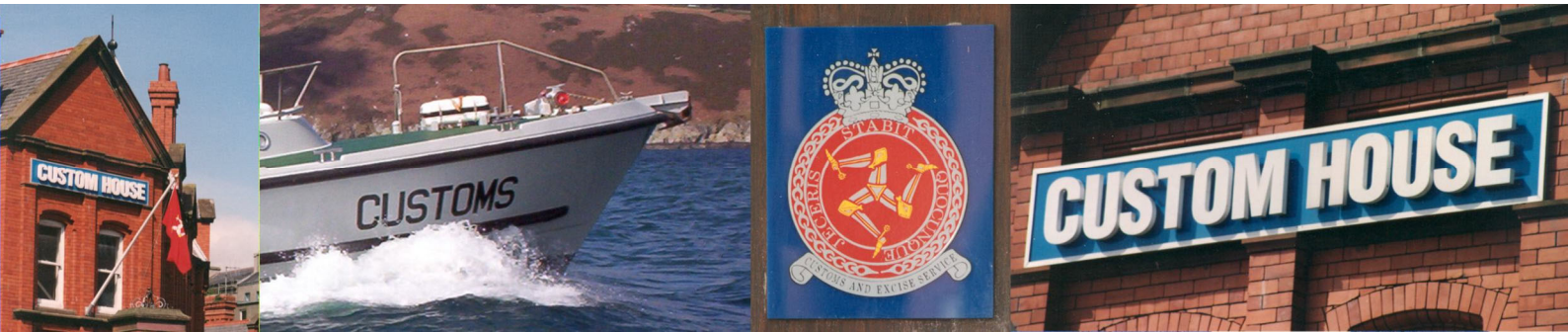


Treasury
Customs and Excise Division

Notice 1002 MAN

Annex C

Powers, Penalties Etc



January 2016
(updated to 23 March 2017)



Isle of Man
Government

Reilrys Ellan Vannin

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Isle of Man
Government

Reiltys Ellan Vannin

FINANCE ACT 1994 (c.9)

CHAPTER II

APPEALS AND PENALTIES

VAT and duties tribunals

VAT and duties tribunals

7. In the following provisions of this Chapter references "tribunal" or "appeal tribunal" are references to the VAT and Duties Tribunal established pursuant to Schedule 13 to the Value Added Tax Act 1996.

Civil penalties

Penalty for evasion of excise duty

8. ...Omitted.

Penalties for contraventions of statutory requirements

9. (1) This section applies, subject to section 10 below, to any conduct in relation to which any enactment (including an enactment contained in this Act or in any statutory provision passed or made after this Act) provides for the conduct to attract a penalty under this section.

(2) Any person to whose conduct this section applies shall be liable -

- (a) in the case of conduct in relation to which provision is made by subsection (4) below, or by or under any other enactment, for the penalty attracted to be calculated by reference to an amount payable on account of, any duty of excise, to a penalty of whichever is the greater of 5 per cent. of that amount and £250; and
- (b) in any other case, to a penalty of £250.

(3) Subject to section 13(3) and (4) below, in the case of any conduct to which this section applies which is conduct in relation to which provision is made by subsection (4) or (5) below or any other enactment for that conduct to attract daily penalties, the person whose conduct it is -

- (a) shall be liable, in addition to an initial penalty under subsection (2) above, to a penalty of £20 for every day, after the first, on which the conduct continues, but
- (b) shall not, in respect of the continuance of that conduct, be liable to further penalties under subsection (2) above.

(4) Where any conduct to which this section applies consists in a failure, in contravention of any subordinate legislation, to pay any amount of any duty of excise or an amount payable on account of any such duty, then, in so far as that would not otherwise be the case -

- (a) the penalty attracted to that contravention shall be calculated by reference to the amount unpaid; and
- (b) the contravention shall also attract daily penalties.

(5) Where -

- (a) a contravention of any provision made by or under any enactment consists in or involves a failure, before such time as may be specified in or determined in accordance with that provision, to send a return to the Treasury showing the amount which any person is or may become required to pay by way of, or on account of, any duty of excise, and
- (b) that contravention attracts a penalty under this section,

that contravention shall also attract daily penalties.

(6) Where, by reason of any conduct to which this section applies, a person is convicted of an offence, that conduct shall not also give rise to liability to a penalty under this section.

(7) ...Omitted.

(8) ...Omitted.

(9) ...Omitted.

Exceptions to liability under section 9

10. (1) Subject to subsection (2) below and to any express provision to the contrary made in relation to any conduct to which section 9 above applies, such conduct shall not give rise to any penalty under that section if the person whose conduct it is satisfies the Treasury or, on appeal, an appeal tribunal that there is a reasonable excuse for the conduct.

(2) Where it appears to the Treasury or, on appeal, an appeal tribunal that there is no reasonable excuse for a continuation of conduct for which there was at first a reasonable excuse, liability for a penalty under section 9 above shall be determined as if the conduct began at the time when there ceased to be a reasonable excuse for its continuation.

(3) For the purposes of this section -

- (a) an insufficiency of funds available for paying any duty or penalty due shall not be a reasonable excuse; and
- (b) where reliance is placed by any person on another to perform any task, then neither the fact of that reliance nor the fact that any conduct to which section 9 above applies was attributable to the conduct of that other person shall be a reasonable excuse.

Breaches of walking possession agreements

11. (1) This section applies where -

- (a) in accordance with regulations made under section 163A of the Customs and Excise Management Act 1986, a person ("the person levying the distress") is empowered or authorised to distrain any property of another person ("the person in default") who has refused or neglected to pay an amount of relevant duty or any amount accountable as if it were an amount of relevant duty due from him; and
- (b) the person levying the distress and the person in default have entered into a walking possession agreement.

(2) In this section a "walking possession agreement" means an agreement under which, in consideration of the property distrained upon being allowed to remain in the custody of the person in default and of the delaying of its sale, the person in default -

- (a) acknowledges that the property specified in the agreement is under distraint and held in walking possession; and
- (b) undertakes that, except with the consent of the Treasury and subject to such conditions as they may impose, he will not remove or allow the removal of any of the specified property from the premises named in the agreement.

(3) Subject to subsection (4) below, if the person in default is in breach of the undertaking contained in a walking possession agreement, he shall be liable to a penalty equal to one-half of the unpaid duty or penalty which gives rise to the distraint.

(4) The person in default shall not be liable to a penalty under subsection (3) above if he satisfies the Treasury or, on appeal, an appeal tribunal that there is a reasonable excuse for the breach in question.

(5) ...Omitted.

Assessments to excise duty or to penalties

Assessments to excise duty

12. (1) Subject to subsection (4) below, where it appears to the Treasury –

- (a) that any person is a person from whom any amount has become due in respect of any duty of excise; and
- (b) that there has been a default falling within subsection (2) below,

the Treasury may assess the amount of duty due from that person to the best of their judgement and notify that amount to that person or his representative.

(1A) Subject to subsection (4), where it appears to the Treasury -

- (a) that any person from whom any amount has become due in respect of any duty of excise; and
- (b) that the amount due can be ascertained by the Treasury,

the Treasury may assess the amount of duty due from that person and notify that amount to that person or his representative.

(2) The defaults falling within this subsection are -

- (a) any failure by any person to make, keep, preserve or produce as required or directed by or under any enactment any returns, accounts, books, records or other documents;
- (b) any omission from or inaccuracy in any returns, accounts, books, records or other documents which any person is required or directed by or under any enactment to make, keep, preserve or produce;

- (bb) any failure by any person to take or permit to be taken any step which he or she is required to take or permit to be taken under Part 1 of Schedule 24 to the Finance Act 2012 (of Parliament), as it has effect in the Island;
- (c) any failure by any person to take or permit to be taken any step which he or she is required under the Gambling Duty Act 2012 to take or to permit to be taken;
- (ca) any failure by any person to comply with a requirement to which he is made subject by or under Schedule 2A to the Alcoholic Liquor Duties Act 1986 (duty stamps);
- (d) any unreasonable delay in performing any obligation the failure to perform which would be a default falling within this subsection.

(3) Where an amount has been assessed as due from any person and notified in accordance with this section, it shall, subject to any appeal under section 16 below, be deemed to be an amount of the duty in question due from that person and may be recovered accordingly, unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced.

(4) An assessment of the amount of any duty of excise due from any person shall not be made under this section at any time after whichever is the earlier of the following times, that is to say -

- (a) subject to subsection (5) below, the end of the period of 4 years beginning with the time when his liability to the duty arose; and
- (b) the end of the period of one year beginning with the day on which evidence of facts, sufficient in the opinion of the Treasury to justify the making of the assessment, comes to their knowledge;

but this subsection shall be without prejudice, where further evidence comes to the knowledge of the Treasury at any time after the making of an assessment under this section, to the making of a further assessment within the period applicable by virtue of this subsection in relation to that further assessment.

(5) Subsection (4) above shall have effect as if the reference in paragraph (a) to 4 years were a reference to twenty years in any case falling within subsection (5A)(a) or (b).

(5A) The cases are—

- (a) a case involving a loss of duty or excise brought about deliberately by the person assessed (P) or by another person acting on P's behalf, and
- (b) a case in which P has participated in a transaction knowing that it was part of arrangements of any kind (whether or not legally enforceable) intended to bring about a loss of duty of excise.

(6) The reference in subsection (4) above to the time when a person's liability to a duty of excise arose are references -

- (a) in the case of a duty of excise on goods, to the excise duty point; and
- (b) in any other case, to the time when the duty was charged.

(6A) The reference in subsection (5A) to a loss of duty of excise brought about deliberately by P or another person includes a loss that arises as a result of—

- (a) a deliberate inaccuracy in a document given to the Treasury by that person, or
 - (b) a deliberate failure by that person to comply with an obligation specified in the Table in paragraph 1 of Schedule 41 to the Finance Act 2008 with respect to that duty of excise.
- (7) ...Omitted.

(8) In this section "representative", in relation to a person appearing to the Treasury to be a person from whom any amount has become due in respect of any duty of excise, means his personal representative, trustee in bankruptcy or interim or permanent trustee, any receiver or liquidator appointed in relation to that person or any of his property or any person acting in a representative capacity in relation to that person.

Other assessments relating to excise duty matters

12A. (1) This subsection applies where any relevant excise duty relief other than an excepted relief -

- (a) has been given but ought not to have been given, or
- (b) would not have been given had the facts been known or been as they later turn out to be.

(2) Where subsection (1) applies, the Treasury may assess the amount of the relief given as being excise duty due from the liable person and notify him or his representative accordingly.

(3) Where an amount has been assessed as due from any person under -

- (a) subsection (2),
- (b) section 95 or 97 of the Management Act,
- (bb) section 7, 9, 10 or 31G of the Alcoholic Liquor Duties Act 1986,
- (c) section 10, 13, 13ZB, 13AB, 13AD, 26 or 27 of the Hydrocarbon Oil Duties Act 1986,
- (d) section 7 of the Tobacco Products Duty Act 1986,

and notice has been given accordingly, that amount shall, subject to any appeal under section 16, be deemed to be an amount of excise duty due from that person and may be recovered accordingly, unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced.

(4) No assessment under any of the provisions referred to in subsection (3), or under section 62 or 175 of the Management Act, shall be made at any time after whichever is the earlier of the following times, that is to say -

- (a) subject to subsection (6), the end of the period of 4 years beginning with the relevant time; and
- (b) the end of the period of one year beginning with the day on which evidence of facts, sufficient in the opinion of the Treasury to justify the making of the assessment, comes to its knowledge.

(5) Subsection (4) shall be without prejudice, where further evidence comes to the knowledge of the Treasury at any time after the making of the assessment concerned, to the making of a further assessment within the period applicable by virtue of that subsection in relation to that further assessment.

(6) Subsection (4) shall have effect as if the reference in paragraph (a) to 4 years were a reference to twenty years in any case falling within section 12(5A)(a) or (b).

(7) For the purposes of subsection (6), a reference in section 12(5A) to a loss of duty of excise includes a loss caused by giving relief, allowing a rebate, conferring an entitlement to drawback or repaying an amount that ought not to have been given, allowed, conferred or repaid.

