

The Law Commission and The Scottish Law Commission

(LAW COM. No. 93)

(SCOT. LAW COM. No. 54)

CUSTOMS AND EXCISE MANAGEMENT BILL

REPORT ON THE CONSOLIDATION OF THE
ENACTMENTS RELATING TO THE COLLECTION
AND MANAGEMENT OF THE REVENUES OF
CUSTOMS AND EXCISE

*Presented to Parliament by the
Lord High Chancellor and the Lord Advocate
by Command of Her Majesty
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THE LAW COMMISSION AND THE SCOTTISH LAW
COMMISSION

CUSTOMS AND EXCISE MANAGEMENT BILL

REPORT ON THE CONSOLIDATION OF THE ENACTMENTS RELATING
TO THE COLLECTION AND MANAGEMENT OF THE REVENUES
OF CUSTOMS AND EXCISE

*To the Right Honourable Lord Elwyn-Jones, C.H., Lord High Chancellor of Great
Britain, and*

the Right Honourable Ronald King Murray, Q.C., M.P., Her Majesty's Advocate.

The Customs and Excise Management Bill which accompanies this Report is the largest in a group of seven Bills* which together consolidate the enactments relating to customs and excise duties and their management. These enactments were last consolidated by the Customs and Excise Act 1952 and have been amended, sometimes radically, by subsequent Finance Acts. Other Acts, notably the Criminal Law Act 1977, have also made important changes.

At an early stage in drafting this and the other Bills a number of consolidation problems relating to the duties and their management were identified. In order to resolve these problems there was included in the Finance Act 1978 a Schedule of pre-consolidation amendments. The opportunity was there taken to dispose of all difficulties which had come to light by April of this year. Since that time, during the completion of the drafting process, four further points of difficulty (none of which relates to duty) have been identified. In order to dispose of these points and produce a satisfactory consolidation, we make the recommendations set out in the Appendix to this Report.

Of these recommendations we think that those numbered 3 and 4 are minor corrections or improvements which could be made under the Consolidation of Enactments (Procedure) Act 1949.

These recommendations are made with the agreement of the Commissioners of Customs and Excise and, in the case of the first recommendation, the Department of Trade also.

MICHAEL KERR

Chairman of the Law Commission

J. O. M. HUNTER

Chairman of the Scottish Law Commission

31 October 1978

*Note: The other Bills are the Customs and Excise Duties (General Reliefs) Bill, the Alcoholic Liquor Duties Bill, the Hydrocarbon Oil Duties Bill, The Matches and Mechanical Lighters Duties Bill, the Tobacco Products Duty Bill and the Excise Duties (Surcharges or Rebates) Bill. They are pure consolidation Bills requiring no recommendations.

APPENDIX
RECOMMENDATIONS

1. Under section 10(1) of the Finance Act 1966, references in certain Parts of the Customs and Excise Act 1952 to "ships" or "vessels" apply as if they included references to hovercraft. A number of the customs control provisions falling within these Parts of the 1952 Act apply only to ships or vessels of less than a specified tons register. Because the capacity of hovercraft cannot be computed in the same way as that of ships, that is, by reference to their tonnage, it was necessary in the 1966 Act to provide for all hovercraft to be treated as either over or under these specified tonnage limits. Hovercraft were considered to present special risks of revenue evasion; the policy of the 1966 Act therefore was to treat hovercraft in every case as if they were ships of less than the specified tonnages.

Provision was made accordingly by paragraph 1 of Schedule 2 to the 1966 Act. Paragraph 1 lists all the provisions of the 1952 Act which apply to ships of less than the specified tonnage except, unaccountably, section 68(5). That subsection requires all vessels not exceeding one hundred tons register to be marked in accordance with the directions of the Commissioners of Customs and Excise. It is clear that the requirement is meant to and does apply to hovercraft as "vessels" but the application of the requirement is unclear because the words excluding hovercraft over one hundred tons register are unworkable. It is thought that the anomalous omission of this provision from the list in paragraph 1 of Schedule 2 to the 1966 Act must have been an oversight.

We therefore recommend that in reproducing section 68(5) of the 1952 Act it should be treated as if it had been listed in paragraph 1 of Schedule 2 to the 1966 Act.

Effect is given to the recommendation in clause 81(7) of the Bill.

