

Explanatory Note:

The general arrangements for excise duty are provided for in Part 2 of Finance Act 2001. These provisions have been amended several times in Finance and other Acts. The 2001 Act and the subsequent amending Acts are published in the Irish Statute Book.

This non-statutory consolidation has been prepared by Revenue for reference purposes. All amendments to date have been incorporated and these are annotated in the sidenotes. While every care has been taken in its preparation, Revenue cannot assume any responsibility for the accuracy, completeness or up to date nature of the information provided.

General Excise Law

Part 2 of Finance Act 2001 (as amended)

**Non-Statutory Consolidated Document
For Reference Purposes Only**

(January 2024 Edition)

Finance Act 2001

PART 2

EXCISE

CHAPTER 1

Interpretation, Liability and Payment

Section		
96.	Interpretation (Part 2).....	8
97.	Excisable products (Part 2).....	14
98.	Importation from outside territory of European Union.....	14
98A.	Release for consumption.....	15
98B.	Chargeability of excisable products released for consumption.....	17
99.	Liability of persons.....	18
99A.	Assessment of excise duty payable.....	21
99AA	Estimation of excise duty due.....	22
99AB	Time limits.....	22
99B.	Penalty for deliberately or carelessly making incorrect returns, etc.....	23
99C.	Penalty for deliberately or carelessly making incorrect returns or failing to make certain returns, etc.	30
100.	[Deleted by S.70(j) of FA2012.]	37
101.	All excisable products are liable for all liabilities, penalties and forfeitures of a warehousekeeper	38
102.	[Deleted by S.93 of FA2010.].....	38
103.	Payment.....	38
104.	Reliefs.....	39
105.	[Deleted by S.70(o) of FA2012.].....	41
105A.	[Deleted by S.70(p) of FA2012.].....	42

105B.	Repayment of overpaid duty.....	42
105BA	Unjust enrichment.....	42
105C.	[Deleted by S.70(r) of FA2012.].....	43
105D.	Interest on repayment of duty.....	43
106.	[Deleted by S. 93(k) of FA2010.]	45
107.	[Repealed by S.I. No. 711 of 2003.].....	45
108.	[Repealed by S.I. No. 462 of 2002.].....	45
108A.	Warehousing.....	45
109.	Authorisation of warehousekeepers and approval of tax warehouses.....	46
109A.	Authorisation of registered consignors.....	52

CHAPTER 2A

Intra-European Union Movement under a Suspension Arrangement

109B.	Interpretation (Chapter 2A).....	57
109C.	Product scope (Chapter 2A).....	58
109D.	Member State territories, exceptional arrangements (Chapter 2A).....	59
109E.	Consignments to another Member State under a suspension arrangement.....	59
109F.	Consignment to consignee in another Member State under computerised system.....	60
109G.	Consignment to place of exportation in another Member State under computerised system.....	61
109H.	Cancellation or amendment of electronic administrative document.....	62
109I.	Consignment to another Member State where computerised system is unavailable.....	64
109IA	Authorisation of registered consignees.....	65
109J.	Consignments to the State under suspension arrangement.....	69

109K.	Completion of consignment.....	71
109L.	Report of receipt.....	71
109M.	Report of export.....	72
109N.	Confirmation of receipt and export by alternative means.....	72
109O.	Exceptional procedures.....	73
109P.	[Deleted by section 71(d) of FA2012.].....	74

CHAPTER 2B

Intra-European Union Movement of Duty-Paid Excisable Products

109Q.	Interpretation (Chapter 2B).....	75
109R.	Product scope (Chapter 2B).....	75
109RA	Movement of excisable products for commercial purposes.....	75
109S.	Member State territories, exceptional arrangements (Chapter 2B).....	76
109SA	Consignment of excisable products, duty-paid in the State, to another Member State for commercial purpose.....	77
109SB	Consignment to the State of excisable products released for consumption in another Member State for commercial purposes.....	78
109SC	Report of receipt of duty-paid consignment.....	78
109T	[Repealed by Section 47 of Finance Act 2021]	79
109TA	Consignment to the State where computerised system is unavailable.....	79
109U.	Distance selling from another Member State.....	80
109V	[Repealed by Section 47 of Finance Act 2021]	81
109VA	Unavailability of the computerised system to a certified consignor in the State.....	81
109W.	Distance selling to another Member State.....	82