12B. (1) For the purposes of section 12A and this section, relevant excise duty relief has been given if (and only if) -

- (a) an amount of excise duty which a person is liable to pay has been remitted or payment of an amount of excise duty which a person is liable to pay has been waived;
- (b) an amount of excise duty has been repaid to a person;
- (c) an amount by way of drawback of excise duty has been paid to a person;
- (d) an allowance of excise duty in any amount has been made to a person;
- (e) an amount by way of rebate has been allowed to a person;
- (f) the liability of a person to repay an amount paid by way of drawback of excise duty has been waived;
- (g) an amount has been paid to a person under section 22(3) of the Hydrocarbon Oil Duties Act 1986 (payments in respect of contaminated or accidentally mixed oil); or
- (h) an amount of relief has been allowed to a person by virtue of section 23A or 23AB of that Act (power to allow reliefs), or in accordance with paragraph 10 of Schedule 2 to that Act (power to make regulations for the purpose of relieving from excise duty oil intended for exportation or shipment as stores);

and the amount of the relief is the amount mentioned in relation to the relief in this subsection.

(2) For the purposes of section 12A the relevant time is -

- (a) in the case of an assessment under section 62 of the Management Act, the time when the ship or aircraft in question returned to a place within the Island;
- (b) in the case of an assessment under section 95 of that Act, the time at which the goods in question were warehoused;
- (c) in the case of an assessment under that section as it has effect by virtue of section 96 of that Act, the time when the goods in question were lawfully taken from the warehouse;

- (d) in the case of an assessment under section 97 of that Act, the time when the goods in question were moved by pipe-line or notified as goods to be moved by pipe-line;
 - (da) in the case of an assessment under section 140A of that Act, the time when the sums were paid or credited in respect of the drawback;
 - (e) in the case of an assessment under section 175 of that Act -
 - (i) if the assessment relates to unpaid duty, the time when the duty became payable or, if later, the time when the document in question was delivered or the statement in question was made; and
 - (ii) if the assessment relates to an overpayment, the time when the overpayment was made;
 - (ea) in the case of an assessment under section 7 or 9 of the Alcoholic Liquor Duties Act 1986, the time of delivery from warehouse;
 - (eb) in the case of an assessment under section 10, 13, 13AB, 14 or 26 of the Hydrocarbon Oil Duties Act 1986, the time when the rebate was allowed or the oil was delivered without payment of duty (as the case may be);
 - (ec) in the case of an assessment under section 31G of that Act, the time at which the requirement to pay the duty took effect (which time, in a case where there was an excise duty point for the beer fixed under section 143A of the Customs and Excise Management Act 1986, is that excise duty point);
 - (f) in the case of an assessment under section 10, 13, 13ZB, 13AB, 13AD, 14, 14F or 26 of the Hydrocarbon Oil Duties Act 1986, the time of the action which gave rise to the power to assess;
 - (g) in the case of an assessment under section 24(4A) or (4B) of that Act, the time when the rebate was allowed or the oil was delivered without payment of duty (as the case may be);
 - (ga) in the case of an assessment under section 7 of the Tobacco Products Duty Act 1986, the time when the Treasury is satisfied of a failure to provide as mentioned in subsection 2(a) or (b) of that section;
 - (h) in the case of an assessment under section 12A(2), the time when the relevant excise duty relief in question was given.
- (3) In section 12A "the liable person" means -
- (a) in the case of excise duty which has been remitted or repaid under section 137 of the Management Act on the basis that goods were lost or destroyed while in a warehouse, the proprietor of the goods or the occupier of the warehouse;
 - (b) in the case of a rebate which has been allowed on any oil under section 11 of the Hydrocarbon Oil Duties Act 1986, the person to whom the rebate was allowed or the occupier of any warehouse from which the oil was delivered for home use;

- (c) in the case of a rebate allowed on any petrol under section 13A of that Act, the person to whom the rebate was allowed or the occupier of any warehouse from which the petrol was delivered for home use;
 - (d) in any other case, the person mentioned in subsection (1) to whom the relief in question was given.
- (4) In section 12A -
- “excepted relief” means any relief which is given by the making of a repayment on a claim made under section 144A of the Management Act;
- “representative”, in relation to any person from whom the Treasury assess an amount as being excise duty due, means his personal representative, trustee in bankruptcy or interim or permanent trustee, any receiver or liquidator appointed in relation to him or any of his property or any other person acting in a representative capacity in relation to him.

Assessments to penalties

13. (1) Where any person is liable to a penalty under this Chapter, the Treasury may assess the amount due by way of penalty and notify that person, or his representative, accordingly.

(2) An assessment under this section may be combined with an assessment under section 12 above, but any notification for the purposes of any such combined assessment shall separately identify any amount assessed by way of penalty.

(3) In the case of any amount due from any person by way of a penalty under section 9 above for conduct consisting in a contravention which attracts daily penalties -

- (a) a notification of an assessment under this section shall specify a date, being a date no later than the date of the notification, to which the penalty as assessed is to be calculated; and
- (b) if the contravention continues after that date, a further assessment, or (subject to this subsection) further assessments, may be made under this section in respect of any continuation of the contravention after that date.

(4) If -

- (a) a person is assessed to a penalty in accordance with paragraph (a) of subsection (3) above, and
- (b) the contravention to which that penalty relates is remedied within such period after the date specified for the purposes of that subsection in the notification of assessment as may for the purposes of this subsection be notified to that person by the Treasury,

that contravention shall be treated for the purposes of this Chapter as having been remedied, and accordingly the conduct shall be deemed to have ceased, immediately before that date.

(5) If an amount has been assessed as due from any person and notified in accordance with this section, then unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced, that amount shall, subject to any appeal under section 16 below, be recoverable as if it were an amount due from that person as an amount of the appropriate duty.

(6) In subsection (5) above “the appropriate duty” means -

- (a) the relevant duty (if any) by reference to an amount of which the penalty in question is calculated; or
- (b) where there is no such duty, the relevant duty the provisions relating to which are contravened by the conduct giving rise to the penalty or, if those provisions relate to more than one duty, such of the duties as appear to the Treasury and are certified by them to be relevant in the case in question.

(7) In this section "representative", in relation to a person liable to a penalty under this Chapter, means his personal representative, trustee in bankruptcy or interim or permanent trustee, any receiver or liquidator appointed in relation to that person or any of his property or any other person acting in a representative capacity in relation to that person.

Meaning of a "relevant decision"

13A. (1) This section applies for the purposes of the following provisions of this Chapter.

(2) A reference to a relevant decision of the Treasury is a reference to any of the following decisions of the Treasury –

- (a) any decision in relation to any customs duty or to any agricultural levy of the European Community, as to –
 - (i) whether or not, at what time, anything is charged in any case with any such duty;
 - (ii) the rate at which any such duty or levy is charged in any case, or the amount charged;
 - (iii) the person liable in any case to pay any amount charged, or the amount of that person's liability; or
 - (iv) whether or not any person is entitled in any case to relief or to any repayment, remission or drawback of any such duty or levy, or to the amount of the relief, repayment, remission or drawback to which any person is entitled;
- (b) so much of any decision that a person is liable to any duty of excise, or as to the amount of that person's liability, as is contained in any assessment under section 12 above;
- (c) any decision to assess any person to excise duty under section 12A(2) above, section 62, 95, 97, 140A or 175 of the Management Act, section 7, 9, 10 or 31G of the Alcoholic Liquor Duties Act 1986, section 10, 13, 13ZB, 13AB, 13AD, 14, 14F or 27 of the Hydrocarbon Oil Duties Act 1986, section 7 of the Tobacco Products Act 1986 or as to the amount of duty to which a person is to be assessed under any of those provisions;
- (d) any decision on a claim under section 144A of the Management Act for repayment of excise duty;
- (e) any decision as to whether or not any person is entitled to any drawback of excise duty by virtue of regulations under section 140A of the Management Act or the amount of the drawback to which the person is entitled;

- (ea) any decision by the Treasury that a person is liable to a penalty, or as to the amount of the person's liability, under –
 - (i) regulations under section 71E of the Alcoholic Liquor Duties Act 1986; or
 - (ii) Schedule 2B to that Act;
- (f) any decision as to whether or not any person is entitled to any repayment or credit by virtue of regulations under paragraph 4(2)(h) of Schedule 2A to the Alcoholic Liquor Duties Act 1986 (duty stamps), or the amount of the repayment or credit to which any person is entitled;
- (g) any decision made by virtue of regulations under paragraph 4(2)(i) to that Schedule that some or all of a payment made, or security provided, is forfeit, or the amount which is so forfeit;
- (h) so many of any decision that a person is liable to any penalty under any of the provisions of this Chapter, or as to the amount of that person's liability, as is contained in any assessment under section 13 above;
- (i) any decision as to whether or not –
 - (i) any amount due in respect of customs duty, or
 - (ii) any repayment by the Treasury of an amount paid by way of customs duty or agricultural levy,
 is to carry interest, or as to the rate at which, any such amount is to carry interest;
- (j) any decision which is of a description specified in Schedule 5 to this Act, except for any decision under section 159(b) of the Management Act as to whether or not anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored.

Customs and excise reviews and appeals

Requirement for a review of a decision

14. (1) This section applies to the following decisions, not being decisions under this section or section 15 below, that is to say -

- (a) any decision under section 159(b) of the Management Act as to whether or not anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored;
 - (b) any relevant decision which is linked by its subject matter to such decision under section 159(b) of the Management Act.
- (2) Any person who is -
- (a) a person whose liability to pay any relevant duty or penalty is determined by, results from or is or will be affected by any decision to which this section applies,

- (b) a person in relation to whom, or on whose application, such a decision has been made, or
- (c) a person on or to whom the conditions, limitations, restrictions, prohibitions or other requirements to which such a decision relates are or are to be imposed or applied,

may by notice in writing to the Treasury require them to review that decision.

(2A) But in the case of a relevant decision that falls within subsection (1)(b), a person may require the Treasury to review the decision under this section only if the Treasury is also required to review the decision within subsection (1)(a) to which it is linked.

(3) The Treasury shall not be required under this section to review any decision unless the notice requiring the review is given before the end of the period of forty-five days beginning with the day on which written notification of the decision, or of the assessment containing the decision, was first given to the person requiring the review.

(4) For the purposes of subsection (3) above it shall be the duty of the Treasury to give written notification of any decision to which this section applies to any person who -

- (a) requests such a notification;
- (b) has not previously been given written notification of that decision; and
- (c) if given such a notification, will be entitled to require a review of the decision under this section.

(5) A person shall be entitled to give a notice under this section requiring a decision to be reviewed for a second or subsequent time only if -

- (a) the grounds on which he requires the further review are that the Treasury did not, on any previous review, have the opportunity to consider certain facts or other matters; and
- (b) he does not, on the further review, require the Treasury to consider any facts or matters which were considered on a previous review except in so far as they are relevant to any issue to which the facts or matters not previously considered relate.

(6) ...Omitted.

(7) ...Omitted.

Review out of time

14A. (1) This section applies if -

- (a) a person may, under section 14(2), require the Treasury to review a decision, and
- (b) the person gives notice requiring such a review after the end of the 45 day period mentioned in section 14(3).

(2) The Treasury is required to carry out a review of the decision in either of the following cases.

- (3) The first case is where the Treasury is satisfied that –
 - (a) there was a reasonable excuse for not giving notice requiring a review before the end of that 45 day period, and
 - (b) the notice given after the end of that period was given without reasonable delay after that excuse ceased.
- (4) The second case is where –
 - (a) the Treasury is not satisfied as mentioned in subsection (3), and
 - (b) the appeal tribunal, on application made by the person, orders the Treasury to carry out a review.

(5) A person may require the Treasury to review a decision falling within section 14(1)(b) only if the Treasury is also required to review the decision within section 14(1)(a) to which it is linked.

(6) Section 14(5) applies to notices given under this section as it applies to notices given under section 14.

Review procedures

15. (1) Where the Treasury are required in accordance with section 14 or 14A to review any decision, it shall be their duty to do so and they may, on that review, either -

- (a) confirm the decision; or
- (b) withdraw or vary the decision and take such further steps (if any) in consequence of the withdrawal or variation as they may consider appropriate.

(2) Where -

- (a) it is the duty of the Treasury in pursuance of a requirement by any person under section 14 or 14A above to review any decision; and
- (b) they do not, within the period of forty-five days beginning with the day on which the review was required, give notice to that person of their determination on the review,

they shall be assumed for the purposes of section 14 or 14A to have confirmed the decision.

(3) The Treasury shall not by virtue of any requirement under this Chapter to review a decision have any power, apart from their power in pursuance of section 8(4) above, to mitigate the amount of any penalty imposed under this Chapter.