2. Schedule 12 to the Finance Act 1978 (pre-consolidation amendments) includes in paragraph 19 a number of amendments designed to pave the way for a more rational terminology in the customs and excise Acts. This was necessary because the Finance (No. 2) Act 1975 had provided for the revenue elements of customs duties to be renamed as excise duties, leaving the term "customs duties" applying only to protective duties on imports. As a result the old terminology, which was based on the traditional distinction between customs duties (as being duties on imported goods) and excise duties (as being duties on home-produced goods), had become misleading.

Paragraph 19(1)(a) of Schedule 12 to the 1978 Act replaces the 1952 Act's separate definitions of "customs Acts" and "excise Acts" with one defined expression "the customs and excise Acts". Paragraph 19(2) goes on to make any reference to "the customs Acts" or "the excise Acts" in any enactment (including the 1952 Act) a reference to "the customs and excise Acts" as defined in 19(1)(a).

Special provision was needed however in the case of Part IX of the 1952 Act. That Part is about the control of persons engaged in the United Kingdom in producing goods or in activities in respect of which excise duties are chargeable.

Those persons (formerly "excise traders") are termed "revenue traders" in the new terminology, and the provisions of the customs and excise Acts relating to their activities are termed "the revenue trade provisions of the customs and excise Acts". In Part IX there are a number of references to "the excise Acts" for which it was inappropriate to substitute the expression "the customs and excise Acts", since Part IX is not concerned with imported goods. Accordingly paragraph 19(3) provides for these references to be replaced by the expression "the revenue trade provisions of the customs and excise Acts". By an oversight, however, paragraph 19(3) does not apply to the reference to "the excise Acts" in section 253(1) of the 1952 Act. If this omission were not remedied on consolidation, the effect would be that the scope of section 253(1) would be widened and its special provisions about distress would apply in respect of unpaid penalties incurred by a revenue trader under provisions of the customs and excise Acts not relating to his trade. Paragraph 19 was not of course intended to make any such change of substance. We therefore recommend that in reproducing section 253(1) there should be substituted for the expression "the excise Acts" the expression "the revenue trade provisions of the customs and excise Acts" and not simply "the customs and excise Acts" as would be required on a literal consolidation.

Effect is given to this recommendation in clause 117(8) of the Bill.

3. Another term used in the 1952 Act which was falsified by the conversion in 1975 of customs revenue duties into excise duties was "customs charge". This expression refers to the control which the Commissioners of Customs and Excise exercise over imported goods for a period after their importation to secure the payment of duty or the observance in other respects of the customs laws. When this control has accomplished its purpose an out-of-charge note is issued in respect of the goods.

"Customs charge" is inappropriate where the Commissioners' control of imported goods arises because the goods are chargeable on importation with excise duty. Paragraph 19(7)(a) of Schedule 12 to the Finance Act 1978 was intended to substitute in the specified cases the expression "out of charge" for "from customs charge". When paragraph 19(7)(a) was drafted, the words "from customs charge" in section 260(1) of the 1952 Act were overlooked. To avoid a confusing difference in terminology where there is no difference in the substance, we recommend that, in reproducing section 260(1), the words "out of charge" be substituted for "from customs charge".

Effect is given to this recommendation in clause 127(1) of the Bill.

4. Section 3(3) of the Provisional Collection of Taxes Act 1968 applies where a resolution of the House of Commons imposes an excise duty in respect of goods produced or activities carried on in the United Kingdom to which provisional statutory effect cannot be given under section 1 of that Act. Section 3(3) confers on the Commissioners power to secure the payment of the duty by regulations which may apply the provisions of "the excise Acts" to the duty so imposed, to the revenue trade in connection with which the duty may become chargeable and to the person carrying on that trade.

As mentioned in connection with recommendation 2 above, paragraph 19(2) of Schedule 12 to the Finance Act 1978 converts the expression "the excise Acts",

wherever it appears, into "the customs and excise Acts". It is clear, however, from the context of section 3(3), that the statutory provisions which the Commissioners are empowered to apply are those defined as "the revenue trade provisions of the customs and excise Acts". The Bill repeals paragraph 19(2) of Schedule 12 to the 1978 Act and reproduces by way of textual amendment in Schedule 4 its effect on enactments outside the consolidation. We recommend that in amending section 3(3) of the 1968 Act consequentially on the repeal of paragraph 19(2), the expression "the revenue trade provisions of the customs and excise Acts", and not "the customs and excise Acts", be substituted for "the excise Acts".

Effect is given to this recommendation in Schedule 4 to the Bill.

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