on the premises.
- (2) The officer may at any reasonable time enter and inspect the premises and inspect—
- (a) accounts, records and other documents in the custody or control of any person who is engaging, or whom the officer reasonably suspects of engaging, in section 5 gambling or in any activity by reason of which the person is or may become liable to online gambling duty; and
 - (b) any equipment that is being, or the officer reasonably suspects of having been or being intended to be, used on the premises for or in connection with section 5 gambling.
- (3) Subsection (1) does not permit an officer to enter or inspect a particular part of premises if—
- (a) the officer has no reasonable cause to believe that section 5 gambling is taking place, has taken place or is about to take place in that part; and
 - (b) the part is used solely as a dwelling.
- (4) “Section 5 gambling” means gambling to which section 5 of the Online Gambling Regulation Act 2001⁽⁵⁾ applies.

⁽⁵⁾ 2001 c.10

124BD Inspection powers: supplementary provisions

- (1) If an officer, in the course of exercising a power under section 124BB or 124BC finds reason to believe that the premises are owned or used by a revenue trader (within the meaning of section 117), the officer may also exercise any power that the officer could have exercised under section 117 if the officer had entered the premises under that section.
- (2) Subsection (2) to (8) of section 124B apply to documents inspected under section 124BB or 124BC as they apply to documents produced under section 124B.
- (3) The powers under section 124BB and 124BC include power—
 - (a) to mark items that have been inspected, and anything containing such items, for the purpose of indicating that they have been inspected; and
 - (b) to obtain and record information (whether electronically or otherwise) relating to the premises, items and documents that have been inspected.”.
- (6) In section 124C (entry and search of premises and persons), omit subsection (2).
- (7) In section 124D (order for access to recorded information), in subsection (5), for “124B and 124C” substitute “124BB to 124C”.
- (8) In section 124G (offences under Part 9)—
 - (a) the existing provisions become subsection (1);
 - (b) after that subsection insert—
 - “(2) Part 7 of Schedule 36 to the Finance Act 2008 (of Parliament) (penalties) applies to a person who fails to comply with a notice under section 124BA as it applies to a person who fails to comply with an information notice.
 - (3) Part 8 of that Schedule (offences) applies in relation to documents that are or are likely to be subject of a notice under section 124BA as it applies in relation to documents that are or are likely to be the subject of an information notice (with the reference to approval of the tribunal in accordance with paragraph 3 or 5 of that Schedule being read as a reference to

approval of the tribunal in accordance with section 124BA of this Act).”.

- (9) For subsection (4) of section 144A⁽⁶⁾ (recovery of overpaid excise duty) substitute—

“(4) No claim for repayment may be made after the expiry of the period of—

(a) 4 years; or

(b) for claims for the repayment of amounts paid on or before 31 March 2008, 3 years,

beginning with the date of the payment or, if later, the date on which the claimant (or, where the right to repayment has been assigned or otherwise transmitted, any predecessor in title of his) discovered, or could with reasonable diligence have discovered, that the amount was not due.”.

- (10) In section 168 (power to search premises: search warrant)—

(a) after subsection (2) insert—

“(2A) The power in subsection (2)(a) includes power to search for and remove documents relating to any such thing (including documents about title, storage and movement).”; and

(b) in subsection (3), for “subsections (1) and (3)” substitute “subsections (1), (2) and (2A)”.

MADE

30th March 2011

Jane Crane

Minister for the Treasury

⁽⁶⁾ Section 144A inserted by SD 450/95. There are no further relevant amendments

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes various amendments to the Customs and Excise Management Act 1986 (“the Act”) analogous to those made to the corresponding United Kingdom legislation by means of the Finance (No. 3) Act 2010 (c.23 of Parliament).

The amendments make provision about information and inspection powers, record-keeping and time limits for assessments and claims involving excise duties.

Section 117 of the Act is amended to make clear that premises used for carrying on a revenue trade (i.e. one involving goods and services liable to excise duties) are liable to inspection etc regardless of their ownership.

A new section 117A is inserted into the Act providing supplementary powers over premises used by revenue traders. This provides the power to inspect any business documents on the premises, and to mark any items etc examined during the inspection.

Section 124A of the Act is amended and permits revenue traders to preserve records required by the Treasury in any form or by any means – subject to any conditions or exceptions imposed by the Treasury in writing.

New sections 124BA to 124BD are inserted providing additional powers in connection with the protection of the revenue deriving from excise duties.

New section 124BA allows the issue of a notice requiring information and documents, subject to the approval of the VAT and Duties Tribunal.

New section 124BB ensures customs officers may enter and inspect any premises used in connection with excise duties on goods.

New section 124BC provides powers for customs officers to enter and inspect premises where there is reasonable cause to believe they are being used for gambling liable to online gambling duty.

New section 124BD contains supplementary provisions regarding the inspection powers in sections 124BA to 124BC.

Consequential amendments are made to sections 124C, 124D, 124G and 168 of the Act.

Section 144A of the Act is amended to take account of the existence of a 4-year cap on recovery of overpaid excise duty, this applying only to repayments of amounts paid after 31 March 2008.