Offer of review of relevant decision

15A. (1) If the Treasury notifies a person (P) of a relevant decision by the Treasury, the Treasury must at the same time, by notice to P, offer P a review of the decision.

(2) This section does not apply to the notification of the conclusions of a review.

Right to require review

15B. (1) Any person (other than P) who has the right of appeal under section 16 against a relevant decision may require the Treasury to review that decision.

(2) The other person may not notify the Treasury requiring a review of the decision if either of the following conditions is met.

(3) Condition A is that –

- (a) the relevant decision falls within section 14(1)(b) (decision linked to decision under section 159(b) of the Management Act about things forfeited or seized), and
- (b) under section 15, the Treasury is reviewing, or has reviewed, the decision under section 159(b) of the Management Act to which the relevant decision is linked.

(4) Condition B is that P or the other person has brought an appeal under section 16 with respect to the relevant decision.

(5) A notification that such a person requires a review must be made within 30 days of that person becoming aware of the decision.

Review by the Treasury

15C. (1) The Treasury must review a decision if –

- (a) it has offered a review of the decision under section 15A, and
- (b) P notifies the Treasury of acceptance of the offer within 30 days beginning with the date of the document containing the notification of the offer of the review.

(2) P may notify the Treasury of acceptance of the offer of a review if either of the following conditions is met.

(3) Condition A is that –

- (a) the relevant decision falls within section 14(1)(b) (decision linked to decision under section 159(b) of the Management Act about things forfeited or seized), and
- (b) under section 15, the Treasury is reviewing, or has reviewed, the decision under section 159(b) of the Management Act to which the relevant decision is linked.

(4) Condition B is that P has brought an appeal under section 16 with respect to the relevant decision.

(5) The Treasury must review a decision if a person other than P notifies it under section 15B.

(6) The Treasury shall not review a decision if P, or another person, has appealed to the appeal tribunal under section 16 in respect of the decision.

Extensions of time

15D. (1) If under section 15A, the Treasury has offered P a review of a decision, the Treasury may within the relevant period notify P that the relevant period is extended.

(2) If under section 15B another person may require the Treasury to review a matter, the Treasury may within the relevant period notify the other person that the relevant period is extended.

(3) If notice is given the relevant period is extended to the end of 90 days from –

- (a) the date of the notice, or
- (b) any other date set out in the notice or a further notice.

(4) In the section “relevant period” means –

- (a) the period of 30 days referred to in –
 - (i) section 15C(1)(b) (in a case falling within subsection (1)), or
 - (ii) section 15B(5) (in a case falling within subsection (2)), or
- (b) if notice has been given under subsection (1) or (2), that period is extended (or as most recently extended) in accordance with subsection (3).

Review out of time

15E. (1) This section applies if –

- (a) the Treasury has offered a review of a decision under section 15A and P does not accept the offer within the time allowed under section 15C(1) or 15D(1); or
- (b) a person who requires a review under section 15B does not notify the Treasury within the time allowed under that section or section 15D(3)

(2) The Treasury must review the decision if –

- (a) after the time allowed, P, or the other person, notifies the Treasury in writing requesting a review out of time,
- (b) the Treasury is satisfied that P, or the other person, had a reasonable excuse for not accepting the offer or requiring review within the time allowed, and
- (c) the Treasury is satisfied that P, or the other person, made the request without unreasonable delay after the excuse had ceased to apply.

(3) The Treasury shall not be required to review a decision under this section if Condition A is met (see sections 15B(3) and 15C(3)).

(4) The Treasury shall not review a decision if P, or another person, has appealed to the appeal tribunal under section 16 in respect of the decision.

Nature of review etc

15F. (1) This section applies if the Treasury is required to undertake a review under section 15C or 15E.

(2) The nature and extent of the review are to be such as appear appropriate to the Treasury in the circumstances.

(3) For the purposes of subsection (2) the Treasury must, in particular, have regard to steps taken before the beginning of the review –

- (a) by the Treasury in making the decision, and
- (b) by any person who is seeking to resolve disagreement about the decision.

(4) The review must take account of any representations made by P, or the other person, at a stage which gives the Treasury a reasonable opportunity to consider them.

(5) The review may conclude that the decision is to be –

- (a) upheld,
- (b) varied, or
- (c) cancelled.

(6) The Treasury must give P, or the other person, notice of the conclusions of the review and its reasoning within –

- (a) the period of 45 days beginning with the relevant date, or
- (b) such other period as the Treasury and P, or the other person, may agree.

(7) In subsection (6), "relevant date" means –

- (a) the date the Treasury received P's notification accepting the offer of a review (in a case falling within section 15A),
- (b) the date the Treasury received notification from another person requiring review (in a case falling within section 15B), or
- (c) the date on which the Treasury decided to undertake the review (in a case falling within section 15E).

(8) Where the Treasury is required to undertake a review but does not give notice of the conclusions within the time period specified in subsection (6), the review is to be treated as having concluded that the decision is upheld.

(9) If subsection (8) applies, the Treasury must notify P, or the other person, of the conclusion which the review is treated as having reached.

Appeals to a tribunal

16. (1) An appeal against a decision on a review under section 15 (not including a deemed confirmation under section 15(2)) may be made to an appeal tribunal within the period of 30 days beginning with the date of the document notifying the decision to which the appeal relates.

(1A) An appeal against a deemed confirmation under section 15(2) may be made to an appeal tribunal within the period of 75 days beginning with the date on which the review was required.

(1B) Subject to subsections (1C) to (1E), an appeal against a relevant decision (other than any relevant decision falling within subsection (1) or (1A)) may be made to an appeal tribunal within the period of 30 days beginning with -

- (a) in a case where P is the appellant, the date of the document notifying P of the decision to which the appeal relates, or
- (b) in a case where a person other than P is the appellant, the date the other person becomes aware of the decision, or
- (c) if later, the end of the relevant period (within the meaning of section 15D).

(1C) In a case where the Treasury is required to undertake a review under section 15C -

- (a) an appeal may not be made until the conclusion date, and
- (b) any appeal is to be made within the period of 30 days beginning with the conclusion date.

(1D) In a case where the Treasury is requested to undertake a review in accordance with section 15E -

- (a) an appeal may not be made -
 - (i) unless the Treasury has decided whether or not to undertake a review, and
 - (ii) if the Treasury decides to undertake a review, until the conclusion date; and
- (b) any appeal is to be made within the period of 30 days beginning with -
 - (i) the conclusion date (if the Treasury decides to undertake a review), or
 - (ii) the date on which the Treasury decides not to undertake a review.

(1E) In a case where section 15F(8) applies, a notice of appeal may be made at any time from the end of the period specified in section 15F(6) to the date 30 days after the conclusion date.

(1F) An appeal may be made after the end of the period specified in subsection (1), (1A), (1B), (1C)(b), (1D)(b) or (1E) if the appeal tribunal gives permission to do so.

(1G) In this section, "conclusion date" means the date of the document notifying the conclusion of the review.

(2) An appeal under this section with respect to a decision falling within subsection (1) or (1A) shall not be entertained unless the appellant is the person who required the review in question.

(2A) An appeal under this section with respect to a relevant decision (other than any relevant decision falling within subsections (1) or (1A)) shall not be entertained unless the appellant is -

- (a) a person whose liability to pay any relevant duty or penalty is determined by, results from or is or will be affected by the relevant decision,
- (b) a person in relation to whom, or whose application, the relevant decision has been made, or
- (c) a person on whom the conditions, limitations, restrictions, prohibitions or other requirements to which the relevant decision relates are or are to be imposed or applied.

(3) An appeal which relates to a relevant decision falling within any of paragraphs (a) to (h) of section 13A(2), or which relates to a decision on a review of any such relevant decision, shall not be entertained if the amount of relevant duty which the Treasury has determined to be payable in relation to that decision has not been paid or deposited with it unless -

- (a) the Treasury have, on the application of the appellant, issued a certificate stating -
 - (i) that such security as appears to them to be adequate has been given to them for the payment of that amount; or
 - (ii) that, on the grounds of hardship that would otherwise be suffered by the appellant, they either do not require the giving of security for the payment of that amount or have accepted such lesser security as they consider appropriate;
- (b) the tribunal to which the appeal is made decide that the Treasury should not have refused to issue a certificate under paragraph (a) above and are satisfied that such security (if any) as it would have been reasonable for the Treasury to accept in the circumstances has been given to the Treasury.

(3A) Subsection (3) shall not apply if the appeal arises out of an assessment under section 7, 9 or 10 of the Alcoholic Liquor Duties Act 1986.

(3B) Sections 85 and 85B of the Value Added Tax Act 1996 (settling of appeals by agreement and payment of tax where there is a further appeal) shall have effect as if -

- (a) the references to section 83 of that Act included references to this section, and
- (b) references to value added tax included references to any relevant duty.

(4) In relation to any decision as to an ancillary matter, or any decision on the review of such a decision, the powers of an appeal tribunal on an appeal under this section shall be confined to a power, where the tribunal are satisfied that the Treasury or other person making that decision could not reasonably have arrived at it, to do one or more of the following, that is to say -

- (a) to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct;
- (b) to require the Treasury to conduct, in accordance with the directions of the tribunal, a review or further review as appropriate of the original decision; and
- (c) in the case of a decision which has already been acted on or taken effect and cannot be remedied by a review or further review as appropriate, to declare the decision to have been unreasonable and to give directions to the

Treasury as to the steps to be taken for securing that repetitions of the unreasonableness do not occur when comparable circumstances arise in future.

(5) In relation to other decisions, the powers of an appeal tribunal on an appeal under this section shall also include power to quash or vary any decision or power to substitute their own decision for any decision quashed on appeal.

(6) On an appeal under this section the burden of proof as to -

- (a) the matters mentioned in subsection (1)(a) and (b) of section 8 above,
- (b) the question whether any person has acted knowingly in using any substance or liquor in contravention of section 119(2) of the Management Act, and
- (c) the question whether any person had such knowledge or reasonable cause for belief as is required for liability to a penalty to arise under section 25(1) or 26(1) of the Hydrocarbon Oil Duties Act 1986 (use of fuel substitute or road fuel gas on which duty not paid),

shall lie upon the Treasury; but it shall otherwise be for the appellant to show that the grounds on which any such appeal is brought have been established.

(7) An appeal tribunal shall not, by virtue of anything contained in this section, have any power, apart from their power in pursuance of section 8(4) above, to mitigate the amount of any penalty imposed under this Chapter.

(8) Subject to subsection (9) below, references in this section to a decision as to an ancillary matter are references to any decision of a description specified in Schedule 5 to this Act which is not comprised in a decision falling within section 13A(2)(a) to (h) above.

(9) References in this section to a decision as to an ancillary matter do not include a reference to a decision of a description specified in the following paragraphs of Schedule 5 -

- (a) paragraph 3(4);
- (b) paragraph 4(3);
- (c) paragraph 9(e);
- (d) paragraph 9A.

(10) Nothing in this section shall be taken to confer on an appeal tribunal any power to vary an amount of interest specified in an assessment under paragraph 11A of Schedule 6 to this Act except in so far as it is necessary to reduce it to the amount which is appropriate under paragraph 7 of that Schedule.

(11) If it appears to the Treasury that there is any description of decisions falling to be made for the purposes of any provision of -

- (a) the Community Customs Code,
- (b) any Community legislation made for the purpose of implementing that Code, or
- (c) any enactment or subordinate legislation so made,

which are not decisions to which sections 13A to 16 otherwise apply, the Treasury may by regulations provide for those sections to apply to decisions of that description as they apply to relevant decisions or decisions referred to in section 14.

- (12) The power to make regulations under subsection (11) above shall include power -
- (a) to provide, in relation to any description of decisions to which this section is applied by any such regulations, that subsection (4) shall have effect as if those decisions were of a description specified in Schedule 5 to this Act; and
 - (b) to make such other incidental, supplemental, consequential and transitional provisions as the Treasury thinks fit.

Supplemental provisions

Interpretation

17. (1) Subject to the following provisions of this section, expressions used in this Chapter and in the Management Act have the same meanings in this Chapter as in that Act.