109X.	Additional requirements.....	82
109Y	Transitional arrangements.....	83

CHAPTER 3

Offences, Penalties and Proceedings

118.	[Deleted by S.46 (1)(a) of FA2011.].....	84
119.	Evasion of excise duty.....	84
120.	Amendment of section 34 (amendments relative to penalties) of Finance Act 1963.....	84
121.	Offences generally.....	85
122.	Offences in relation to false returns, claims, etc.....	85
123.	Resisting, obstructing, giving false information.....	86
124.	Penalty.....	86
124A.	Administrative penalties for breach of provisions or regulations.....	86
125.	Forfeiture.....	87
125A	Forfeiture of alcohol products on unlicensed premises.....	87
126.	Proceedings in relation to offences.....	88
127.	Notice of Claim (as substituted by S.46(1)(b) of FA2011).....	89
128.	Proceedings for condemnation by court (as substituted by S. 46(1)(c) of FA2011).....	89
129.	Damages.....	90
130.	Mitigation.....	90
131.	Presumptions.....	90
132.	[Deleted by S.72(f) of FA2012.].....	92

CHAPTER 4

Powers of Officers

133.	Interpretation	93
134.	Power to stop vehicles.....	93
135.	Power to examine and search vehicles and to take samples.....	94
136.	Entry and search of premises.....	96
136A.	Power to stop, question and search for intra-Community baggage.....	101
137.	[Deleted by S.73(l) of FA2012.].....	102
137A.	Substitute fuels.....	102
138.	Powers of officers in respect of certain tobacco products.....	103
139.	Power of arrest and detention of persons.....	104
139A.	Designation of secure premises for keeping of detained or seized goods.....	105
140.	Detention of goods and vehicles.....	105
141.	Seizure of goods and vehicles.....	106
142.	Notice of seizure.....	106
143.	[Deleted by S. 47(b) of FA2011.].....	107
144.	Power to deal with seizures, before and after condemnation.....	107

CHAPTER 5

Miscellaneous

144A.	Delegation of powers, functions and duties of Commissioners.....	109
145.	Appeals to Commissioners.....	110
146.	Appeals to Appeal Commissioners.....	111
147.	[Deleted by Schedule 2 of F(Tax Appeals)A 2015].....	113

<u>148.</u>	Exclusion of criminal matters.....	113
<u>149.</u>	Repeals and revocations (Part 2).....	113
<u>150.</u>	Saver.....	113
<u>151.</u>	Continuity.....	113
<u>152.</u>	Commencement.....	114
<u>153.</u>	Regulations.....	114

CHAPTER 1

Interpretation, Liability and Payment

Interpretation (Part 2).

96.—(1) In this Part—

Section substituted by S.93(a) of FA2010.

[Definition of “accompanying administrative document” **deleted** by S.70(a) of FA2012.]

Inserted by S.58(a) of FA2014.

“alcohol products” has the meaning assigned to it by paragraph (a) of section 97;

Substituted by Schedule 2 of FA(Tax Appeals)2015.

“Appeal Commissioner” has the meaning given to it by section 2 of the Finance (Tax Appeals) Act 2015;

Amended by S.47(1) of FA2021

“authorised warehousekeeper” means, as the case requires, either—

- (a) a person in the State authorised by the Commissioners, in accordance with section 109, to produce, process, hold or store excisable products in a tax warehouse, or to dispatch and receive consignments of excisable products to and from a tax warehouse, in the course of business, under a suspension arrangement, or
- (b) a person in another Member State, authorised by the competent authority of that Member State to dispatch and receive consignments of excisable products to and from a tax warehouse, in the course of business, under a suspension arrangement;

Inserted by S.58(a) of FA2014.

“beer” has the same meaning as it has in section 73 of the Finance Act 2003;

Inserted by S.47(1) of FA2021

“certified consignee” means, as the case requires—

- (a) a person registered with the Commissioners in accordance with section 109RA(4) in order to receive, in the course of business, excisable products that have been released for consumption in another Member State and then moved to the State, or
- (b) a person registered with a competent authority in another Member State in order to receive, in the course of business, excisable products that have been released for consumption in the Member State of dispatch and then moved to the first-mentioned Member State;

Inserted by S.47(1) of FA2021

“certified consignor” means, as the case requires, either—

- (a) a person registered with the Commissioners in accordance with section 109RA(4) in order to dispatch, in the course of

business, excisable products that have been released for consumption in the State to another Member State, or

- (b) a person registered with the competent authority of another Member State in order to dispatch, in the course of business, excisable products that have been released for consumption in that Member State and then moved to another Member State;

“Commissioners” means the Revenue Commissioners;

Inserted by S.47(1) of FA2021 and substituted by S.56(a)(i) of F(No. 2)A 2023

“Commission Regulation” means Commission Delegated Regulation (EU) 2022/1636 of 5 July 2022¹;