(2) In this Chapter -

“appeal tribunal” means VAT and duties tribunal;

“conduct” includes any act, omission or statement;

“contravention” includes a failure to comply, and cognate expressions shall be construed accordingly;

“the Community Customs Code” means the Regulation of the Council of the European Communities dated 12 October 1992 (EEC) No. 2913/92 for establishing the Community Customs Code;

“the Management Act” means the Customs and Excise Management Act 1986;

“relevant duty” means any Community customs duty or agricultural levy of the European Community or any duty of excise; and

“subordinate legislation” has the same meaning as in the Interpretation Act 1978.

(3) For the purposes of this Chapter a contravention consisting in a failure to do something at or before a particular time shall be taken to continue after that time until the thing is done, and references in this Chapter to the remedying of such a contravention shall be construed accordingly.

(4) References in this Chapter to a duty of excise do not include references to vehicle excise duty.

Consequential modifications of enactments

18. (1) Subject to subsection (2) below, references in the Management Act to a penalty shall not include references to a penalty under this Chapter.

(2) Section 123 of the Management Act (execution and distress against revenue traders) shall have effect -

- (a) as if any amount assessed as due from any person by way of a penalty under this Chapter; were an amount of excise duty payable by that person;
- (b) ...omitted.

(3) Section 133 of the Management Act (determination of disputes as to duties on imported goods) shall cease to have effect; and for subsection (5) of section 40 of the Value Added Tax and Other Taxes Act 1973 (which provides for there to be no appeal with respect to any matter falling to be determined in accordance with section 133 of the Management Act) there shall be substituted the following subsection -

“(5) No appeal shall lie under this section with respect to the subject matter of any decision which by virtue of section 24 above is a decision to which section 14 of the Finance Act 1994 (decisions subject to review), as it has effect in the Island applies unless the decision -

- (a) relates exclusively to one or both of the following matters, namely whether or not section 16(3) above applies in relation to the importation of the goods in question and (if it does not) the rate of tax charged on those goods; and
- (b) is not one in respect of which notice has been given to the Treasury under section 14 of that Act requiring them to review it.”

(4) ...Omitted.

(5) ...Omitted.

(6) ...Omitted.

(7) Where a person is liable to make a payment by way of a penalty under any of sections 8 to 11 of this Act (penalties relating to excise), that payment shall not be allowed as a deduction in computing any income, profits or losses for any income tax purposes under the Income Taxes Acts 1970 to 1994.

(8) Subsections (1) and (2) above shall be without prejudice to section 13(5) above; and subsection (7) above shall have effect in relation to any chargeable period ending after the coming into force of the provision which provides for the imposition of the penalty in question.

Commencement of Chapter

19. (1) Subject to section 18(8) above, this Chapter shall come into force on such day as the Treasury may by order appoint, and different days may be appointed under this subsection for different provisions and for different purposes.

(2) An order under this section may make such transitional provision and savings as appear to the Treasury to be appropriate in connection with the bringing into force by such an order of any provision of this Chapter.

(3) Nothing in any provision of this Chapter shall, in respect of conduct occurring before the coming into force of that provision, impose or affect any liability to any civil or criminal penalty or any liability of goods to forfeiture.

SCHEDULE 5**DECISIONS SUBJECT TO REVIEW AND APPEAL****The Community Customs Code etc.**

1. The following decisions, so far as they are made for the purposes of the Community Customs Code and are decisions the authority for which is not contained in provisions outside that code and any directly applicable Community legislation made for the purpose of implementing that Code, that is to say -

- (a) any decision in relation to any goods as to whether or not the entry, unloading or transshipment of the goods, or their release by or to any person or for any purpose, is to be allowed or otherwise permitted;
- (b) any decision as to whether or not permission for the examination of, or the taking of samples from, any goods presented to the Treasury is to be granted;
- (c) any decision as to the route to be used for the movement of any goods;
- (d) any other decision as to whether or not the requirements of any procedure for goods which are to be or have been presented to the Treasury, or any other formalities in relation to any such goods, have been satisfied or complied with or are to be waived, or as to the measures to be taken, including any requirements to be imposed, in consequence of the inability or other failure of any person to comply with the required procedure;
- (e) any decision in relation to any place or area as to whether or not it is to be, or to continue to be, designated or approved for any purpose;
- (f) any decision, in any particular case, as to whether or not the carrying out of any processing or other operations or the use of any procedure is to be, or to continue to be, authorised or approved;
- (g) any decision in relation to -
 - (i) the establishment or operation of any warehouse or other facility, or
 - (ii) the construction of any building,
 as to whether or not its establishment, operation or construction or the person by whom it is to be established, operated or constructed, is to be, or to continue to be, authorised or approved for any purpose;
- (h) any decision consisting in the imposition of a requirement to supply information or assistance, or to furnish any document or other evidence, to the Treasury or any officer or of a requirement to be present or represented when anything is done in relation to any goods;
- (i) any decision to take or retain samples of any goods or as to the examination or analysis to which any goods or samples are to be subjected;
- (j) any decision as to whether or not any person is to bear any of the expenses of the supply of any information by or on behalf of the Treasury or as to the amount of any such expenses to be borne by any person;

- (k) any decision as to whether or not collection of interest on arrears of customs duty or agricultural levy is to be waived;
- (l) any decision, in relation to a decision mentioned in any of the preceding sub-paragraphs, as to the conditions subject to which the decision so mentioned is made or, as the case may be, the matters to which that decision relates have effect;
- (m) any decision as to whether or not any person is to be required to give any security for the fulfilment, in whole or in part, of -
 - (i) any obligation to pay any customs duty or any agricultural levy of the European Community; or
 - (ii) any obligation to comply with a condition of any permission, designation, approval, authorisation or requirement mentioned in any of the preceding sub-paragraphs or with any provision for the purposes of which any decision falling within any of those sub-paragraphs is made,or as to the form or amount of, or the conditions of, any such security;
- (n) any decision as to the time at which or the period within which any obligation to pay any customs duty or agricultural levy of the European Community or to do any other thing required by virtue of the Community Customs Code is to be complied with;
- (o) any decision as to whether or not a decision falling within this paragraph is to be varied or revoked, including a decision as to whether or not the time at which any such decision is to take effect is to be deferred.

The Management Act

2. (1) The following decisions under or for the purposes of the Management Act, that is to say -
- (a) any decision for the purposes of section 13, 15 or 18 as to whether or not an approval of a place as an approved wharf, as an examination station or as a transit shed is to be given or withdrawn or as to the conditions subject to which any such approval is given;
 - (b) any decision as to whether or not any permission for any of the purposes of section 14 (control of movement of aircraft) is to be given or withdrawn or as to the conditions subject to which any such permission is given;
 - (c) any decision as to whether or not approval of a pipe-line for the purposes of section 17 (control of movement of goods by pipe-line) is to be given or withdrawn or as to the conditions subject to which any such approval is given;
 - (d) any decision as to whether or not expenses incurred by the Treasury are to be borne by any person by virtue of section 21(3) (expenses of detention etc. of ships, aircraft and vehicles) or as to the amount of the expenses to be so borne;
 - (e) any decision consisting in the giving of a direction under section 22(1) (control of uncleared goods);

- (f) any decision by virtue of section 23(3) (control of movement of goods) as to whether or not the requirements of any regulations under subsection (1) of that section are to be relaxed, as to whether or not substituted requirements are to be imposed or as to the terms of any such substituted requirements;
- (g) any decision consisting in the imposition of a requirement by virtue of section 25(3) (requirements as to record keeping) on a person in control of an aerodrome who is not licensed under any enactment relating to air navigation or as to what is or is not to be approved (whether or not in relation to such a requirement) for the purposes of paragraph (a) of that subsection;
- (h) any decision as to whether or not permission is to be given to any person for the purposes of section 36 (entry of surplus stores);
- (i) any decision for the purposes of section 37 that any goods are to be deposited in a Queen's warehouse;
- (j) any decision for the purposes of section 44 as to whether or not goods are allowed to be removed for transit or transshipment or as to the conditions subject to which they are removed;
- (k) any decision as to the conditions subject to which any permission is given for the purposes of section 45 (temporary importation);
- (l) any decision for the purposes of section 64 (entry outwards) as to whether or not entry outwards is to be made of any ship of goods or as to the conditions subject to which any such entry outwards is to be made;
- (m) any decision consisting in the imposition of a requirement under section 78, 80 or 81 to produce or furnish any document or other evidence or information;
- (n) any decision for the purposes of section 93 (approval of warehouses) -
 - (i) as to whether or not any approval is to be given to any place as a warehouse or any consent is to be given to any alteration in or addition to any warehouse;
 - (ii) as to the conditions subject to which any approval or consent is given for the purposes of that section; or
 - (iii) for the withdrawal of any such approval or consent;
- (o) any decision as to whether or not any amount is payable to the Treasury in pursuance of section 93 (provision as to deposit in Queen's warehouse) or as to the amount to be so paid by any person;
- (p) any decision for the purposes of section 107A (registered excise dealers and shippers) as to whether or not, and in which respects, any person is to be, or to continue to be, approved and registered or as to the conditions subject to which any person is approved and registered;
- (q) any decision as to the conditions subject to which any drawback is allowed or payable under section 139 or 141;

- (r) any decision under section 159(b) as to whether or not anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored;
- (s) any decision under section 164 as to whether or not any person is to be required to give any security for the observance of any condition, as to the form or amount of, or the conditions of, any such security or as to the cancellation of any bond;
- (t) any decision consisting in the giving or imposition of a direction or requirement for the purposes of section 165 (power to require the provision of facilities) or any decision as to whether or not an approval is to be given for the purposes of any such direction.

(2) Any decision which is made under or for the purposes of any regulations under any of sections 186, 23 or 94 of the Management Act (application to pipe-lines, control of movement of goods and warehousing regulations) and is -

- (a) a decision in relation to any goods as to whether or not they may be moved, deposited, kept, secured, treated in any manner, removed or made available to any person or as to the conditions subject to which they are moved, deposited, kept, secured, treated in any manner, removed or made available to any person;
- (b) a decision as to whether or not any person or place is to be, or to continue to be, authorised or approved in any respect for any purpose or as to the conditions subject to which any person or place is so authorised or approved; or
- (c) a decision as to whether or not any person is to be required to give any security for the fulfilment of any obligation or as to the form or amount of, or the conditions of, any such security.

(3) Any decision which is made under or for the purposes of any regulations under section 27(4), 39 or 67 of the Management Act (report inwards, procedure in relation to goods on arrival etc. or in relation to goods for exportation) and is -

- (a) a decision as to whether or not any permission is to be given for the purpose of dispensing with any of the requirements of any such regulations;
- (b) a decision consisting in the imposition or variation of any requirement in exercise of any power conferred by any such regulations; or
- (c) a decision as to whether or not any approval, authority or permission is to be given or granted for the purpose of determining the manner in which any requirement imposed by or under any such regulations is to be performed.

(3A) Any decision which is made under or for the purpose of any regulations made under section 61A of the Management Act (power to make regulations about stores) and is a decision about granting or withdrawing authorisation for goods to be shipped or carried as stores without payment of duty or on drawback.

(4) Any decision which is made under or for the purposes of any regulations under section 134 of the Management Act (deferment of duty) and is -

- (a) a decision as to whether or not any person or place is to be, or to continue to be, approved for any purpose connected with the deferment of duty or as to the conditions subject to which any person or place is so approved;
- (b) a decision as to the amount of the duty that may be deferred in any case; or
- (c) a decision as to whether or not any person is to be required to give any security for the fulfilment of any obligation or as to the form or amount of, or the conditions of, any such security.

The Alcoholic Liquor Duties Act 1986

3. (1) The following decisions under or for the purposes of the Alcoholic Liquor Duties Act 1986, that is to say -

- (a) ...omitted;
- (b) any decision for the purposes of section 6 (exemption of spirits used for medical purposes) as to whether or not to recognise any article as used for medical purposes;
- (c) any decision for the purposes of section 7 (remission of duty on spirits used for medical purposes etc.) -
 - (i) as to the use to which any article is or is to be put or as to the purposes for which it is or is to be used; or
 - (ii) as to the conditions subject to which the receipt and delivery of any spirits is permitted as mentioned in that section;
- (d) any decision for the purposes of section 8 or 9 (remission of duty on spirits) as to whether or not permission or authorisation for any person to receive, or for the delivery of, any spirits without payment of duty is to be granted or withdrawn or as to the conditions subject to which any such permission or authorisation is granted;
- (e) any decision as to whether or not any goods are to be directed under section 10 (goods not for human consumption) to be treated as not containing spirits or as to the conditions subject to which any goods are directed to be so treated;
- (f) any decision for the purposes of section 11 (licences to manufacture spirits) as to whether or not a licence under that section is to be granted or as to the suspension or revocation of such a licence or as to the conditions subject to which such a licence is granted;
- (g) any decision for the purposes of section 14 (distillers' warehouses) -
 - (i) as to whether or not any approval is to be given to any place as a warehouse or any consent is to be given to any alteration in or addition to any warehouse;
 - (ii) as to the conditions subject to which any approval or consent is given for the purposes of that section; or
 - (iii) for the withdrawal of any such approval or consent;

- (h) any decision for the purposes of section 17 (licences for rectifiers and compounders) -
 - (i) as to whether or not any person is to be granted a licence as a rectifier or compounder or permission to compound spirits without a licence;
 - (ii) as to the conditions subject to which any such licence or permission is granted; or
 - (iii) as to the revocation or withdrawal of any such licence or permission;
- (ha) ...omitted;
- (i) any decision for the purposes of section 27 (transfer of spirits in a distiller's warehouse) as to whether or not any person is to be required to give any security for the payment of any duty or as to the form or amount of, or the conditions of, any such security;
- (j) any decision as to whether or not drawback is to be allowed in any case under section 37 (drawback on exportation etc.) or as to the conditions subject to which drawback is so allowed;
- (k) any decision as to whether or not any duty is to be remitted or repaid under section 39 (remission or repayment of duty on beer used for the purposes of research or experiment) or as to the conditions subject to which any duty is so remitted or repaid;
- (ka) any decision by the Treasury as to whether or not to remit or repay duty under section 41 of the Alcoholic Liquor Duties Act 1986 (remission or repayment of duty on spoilt beer) or the amount of duty to be so remitted or repaid;
- (l) any decision for the purposes of section 45 as to whether or not any drawback is to be set against an amount chargeable in respect of excise duty on beer or as to the conditions subject to which any drawback is set against any such amount;
- (m) any decision as to whether or not any permission for the purposes of section 53 or 54 (mixing of made-wine or wine with spirits) is to be given or withdrawn or as to the conditions subject to which any drawback is set against any such amount;
- (ma) any decision by the Treasury as to whether or not to remit or repay duty under section 57 of the Alcoholic Liquor Duties Act 1986 (remission or repayment of duty on spoilt wine or made-wine) or the amount of duty to be so remitted or repaid;
- (mb) any decision by the Treasury as to whether or not to remit or repay duty under section 60 of the Alcoholic Liquor Duties Act 1986 (remission or repayment of duty on spoilt cider) or the amount of duty to be so remitted or repaid;
- (n) ...omitted;

- (o) any decision as to whether or not an authorisation or licence for the purposes of section 64 (denatured alcohol) is to be granted to any person or as to the revocation or suspension of any such authorisation or licence.
 - (p) any decision for the purposes of Part VIA (wholesaling of controlled liquor) as to whether or not, and in which respects, any person is to be, or to continue to be, approved and registered or as to the conditions or restrictions subject to which any person is approved and registered.
- (2) A decision -
- (a) which is made under regulations under section 12 or 65 of the Alcoholic Liquor Duties Act 1986 (regulation of the manufacture of spirits and denatured alcohol) and is a decision as to whether or not any premises, plant or process is to be, or continue to be, approved for any purpose or as to the conditions subject to which any premises, plant or process is so approved; or
 - (b) as to whether or not a person is to be required to give security for the fulfilment of an obligation or as to the form or amount of, or the conditions of, any such security.

(2A) Any decision which is made under or for the purposes of any regulations under section 14 of the Alcoholic Liquor Duties Act 1986 (distillers' warehouses) and is a decision as to whether or not a person is to be required to give security for the fulfilment of an obligation or as to the form or amount of, or the conditions of, any such security.

(2B) Any decision which is made under or for the purposes of section 36A or 42, or any regulations under section 44, of the Alcoholic Liquor Duties Act 1986 (regulation of the making of beer) and is a decision -

- (a) as to whether or not to register a person or premises under section 36A or 42;
 - (b) as to the conditions subject to which a person is, or premises are, so registered;
 - (c) as to the revocation of such a registration;
 - (d) as to whether or not a person is to be required to give security for the fulfilment of an obligation or as to the form or amount of, or the conditions of, any such security; or
 - (e) as to whether or not to restrict or prohibit the movement of beer from one place to another without payment of duty.
- (3) A decision -
- (a) which is made under or for the purposes of section 50 or 51, or any regulations made under section 52, of the Alcoholic Liquor Duties Act 1986 (regulation of the making of wine and made-wine) and is a decision as to whether or not a licence is to be granted or cancelled;
 - (b) as to whether or not a person is to be required to give security for the fulfilment of an obligation or as to the form of, or the conditions of, any such security; or

- (c) as to the conditions subject to which, or for the purposes of which, wine or made-wine may be moved from one place to another without payment of duty.

(3A) Any decision which is made under or for the purposes of section 58 of the Alcoholic Liquor Duties Act 1986 (regulation of the making of cider), or any regulations under that section, and is a decision –

- (a) as to whether or not to register, or to cancel the registration of, a maker of cider;
- (b) as to whether or not a person is to be required to give security for the fulfilment of an obligation or as to the form or amount of, or the conditions of, any such security; or
- (c) as to the conditions subject to which, or for the purposes of which, cider may be moved from one place to another without payment of duty.

(3B) Any decision of the Treasury –

- (a) on a claim under section 60B of the Alcoholic Liquor Duties Act 1986 (alcoholic ingredients relief) for repayment of duty; or
- (b) as to whether or not to remit duty under that section.

(4) Any decision which -

- (a) is made under paragraph 1 of Schedule 3 to the Finance Act 2001, as it has effect in the Island, and
- (b) relates to the Alcoholic Liquor Duties Act 1986.

The Hydrocarbon Oil Duties Act 1986

4. (1) The following decisions under or for the purposes of the Hydrocarbon Oil Duties Act 1986 -

- (a) any decision under section 9 (delivery of oil for home use etc.) as to whether or not permission is to be given for the delivery of anything without payment of duty or as to the conditions subject to which any such permission is given;
- (b) any decision as to whether or not consent is to be given for the purposes of section 10(1) (consent to certain uses of rebated oil) or as to the conditions subject to which any such consent is given;
- (c) any decision as to whether or not a consent is to be given for the purposes of section 14(2) (consent to certain uses of rebated oil) or as to the conditions subject to which any such consent is given;
- (d) any decision consisting in a determination for the purposes of section 18(3) (determination of use of oil etc. for different purposes);
- (e) any decision as to the conditions subject to which any payment is to be made to any person in accordance with section 22(3) (payments in respect of contaminated or mixed substances).

(1A) Any decision which is made under or for the purposes of any regulations made under section 23A of the Hydrocarbon Oil Duties Act 1986 and is a decision as to whether or not relief is to be allowed.

(2) Any decision which is made under or for the purposes of any regulations made or having effect as if made under section 24 or 27 of the Hydrocarbon Oil Duties Act 1986 and is -

- (a) a decision as to whether or not any person is to be required to give any security for any duty which is or may become due, or as to the form or amount of, or the conditions of, any such security; or
- (b) a decision as to whether or not any person is to be, or to continue to be, approved for the purposes of section 9(1) or (4), 14(1), or 21(1) of that Act or as to the conditions subject to which any person is so approved.

(3) Any decision which -

- (a) is made under paragraph 1 or 2 of Schedule 3 to the Finance Act 2001, as it has effect in the Island, and
- (b) relates to the Hydrocarbon Oil Duties Act 1986.

The Tobacco Products Duty Act 1986

5. Any decision which is made under or for the purposes of any regulations made under section 2 or 6 of the Tobacco Products Duty Act 1986 and is -

- (a) a decision as to whether or not any duty is remitted or repaid or as to the conditions subject to which it is remitted or repaid; or
- (b) a decision as to whether or not any premises are to be, or continue to be, registered for any purpose or as to the conditions subject to which any premises are so registered.

The Gambling Duty Act 2012

6. (1) Any decision which is made under or for the purposes of any regulations made under section 18 (regulations about payment of gambling duty) –

- (a) requiring further information from persons from whom gambling duty may be recovered under section 12(2) (gambling duty recoverable from other persons);
- (b) requiring payments to be made on account of any gambling duty; or
- (c) requiring the payment of security under section 22 (security for protection of revenue).

(2) Any decision consisting of a ruling for the purposes of section 8 (gambling duty) as to a bet not being for community benefit.

(3) Any decision consisting of a direction under section 11(5) (expenditure on gambling winnings: credit of user of the facilities) as to a class of cases not being eligible to be treated as a provision of a prize for the purposes of that section.

(4) Any decision under section 13 (gambling duty payable by two or more operators) consisting of the refusal to approve treatment of two or more operators as a single operator.

(5) Any decision which is made under or for the purposes of any regulations made under section 21 (general administration and enforcement) –

- (a) requiring the furnishing or display of information or records relating to any gambling operation;
- (b) requiring the keeping, preserving and producing of accounts, records or other documents by persons engaging in a gambling operation;
- (c) requiring that inspection be permitted of accounts, records and other documents of persons engaged in or suspected of being engaged in gambling operations;
- (d) requiring that access and inspection be permitted of premises or equipment used by persons engaged in or suspected of being engaged in gambling operations or where any gambling operation is carried on;
- (e) requiring entry by any officer on any premises used, or suspected of being used, for or in connection with gambling and to inspect, remove and take copies of any books, records, accounts or other documents which relate to or appear to relate to any gambling operation on those premises;
- (f) requiring any person carrying on or suspected of carrying on a gambling operation to produce specified books, records, accounts or documents within a specified time; or
- (g) requiring information to which the regulations relate to be produced in a form which it can be taken away and which it is visible and legible.

The Finance Act 1993

7. ...Omitted.

Chapter III of Part I of this Act

8. (1) Any decision made under or for the purposes of any regulations under section 21 of this Act or for the purposes of subsection (2) of that section which is -

- (a) a decision consisting in the imposition or variation of any requirement as to the records which are to be kept by any person;
- (b) a decision as to the manner in which any record or information is to be preserved or is to be made available to the Treasury; or
- (c) a decision as to the period for which any record or information is to be preserved.

(2) Any decision for the purposes of section 23 of this Act which is -

- (a) a decision consisting in the imposition or variation of any requirement as to the information or documents which are to be furnished or produced by any person, including any decision as to the time or place at which, period within which or form in which anything is to be furnished or produced in pursuance of that section; or

- (b) a decision as to the removal of any document produced under that section or as to the period for which such a document may be removed.

Schedule 24 to the Finance Act 2012 (c.14)

8A. (1) Any decision made for the purposes of paragraph 2 or 3 as to whether or not a game is a dutiable machine game.

(2) Any decision made for the purposes of paragraph 11 as to whether or not a person is liable to duty.

(3) Any decision made for the purposes of paragraph 12 as to whether or not a person is responsible for premises.

(4) A direction made by the Treasury for the purposes of paragraph 14 to refuse a request for agreement.

(5) A decision to give a direction under that paragraph or not to give a direction.

(6) Any decision made for the purposes of paragraph 15 or regulations made under that paragraph as to the valuing of prizes.

(7) Any decision made under regulations made under paragraph 18 (returns).

(8) Any decision made under regulations made under paragraph 19 (payment of duty).

(9) Any assessment of duty made under section 12 of the Finance Act 1994, as applied to machine games duty by paragraph 19(3).

(10) Any decision made under paragraph 20, 21 or 23 or regulations made under paragraph 23 as to whether or not a person is a registrable person.

(11) Any decision made under regulations made under paragraph 24 as to conditions applied for registration or continued registration.

(12) Any decision made under paragraph 24(4)(a) about security.

(13) Any decision made under paragraph 24(4)(b) about the appointment of an Island representative.

Chapter IV of Part I of this Act

9. The following decisions under or for the purposes of Chapter IV of Part I of this Act, that is to say -

- (a) any decision under regulations made by virtue of section 33 to register or not to register, any person as an aircraft operator in the register kept under that section or to remove a person so registered from the register;
- (b) any decision under such regulations to show, or not to show, the name of any person as a fiscal representative in that register or to remove a name from the register;
- (c) any decision under section 36 to require a person to provide security, including any decision as to the form or amount of the security;
- (d) any decision to give a person notice under section 37;

-
- (e) any decision with respect to the amount of interest specified in an assessment under paragraph 11A of Schedule 6.

The Finance Act 2001

9A. Any decision under or for the purposes of Part II of Schedule 3 to the Finance Act 2001, as it has effect in the Island, (interest).

Interpretation of Schedule

10. (1) In this Schedule references to any decision as to the conditions subject to which any other decision (whether or not specified in this Schedule) is made include references to -

- (a) any decision as to whether the other decision should be made subject to or to the imposition of any conditions, limitations, restrictions, prohibitions or other requirements, either from the time when the other decision takes effect or in exercise of any power to impose them subsequently;
- (b) any decision as to the terms of any conditions, limitations, restrictions, prohibitions or other requirements imposed or applied in relation to that other decision;
- (c) any decision as to the period for which any licence, approval, permission or other authorisation to which the other decision relates is to have effect or as to any variation of that period; and
- (d) any decision as to whether any conditions, limitations, restrictions, prohibitions or other requirements so imposed or applied are to be revoked, suspended or cancelled or as to whether or in what respect their terms are at any time to be varied;

but those references do not include references to any decision as to the enforcement of any condition, restriction, prohibition in criminal proceedings, by the seizure or forfeiture of goods or, for purposes connected with any duty of excise, by any other means.

(2) References in this Schedule to decisions as to the exercise of any power to require security for the fulfilment of any obligation, the observance of any conditions or the payment of any duty shall be without prejudice to any reference to decisions as to the exercise of any general power in the case in question to impose conditions in connection with the making of any other decision and shall include references to the exercise of any power to require further security for the fulfilment of that obligation, the observance of those conditions or, as the case may be, the payment of that duty.

PENALTIES FOR ERRORS

PART 1

LIABILITY FOR PENALTY

Error in taxpayer's document

- 1 (1) A penalty is payable by a person (P) where—
- (a) P gives the Treasury a document of a kind listed in the Table below, and
 - (b) Conditions 1 and 2 are satisfied.
- (2) Condition 1 is that the document contains an inaccuracy which amounts to, or leads to—
- (a) an understatement of P's *a* liability to tax,
 - (b) a false or inflated statement of a loss, or
 - (c) a false or inflated claim to repayment of tax.
- (3) Condition 2 is that the inaccuracy was careless (within the meaning of part 3) or deliberate on P's part.
- (4) Where a document contains more than one inaccuracy, a penalty is payable for each inaccuracy.

<u>Tax</u>	<u>Document</u>
VAT	VAT return under regulations made under paragraph 2 of Schedule 12 to the Value Added Tax Act 1996.
VAT	Return, statement or declaration in connection with a claim.
Air passenger duty	Return under section 38 of Finance Act 1994 (as it has effect in the Island).
Alcoholic liquor duties	Return under regulations under sections 12, 44, 52 or 58 of the Alcoholic Liquor Duties Act 1986.
Alcoholic liquor duties	Statement or declaration in connection with a claim for repayment under section 60B, Alcoholic Liquor Duties Act 1986.

<u>Tax</u>	<u>Document</u>
<i>Tobacco products duty</i>	<i>Return under regulations under section 6 of the Tobacco Products Duty Act 1986.</i>
<i>Hydrocarbon oil duties</i>	<i>Return under regulations under section 24 of the Hydrocarbon Oil Duties Act 1986.</i>
<i>Excise duties</i>	<i>Return under regulations under section 94 of the Customs and Excise Management Act 1986.</i>
<i>Excise duties</i>	<i>Return under regulations under section 107A or 107B of the Customs and Excise Management Act 1986.</i>
<i>Excise duties</i>	<i>Statement or declaration in connection with a claim.</i>
<i>Gambling duty</i>	<i>Return under regulations under section 15 (returns) of the Gambling Duty Act 2012.</i>
<i>Any of the taxes mentioned above</i>	<p><i>Any document which is likely to be relied upon by the Treasury to determine, without further inquiry, a question about –</i></p> <ul style="list-style-type: none"> <i>(a) P's liability to tax,</i> <i>(b) payments by P by way of or in connection with tax,</i> <i>(c) any other payment by P (including penalties), or</i> <i>(d) repayments, or any other kinds of payment or credit, to P.</i>

(5) ...Omitted.

- 1A (1) A penalty is payable by a person (T) where –
- (a) another person (P) gives the Treasury a document of a kind listed in the Table in paragraph 1,
 - (b) the document contains a relevant inaccuracy, and
 - (c) the inaccuracy was attributable to T deliberately supplying false information to P (whether directly or indirectly), or to T deliberately withholding information from P, with the intention of the document containing the inaccuracy.
- (2) A “relevant inaccuracy” is an inaccuracy which amounts to, or leads to –
- (a) an understatement of a liability to tax,
 - (b) a false or inflated statement of loss, or
 - (c) a false or inflated claim to repayment of tax.
- (3) A penalty is payable under this paragraph in respect of an inaccuracy whether or not P is liable to a penalty under paragraph 1 in respect of the same inaccuracy.

Under-assessment by Treasury

- 2 (1) A penalty is payable by a person (P) where—
- (a) an assessment issued to P by Treasury understates P’s liability to a relevant tax, and
 - (b) P has failed to take reasonable steps to notify Treasury, within the period of 30 days beginning with the date of the assessment, that it is an under-assessment.
- (2) In deciding what steps (if any) were reasonable the Treasury must consider—
- (a) whether P knew, or should have known, about the underassessment, and
 - (b) what steps would have been reasonable to take to notify the Treasury.
- (3) In sub-paragraph (1), “relevant tax” means any tax mentioned in the Table in paragraph 1.
- (4) In this paragraph (and in Part 2 of this Schedule so far as relating to this paragraph) –
- (a) “assessment” includes determination, and
 - (b) accordingly, references to an under-assessment include an under-determination.

Degrees of culpability

- 3 (1) For the purpose of a penalty under paragraph 1, inaccuracy in a document given by P to the Treasury is—
- (a) “careless” if the inaccuracy is due to failure by P to take reasonable care,

- (b) "deliberate but not concealed" if the inaccuracy is deliberate on P's part but P does not make arrangements to conceal it, and
- (c) "deliberate and concealed" if the inaccuracy is deliberate on P's part and P makes arrangements to conceal it (for example, by submitting false evidence in support of an inaccurate figure).

(2) An inaccuracy in a document given by P to the Treasury, which was neither careless nor deliberate on P's part when the document was given, is to be treated as careless if P—

- (a) discovered the inaccuracy at some later time, and
- (b) did not take reasonable steps to inform the Treasury.

PART 2 AMOUNT OF PENALTY

Standard amount

4 (1) The penalty payable under paragraph 1 is—

- (a) for careless action, 30% of the potential lost revenue,
- (b) for deliberate but not concealed action, 70% of the potential lost revenue, and
- (c) for deliberate and concealed action, 100% of the potential lost revenue.

(1A) The penalty payable under paragraph 1A is 100% of the potential lost revenue.

(2) The penalty payable under paragraph 2 is 30% of the potential lost revenue.

(3) Paragraphs 5 to 8 define "potential lost revenue".

Potential lost revenue: normal rule

5 (1) "The potential lost revenue" in respect of an inaccuracy in a document (including an inaccuracy attributable to a supply of false information or withholding of information) or a failure to notify an under-assessment is the additional amount due or payable in respect of tax as a result of correcting the inaccuracy or assessment.

(2) The reference in sub-paragraph (1) to the additional amount due or payable includes a reference to—

- (a) an amount payable to the Treasury having been erroneously paid by way of repayment of tax, and
- (b) an amount which would have been repayable by the Treasury had the inaccuracy or assessment not been corrected.

(3) ...Omitted.

(4) ...Omitted.

Potential lost revenue: multiple errors

6 (1) Where P is liable to a penalty under paragraph 1 in respect of more than one inaccuracy, and the calculation of potential lost revenue under paragraph 5 in respect of each inaccuracy depends on the order in which they are corrected—

- (a) careless inaccuracies shall be taken to be corrected before deliberate inaccuracies, and
- (b) deliberate but not concealed inaccuracies shall be taken to be corrected before deliberate and concealed inaccuracies.

(2) In calculating potential lost revenue where P is liable to a penalty under paragraph 1 in respect of one or more understatements in one or more documents relating to a tax period, account shall be taken of any overstatement in any document given by P which relates to the same tax period.

(3) In sub-paragraph (2)—

- (a) “understatement” means an inaccuracy that satisfies Condition 1 of paragraph 1, and
- (b) “overstatement” means an inaccuracy that does not satisfy that condition.

(4) For the purposes of sub-paragraph (2) overstatements shall be set against understatements in the following order—

- (a) understatements in respect of which P is not liable to a penalty,
- (b) careless understatements,
- (c) deliberate but not concealed understatements, and
- (d) deliberate and concealed understatements.

(5) In calculating for the purposes of a penalty under paragraph 1 potential lost revenue in respect of a document given by or on behalf of P no account shall be taken of the fact that a potential loss of revenue from P is or may be balanced by a potential over-payment by another person (except to the extent that an enactment requires or permits a person’s tax liability to be adjusted by reference to P’s).

Potential lost revenue: losses

7 ...Omitted.

Potential lost revenue: delayed tax

8 (1) Where an inaccuracy resulted in an amount of tax being declared later than it should have been (“the delayed tax”), the potential lost revenue is—

- (a) 5% of the delayed tax for each year of the delay, or
- (b) a percentage of the delayed tax, for each separate period of delay of less than a year, equating to 5% per year.

(2) ...Omitted.

Reductions for disclosure

9 (A1) Paragraph 10 provides for reductions in penalties under paragraphs 1, 1A and 2 where a person discloses an inaccuracy, a supply of false information or withholding of information, or a failure to disclose an under-assessment.

(1) A person discloses an inaccuracy a supply of false information or withholding of information or a failure to disclose an underassessment by—

- (a) telling the Treasury about it,
- (b) giving the Treasury reasonable help in quantifying the inaccuracy, the inaccuracy attributable to the supply of false information or withholding of information, or the under-assessment, and
- (c) allowing the Treasury access to records for the purpose of ensuring that the inaccuracy, the inaccuracy attributable to the supply of false information or withholding of information, or the under-assessment is fully corrected.

(2) Disclosure—

- (a) is “unprompted” if made at a time when the person making it has no reason to believe that the Treasury have discovered or are about to discover the inaccuracy, the supply of false information or withholding of information, or the under-assessment, and
- (b) otherwise, is “prompted”.

(3) In relation to disclosure “quality” includes timing, nature and extent.

10 (1) Where a person who would otherwise be liable to a 30% penalty has made an unprompted disclosure, the Treasury shall reduce the 30% to a percentage (which may be 0%) which reflects the quality of the disclosure.

(2) Where a person who would otherwise be liable to a 30% penalty has made a prompted disclosure, the Treasury shall reduce the 30% to a percentage, not below 15%, which reflects the quality of the disclosure.

(3) Where a person who would otherwise be liable to a 70% penalty has made an unprompted disclosure, the Treasury shall reduce the 70% to a percentage, not below 20%, which reflects the quality of the disclosure.

(4) Where a person who would otherwise be liable to a 70% penalty has made a prompted disclosure, the Treasury shall reduce the 70% to a percentage, not below 35%, which reflects the quality of the disclosure.

(5) Where a person who would otherwise be liable to a 100% penalty has made an unprompted disclosure, the Treasury shall reduce the 100% to a percentage, not below 30%, which reflects the quality of the disclosure.

(6) Where a person who would otherwise be liable to a 100% penalty has made a prompted disclosure, the Treasury shall reduce the 100% to a percentage, not below 50%, which reflects the quality of the disclosure.

Special reduction

11 (1) If they think it right because of special circumstances, the Treasury may reduce a penalty under paragraph 1, 1A or 2.

(2) In sub-paragraph (1) "special circumstances" does not include—

- (a) ability to pay, or
- (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—

- (a) staying a penalty, and
- (b) agreeing a compromise in relation to proceedings for a penalty.

Interaction with other penalties and late payment surcharges

12 (1) ...Omitted.

(2) The amount of a penalty for which P is liable under paragraph 1 or 2 in respect of a document relating to a tax period shall be reduced by the amount of any other penalty incurred by P, or any surcharge for late payment of tax imposed on P, if the amount of the penalty or surcharge is determined by reference to the same tax liability.

(3) ...Omitted.

(4) Where penalties are imposed under paragraphs 1 and 1A in respect of the same inaccuracy, the aggregate of the amounts of the penalties must not exceed 100% of the potential lost revenue.

PART 3 PROCEDURE

Assessment

13 (1) Where a person becomes liable for a penalty under paragraph 1, 1A or 2 Treasury shall—

- (a) assess the penalty,
- (b) notify the person, and
- (c) state in the notice a tax period in respect of which the penalty is assessed.

(1A) A penalty under paragraph 1, 1A or 2 must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.

(2) An assessment—

- (a) shall be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Act),
- (b) may be enforced as if it were an assessment to tax, and

(c) may be combined with an assessment to tax.

(3) An assessment of a penalty under paragraph 1 or 1A must be made before the end of the period of 12 months beginning with—

- (a) the end of the appeal period for the decision correcting the inaccuracy, or
- (b) if there is no assessment to the tax concerned within paragraph (a), the date on which the inaccuracy is corrected.

(4) An assessment of a penalty under paragraph 2 must be made before the end of the period of 12 months beginning with –

- (a) the end of the appeal period for the assessment of tax which corrected the understatement, or
- (b) if there is no assessment within paragraph (a), the date on which the understatement is corrected.

(5) For the purpose of sub-paragraphs (3) and (4) a reference to an appeal period is a reference to the period during which—

- (a) an appeal could be brought, or
- (b) an appeal that has been brought has not been determined or withdrawn.

(6) Subject to sub-paragraphs (3) and (4), a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of potential lost revenue.

Suspension

14 (1) The Treasury may suspend all or part of a penalty for a careless inaccuracy under paragraph 1 by notice in writing to P.

(2) A notice must specify—

- (a) what part of the penalty is to be suspended,
- (b) a period of suspension not exceeding two years, and
- (c) conditions of suspension to be complied with by P.

(3) The Treasury may suspend all or part of a penalty only if compliance with a condition of suspension would help P to avoid becoming liable to further penalties under paragraph 1 for careless inaccuracy.

(4) A condition of suspension may specify—

- (a) action to be taken, and
- (b) a period within which it must be taken.

(5) On the expiry of the period of suspension—

- (a) if P satisfies the Treasury that the conditions of suspension have been complied with, the suspended penalty or part is cancelled, and
- (b) otherwise, the suspended penalty or part becomes payable.

(6) If, during the period of suspension of all or part of a penalty under paragraph 1, P becomes liable for another penalty under that paragraph, the suspended penalty or part becomes payable.

Appeal

15 (1) A person may appeal against a decision of the Treasury that a penalty is payable by the person.

(2) A person may appeal against a decision of the Treasury as to the amount of a penalty payable by the person.

(3) A person may appeal against a decision of the Treasury not to suspend a penalty payable by the person.

(4) A person may appeal against a decision of the Treasury setting conditions of suspension of a penalty payable by the person.

16 (1) An appeal under this Part of this Schedule shall be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to the Treasury, about the Treasury's review of the decision or about determination of the appeal by the Tribunal).

(2) Sub-paragraph (1) does not apply –

- (a) so as to require P to pay a penalty before an appeal against the assessment of the penalty is determined, or
- (b) in respect of any other matter expressly provided for by this Act.

17 (1) On an appeal under paragraph 15(1) the tribunal may affirm or cancel the Treasury's decision.

(2) On an appeal under paragraph 15(2) the tribunal may—

- (a) affirm the Treasury's decision, or
- (b) substitute for the Treasury's decision another decision that the Treasury had power to make.

(3) If the tribunal substitutes its decision for the Treasury's, the tribunal may rely on paragraph 11—

- (a) to the same extent as the Treasury (which may mean applying the same percentage reduction as the Treasury to a different starting point), or
- (b) to a different extent, but only if the appellate tribunal thinks that the Treasury's decision in respect of the application of paragraph 11 was flawed.

(4) On an appeal under paragraph 15(3)—

- (a) the tribunal may order the Treasury to suspend the penalty only if it thinks that the Treasury's decision not to suspend was flawed, and
 - (b) if the tribunal orders the Treasury to suspend the penalty—
 - (i) P may appeal against a provision of the notice of suspension, and
 - (ii) the tribunal may order the Treasury to amend the notice.
- (5) On an appeal under paragraph 15(4) the tribunal—
- (a) may affirm the conditions of suspension, or
 - (b) may vary the conditions of suspension, but only if the tribunal thinks that Treasury's decision in respect of the conditions was flawed.

(5ZA) In this paragraph, "tribunal" means the VAT and Duties Tribunal.

(6) In sub-paragraphs (3)(b), (4)(a) and (5)(b) "flawed" means flawed when applying the principles applied by the High Court on a petition of dolence.

(7) Paragraph 14 (see in particular paragraph 14(3)) is subject to the possibility of an order under this paragraph.

PART 4 MISCELLANEOUS

Agency

18 (1) P is liable under paragraph 1(1)(a) where a document which contains a careless inaccuracy (within the meaning of paragraph 3) is given to the Treasury on P's behalf.

(2) In paragraph 2(1)(b) and (2)(a) a reference to P includes a reference to a person who acts on P's behalf in relation to tax.

(3) Despite sub-paragraphs (1) and (2), P is not liable to a penalty under paragraph 1 or 2 in respect of anything done or omitted by P's agent where P satisfies the Treasury that P took reasonable care to avoid inaccuracy (in relation to paragraph 1) or unreasonable failure (in relation to paragraph 2).

(4) In paragraph 3(1)(a) (whether in its application to a document given by P or, by virtue of sub-paragraph (1) above, in its application to a document given on P's behalf) a reference to P includes a reference to a person who acts on P's behalf in relation to tax

(5) In paragraph 3(2) a reference to P includes a reference to a person who acts on P's behalf in relation to tax.

Companies: officers' liability

19 (1) Where a penalty under paragraph 1 is payable by a company for a deliberate inaccuracy which was attributable to an officer of the company, the officer is liable to pay such portion of the penalty (which may be 100%) as the Treasury may specify in written notice to the officer.

(2) Sub-paragraph (1) does not allow the Treasury to recover more than 100% of a penalty.

(3) In the application of sub-paragraph (1) to a body corporate other than a limited liability partnership "officer" means—

- (a) a director (including a shadow director),
- (aa) a manager, and
- (b) a secretary.

(3A) In the application of sub-paragraph (1) to a limited liability partnership, "officer" means a member.

(4) In the application of sub-paragraph (1) in any other case "officer" means—

- (a) a director,
- (b) a manager,
- (c) a secretary,
- (ca) a registered agent of a limited liability company, and
- (d) any other person managing or purporting to manage any of the company's affairs.

(5) Where the Treasury has specified a portion of a penalty in a notice given to an officer under sub-paragraph (1) –

- (a) paragraph 11 applies to the specified portion as to a penalty,
- (b) the officer must pay the specified portion before the end of a period of 30 days beginning with the day on which the notice is given,
- (c) paragraph 13(2), (3) and (5) apply as if the notice were an assessment of a penalty,
- (d) a further notice may be given in respect of a portion of any additional amount assessed in a supplementary assessment in respect of the penalty under paragraph 13(6),
- (e) paragraphs 15(1) and (2), 16 and 17(1) to (3) and (6) apply as if Treasury had decided that a penalty of the amount of the specified portion is payable by the officer, and
- (f) paragraph 21 applies as if the officer were liable to a penalty.

(6) In this paragraph "company" means any body corporate or unincorporated association, but does not include a partnership, a local authority or a local authority association.

Partnerships

20 (1) This paragraph applies where P is liable to a penalty under paragraph 1 for an inaccuracy in or in connection with a partnership return.

(2) Where the inaccuracy affects the amount of tax due or payable by a partner of P, the partner is also liable to a penalty ("a partner's penalty").

(3) Paragraphs 4 to 13 and 19 shall apply in relation to a partner's penalty (for which purpose a reference to P shall be taken as a reference to the partner).

(4) Potential lost revenue shall be calculated separately for the purpose of P's penalty and any partner's penalty, by reference to the proportions of any tax liability that would be borne by each partner.

(5) Paragraph 14 shall apply jointly to P's penalty and any partner's penalties.

(6) P may bring an appeal under paragraph 15 in respect of a partner's penalty (in addition to any appeal that P may bring in connection with the penalty for which P is liable).

Double jeopardy

21. A person is not liable to a penalty under paragraph 1, 1A or 2 in respect of an inaccuracy or failure in respect of which the person has been convicted of an offence.

PART 5 GENERAL

Interpretation

22 Paragraphs 23 to 27 apply for the construction of this Schedule.

23 ...Omitted.

23A "Tax" includes duty.

24 ...Omitted.

25 ...Omitted.

26 ...Omitted.

27 An expression used in relation to VAT has the same meaning as in Value Added Tax Act 1996.

28 In this Schedule—

(a) ...omitted,

(b) ...omitted,

(c) ...omitted,

(d) a reference to understating liability to VAT includes a reference to overstating entitlement to a VAT credit,

(da) ...omitted,

(e) a reference to a loss includes a reference to a charge, expense, deficit and any other amount which may be available for, or relied on to claim, a deduction or relief,

(f) a reference to repayment of tax includes a reference to allowing a credit against tax,

(fa) ...omitted,

-
- (g) "tax period" means a tax year, accounting period or other period in respect of which tax is charged,
 - (h) a reference to giving a document to the Treasury includes a reference to communicating information to the Treasury in any form and by any method (whether by post, fax, email, telephone or otherwise),
 - (i) a reference to giving a document to the Treasury includes a reference to making a statement or declaration in a document,
 - (j) a reference to making a return or doing anything in relation to a return includes a reference to amending a return or doing anything in relation to an amended return, and
 - (k) a reference to action includes a reference to omission.

Consequential amendments

29 The following provisions are omitted—

- (a) ...omitted,
- (b) ...omitted,
- (c) ...omitted,
- (d) sections 60, 61, 63 and 64 of the Value Added Tax Act 1996 (evasion).

30 ...Omitted.

31 ...Omitted.

Finance Act 2008 (c.9)

CHAPTER 4

APPEALS ETC

Reviews and appeals etc: general

Treasury decisions etc: reviews and appeals

124. (1) The Treasury may by order make provision –
- (a) for and in connection with reviews by the Treasury, or by an officer, of decisions on assigned matters, and
 - (b) in connection with appeals against decisions on assigned matters.
- (2) An order under subsection (1) may, in particular, contain provision about –
- (a) the circumstances in which, or the time within which –
 - (i) a right to a review may be exercised, or
 - (ii) an appeal may be made, and
 - (b) the circumstances in which, or the time at which, an appeal or review is, or may be treated as, concluded.
- (3) An order under subsection (1) may, in particular, contain provision about the payment of sums by, or to, the Treasury in cases where –
- (a) a right to a review is exercised, or
 - (b) an appeal is made or determined.
- (4) That includes provision about payment of sums where an appeal has been determined, but a further appeal may be or has been made, including provision –
- (a) requiring payments to be made,
 - (b) enabling payments to be postponed, or
 - (c) imposing conditions in connection with the making or postponement of payments.
- (5) An order under subsection (1) may, in particular, contain provision about interest on any sum that is payable by, or to, the Treasury in accordance with a decision made on the determination of an appeal.
- (6) Provision under subsection (1) may be made by amending or revoking any provision of any subordinate legislation which applies to and forms part of the law of the Island (whenever passed or made).
- (7) An order under subsection (1) may –

- (a) provide that any provision contained in the order comes into force on a day appointed by an order of the Treasury (and may provide that different days may be appointed for different purposes),
 - (b) contain incidental, supplemental, consequential, transitional, transitory and saving provision, and
 - (c) make different provision for different purposes.
- (8) An order under subsection (1) may not come into operation until approved by Tynwald.
- (9) ...Omitted.
- (10) In this section –
- (a) references to appeals against decisions on an assigned matter include any other kind of proceedings relating to a decision on an assigned matter, and
 - (b) references to the making, determination or conclusion of appeals are to be read accordingly.
- (11) In this section –
- “assigned matter” has the same meaning as in section 184(1) of the Customs and Excise Management Act 1986;
- “a decision on an assigned matter” means –
- (a) any decision of the Treasury relating to an assigned matter, or
 - (b) any decision of an officer of customs and excise relating to an assigned matter,
- and references to a decision on an assigned matter includes references to anything done by such a person in connection with making such a decision or in consequence of such a decision.

CHAPTER 5

PAYMENT AND ENFORCEMENT

Set off

Set off

130. (1) This section applies where there is both a credit and a debit in relation to a person.
- (2) The Treasury may set the credit against the debit (subject to section 131 and any obligation of the Treasury to set the credit against another sum).
- (3) The obligations of the Treasury and the person concerned are discharged to the extent of any set-off under subsection (2).
- (4) “Credit”, in relation to a person, means –
- (a) a sum that is payable by the Treasury to the person under or by virtue of –

- (i) the Customs and Excise Acts 1986, as defined in section 184(1) of the Customs and Excise Management Act 1986,
 - (ii) an enactment applied in the Island under section 1 of the Customs and Excise Act 1993, or
 - (iii) the Value Added Tax Act 1996, or
- (b) a relevant sum that may be repaid to the person by the Treasury.

(5) For the purposes of subsection (4), in relation to a person, "relevant sum" means a sum that was paid in connection with any liability (including any purported or anticipated liability) of that person to make a payment to the Treasury under or by virtue of an enactment or under a contract settlement.

(6) "Debit", in relation to a person, means a sum that is payable by the person to the Treasury under or by virtue of an enactment or under a contract settlement.

(6A) In this section, "contract settlement" means an agreement made in connection with any person's liability to make a payment to the Treasury under or by virtue of an enactment.

(7) In this section references to sums paid, repaid or payable by or to a person (however expressed) include sums that have been or are to be credited by or to a person.

(8) This section has effect without prejudice to any other power of the Treasury to set off amounts.

(9) ...Omitted.

(10) ...Omitted.

No set-off where insolvency procedure has been applied

131. (1) This section applies where –

- (a) an insolvency procedure has been applied to a person, and
- (b) there is a post-insolvency credit in relation to that person.

(2) The Treasury may not use the power under section 130 to set that post insolvency credit against a pre-insolvency debit in relation to the person.

(3) "Post-insolvency credit" means a credit that –

- (a) became due after the insolvency procedure was applied to the person, and
- (b) relates to, or to matters occurring at, times after it was so applied.

(4) "Pre-insolvency debit" means a debit that –

- (a) arose before the insolvency procedure was applied to the person, or
- (b) arose after that procedure was so applied but relates to, or to matters occurring at, times before it was so applied.

(5) Subject to subsection (6), an insolvency procedure is to be taken, for the purposes of this section, to be applied to a person when –

- (a) a bankruptcy order or winding up order is made or an administrator is appointed in relation to that person,
- (b) that person is put into administrative receivership,
- (c) if the person is a corporation, that person passes a resolution for voluntary winding up,
- (d) a voluntary arrangement comes into force in relation to that person, or
- (e) a deed of arrangement takes effect in relation to that person.

(6) In this section references to the application of an insolvency procedure to a person do not include –

- (a) the application of an insolvency procedure to a person at a time when another insolvency procedure applies to the person, or
- (b) the application of an insolvency procedure to a person immediately upon another insolvency procedure ceasing to have effect.

(7) For the purposes of this section –

- (a) a person shall be treated as being in administrative receivership throughout any continuous period for which there is an administrative receiver of that person (disregarding any temporary vacancy in the office of the receiver), and
- (b) the reference in subsection (5) to a person being put into administrative receivership shall be interpreted accordingly.

(8) In this section –

“credit” and “debit” have the same meaning as in section 130,

“deed of arrangement” means a deed of arrangement within the meaning of section 78 of the Bankruptcy Code 1892,

“voluntary arrangement” means a voluntary arrangement approved in accordance with Part 1 or Part 8 of the Insolvency Act 1986 (c.45 of Parliament) or Part 2 or Chapter 2 of Part 8 of the Insolvency (Northern Ireland) Order 1989.

(9) ...Omitted.

132. ...Not Applied.

Set-off etc where right to be paid a sum has been transferred

133. (1) This section applies where there has been a transfer from one person (“the original creditor”) to another person (“the current creditor”) of a right to be paid a sum (“the transferred sum”) by the Treasury.

(2) The Treasury –

-
- (a) must set the transferred sum against a sum payable to it by the original creditor if it would have had an obligation to do so under or by virtue of an enactment had the original creditor retained the right, and
 - (b) may do so if it would have had a power to do so under or by virtue of an enactment or under a rule of law had the original creditor retained the right.
- (3) Subsection (2) applies whether the sum payable by the original creditor to the Treasury first became payable before or after the transfer (but not if it only became payable after the Treasury discharged their obligation to pay the transferred sum to the current creditor).
- (4) The following are discharged to the extent of any set-off under this section –
- (a) the obligations of the Treasury in relation to the current creditor, and
 - (b) the obligations of the original creditor.
- (5) An obligation under or by virtue of an enactment (other than this section) to set the transferred sum against a sum payable to the Treasury by a person other than the original creditor has effect subject to the obligation under subsection (2)(a) and to any exercise of the power under subsection (2)(b).
- (6) A power under or by virtue of an enactment (other than this section) or under a rule of law to set the transferred sum against a sum payable to the Treasury by a person other than the original creditor has effect subject to the obligation under subsection (2)(a).
- (7) In determining the sum (if any) to be paid, the Treasury may make any reduction that they could have made if the original creditor had retained the right to be paid the transferred sum (in addition to any other reduction that they are entitled to make), including a reduction arising from any defence to a claim for the sum.
- (8) In this section –
- (a) references to the transfer of a right are to its transfer by assignment, assignation or any other means,
 - (b) references to a sum that is payable by or to a person are to a sum that is to be paid, repaid or credited by or to that person and references to the payment of the sum (however expressed) are to be interpreted accordingly, and
 - (c) where a right in relation to a sum has been transferred more than once, references to the original creditor are to the person from whom the right was first transferred (except in subsection (1)).
- (9) Where the right to be paid the transferred sum is dependent on the making of a claim –
- (a) subsection (2) does not apply unless a claim in respect of the transferred sum has been made, and
 - (b) the references in subsections (2) and (7) to the obligations or powers that the Treasury would have had if the original creditor had retained the right are references to those that they would have had if the original creditor had also made the claim in respect of the transferred sum.
-

(10) ...Omitted.

PART 8

MISCELLANEOUS

Other matters

Power to give statutory effect to concessions

160. (1) The Treasury may by order make provision for and in connection with giving effect to any existing concession.

(2) "Existing concession" means a statement made by the Treasury before the passing of this Act, and having effect at that time, and it will treat persons as if they were entitled to –

- (a) a reduction in a liability to a tax or duty, or
- (b) any other concession relating to a tax or duty,

to which they are not, or may not be, entitled in accordance with the law.

(3) For this purpose "statement" means a statement of any sort, whether it was described as an extra-statutory concession, a statement of practice, an interpretation, a decision or a press release or in any other way.

(4) ...Omitted.

(5) An order under this section –

- (a) may give effect to an existing concession with or without modification,
- (b) may include supplementary, incidental, consequential or transitional provision, and
- (c) may include provisions amending (or repealing or revoking) any enactment or instrument (whenever passed or made).

(6) ...Omitted.

(7) An order made under this section shall not come into operation until approved by Tynwald.



CUSTOMS AND EXCISE ACT 1993
CUSTOMS AND EXCISE ACTS (APPLICATION)
(AMENDMENT) (No. 2) Order 2009

Approved by Tynwald

19 May 2009

Coming into operation

In accordance with article 2

The Treasury makes this Order under section 1 of the Customs and Excise Act 1993.

1 Title

This Order is the Customs and Excise Acts (Application) (Amendment) (No. 2) Order 2009.

2 Commencement

- (1) This Order comes into operation on the date on which it is approved by Tynwald.
- (2) However, when approved by Tynwald, this Order shall be deemed to have come into operation on 1 April 2009.

3 Amendment of the Customs and Excise Acts (Application) Order 2008

- (1) The Customs and Excise Acts (Application) Order 2008 is amended as follows.
- (2) For article 1(3)(b) and (c) (commencement of Schedule 1 and Part 3 of Schedule 2) substitute –
 - “(b) Schedule 1 to this Order shall have effect in relation to VAT –
 - (i) on and after 1 November 2008 in relation to assessments falling within paragraph 2 of Schedule 24 to the Finance Act 2007 of Parliament, as it has effect in the Island, for prescribing accounting periods commencing on or after that date;
 - (ii) on and after 1 November 2008 in relation to relevant records relating to claims under the 13th Council Directive (arrangements for the refund of value added tax to persons not established in Community territory) for years commencing on or after that date;
 - (iii) on and after 1 January 2009 in relation to relevant documents relating to claims under the 8th Council Directive (arrangements for the refund of

- value added tax to taxable persons not established in the territory of the country) for years commencing on or after that date;
- (iv) on and after 1 April 2009 in relation to documents relating to all other claims for repayment of tax made on or after 1 April 2009 which are not related to a prescribed accounting period; and
 - (v) in any other case, on and after 1 April 2009 in relation to documents given where a person's liability to tax arises on or after that date; and
- (c) Subject to article 12A (savings), Schedule 1 to this Order shall have effect in relation to penalties payable under paragraph 1 of Schedule 24 to the Finance Act 2007 (error in taxpayer's document), in relation to the taxes and duties (other than VAT) and for a document mentioned in paragraph 1(4) of Schedule 24 to the Finance Act 2007 as follows –
- (i) for relevant documents relating to tax periods commencing on or after 1 April 2009, where the due date for the return is on or after 1 April 2010;
 - (ii) for relevant documents relating to all other claims for repayments of relevant tax made on or after 1 April 2010 which are not related to a tax period; and
 - (iii) in any other case, relevant documents given where a person's liability to pay relevant tax arises on or after 1 April 2010;
- but a person shall not be liable to a penalty in respect of any tax period for which a return is required to be made before 1 April 2010;
- (d) Subject to article 12A, Schedule 1 to this Order shall have effect in relation to penalties payable under paragraph 1 of Schedule 24, in relation to the taxes and duties (other than VAT) mentioned in paragraph 1(4) of Schedule 24 for the purposes of paragraph 1A of Schedule 24 (error in taxpayer's document attributable to another person) as follows –
- (i) for relevant documents relating to tax periods commencing on or after 1 April 2009, where the due date for the return is on or after 1 April 2010;
 - (ii) for relevant documents relating to all other claims for repayment of relevant tax made on or after 1 April 2010 which are not related to a tax period; and
 - (iii) in any other case, relevant documents given where a person's liability to pay relevant tax arises on or after 1 April 2010;
- but a person shall not be liable for a penalty in respect of any tax period for which a return is required to be made before 1 April 2010;
- (e) Part 3 of Schedule 2 shall have effect –
- (i) where a relevant obligation arises on or after 1 April 2010;
 - (ii) where an unauthorised issue of an invoice takes place on or after 1 April 2010;
 - (iii) where an act which enables the Treasury to assess an amount of duty under a relevant excise provision is performed on or after 1 April 2010; and

-
- (iv) where a person's actions giving rise to a penalty under paragraph 4 (handling goods subject to unpaid excise duty) arises on or after 1 April 2010;

but a person shall not be liable to a penalty under Schedule 41 to the Finance Act 2008 in respect of any tax period in respect of which a relevant obligation arises before 1 April 2010.”.

- (3) After Article 12 insert –

“12A Savings

- (1) Notwithstanding article 5 of this Order, section 8 of the Finance Act 1994 (penalty for evasion of excise duty) shall continue to have effect –
- (a) with respect to conduct involving dishonesty which does not relate to an inaccuracy in a document or a failure to notify the Treasury of an under-assessment by the Treasury; and
 - (b) for the purposes of Schedule 41 to the Finance Act 2008, with respect to conduct involving dishonesty which does not give rise to a penalty under the said Schedule.
- (2) Notwithstanding paragraph 29(d) of Schedule 24 to the Finance Act 2007 (consequential amendments), as applied by this Order, sections 60 and 61 (VAT evasion) of the Value Added Tax Act 1996 shall continue to have effect –
- (a) with respect to conduct involving dishonesty which does not relate to an inaccuracy in a document or a failure to notify the Treasury of an under-assessment by the Treasury; and
 - (b) for the purposes of Schedule 41 to the Finance Act 2008, with respect to conduct involving dishonesty which does not give rise to a penalty under the said Schedule.”.

MADE 26th March 2009

Signed by A R Bell
Minister for the Treasury

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Government

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