Amended by S.47(1) of FA2021

“computerised system” means the system referred to in Article 1 of Decision (EU) 2020/263 of the European Parliament and of the Council of 15 January 2020²;

“consignment” has the meaning, as the case requires, assigned to it by section 109B or section 109Q;

Inserted by S.47(1) of FA2021

“Council Regulation” means Regulation (EU) No. 952/2013 of the European Parliament and of the Council of 9 October 2013³ laying down the Union Customs Code;

Inserted by S.47(1) of FA2021

“declarant” means the declarant as defined in point (15) of Article 5 of the Council Regulation;

Inserted by S.47(1) of FA2021

“destination Member State”, in respect of a consignment, means the Member State where, as the case may be, the designated consignee, place of exportation, or certified consignee for that consignment, is located;

Amended by S.47(1) of FA2021

“Directive” means Council Directive (EU) No. 2020/262 of 19 December 2019⁴;

Inserted by S.47(1) of FA2021

“electronic change of destination document” means a document that complies with the requirements set out in Table 3 of Annex 1 of the Commission Regulation;

Inserted by S.56(a)(ii) of F(No. 2)A 2023

“electronic simplified administrative document” means the electronic simplified administrative document referred to in Article 36(1) of the Directive;

Amended by S.76(a)(i)(I)(A) of The Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020.

“European Union”, subject to subsection (3), means the territory of the Union as defined by the Treaty on the Functioning of the European Union and, in particular, Article 355 of that Treaty except for the following national territories:

¹ OJ No. L247, 23.9.2022, p.2

² OJ No. L58, 27.2.2020, p.43

³ OJ No. L269, 10.10.2013, p.1

⁴ OJ No. L58, 27.2.2020, p.4.

Substituted by S.48(1) of FA2019.

- (a) in the case of Germany, the Island of Heligoland and the territory of Büsingen,
- (b) in the case of Italy, the territory of Livigno,
- (c) [**Deleted** by S.76(a)(i)(I)(B) of The Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020.]
- (d) in the case of Greece, Mount Athos,
- (e) in the case of Spain, the Canary Islands, Ceuta and Melilla,

Amended by S.47(1) of FA2021

- (f) in the case of France, the territories referred to in Article 349 and Article 355(1) of the Treaty on the Functioning of the European Union, and
- (g) in the case of Finland, the Åland Islands;

Substituted by S.47(a)(i) of F(No. 2)A2013.

“excise law” means the statutes that relate to the duties of excise or the management of those duties, and the instruments made under statute that relate to those duties or the management of those duties;

“exempt consignee” means, as the case may be, either—

- (a) a consignee in the State who, in respect of a consignment, qualifies for relief under section 104(1), and who has been granted a certificate to that effect by the Commissioners, or
- (b) a consignee in another Member State who, in respect of a consignment, qualifies for relief in accordance with paragraph 1 of Article 12 of the Directive, and who has been granted a certificate to that effect by the competent authority of that Member State;

Inserted by S.47(1) of FA2021

“importation” means the release of goods for free circulation in accordance with Article 201 of the Council Regulation;

[Definition of “free warehouse” **deleted** by S.70(a) of FA2012.]

[Definition of “free zone” **deleted** by S.70(a) of FA2012.]

“information” includes any representation of fact, whether in legible form or otherwise;

Inserted by S.47(1) of FA2021

“irregular entry” means an entry of goods into the territory of the European Union, which have not been placed under release for free circulation in accordance with Article 201 of the Council Regulation and for which a customs debt under Article 79(1) of that Regulation

has been incurred, or would have been incurred if the goods had been subject to customs duty;

Inserted by S.47(1) of FA2021

“irregularity” means an occurrence during a movement of excisable products made under Chapter 2B that has not been ended in accordance with the provisions of that Chapter;

Inserted by S.47(1) of FA2021

“irregular release” means an occurrence giving rise to a release for consumption during a movement of excisable products made under Chapter 2A that has not been ended in accordance with the provisions of that Chapter;

Amended by S.76(a)(i)(II) of The Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020

“Member State”, subject to subsection (3), means a Member State of the European Union;

Inserted by S.47(1) of FA2021

“Member State of dispatch” means the Member State from which a consignment is dispatched;

Substituted by S.58(c) of FA2014

“mineral oils” has the meaning assigned to it by paragraph (c) of section 97;

“non-State vendor” means a person in another Member State who sells excisable products, released for consumption in that Member State, to a private individual resident in the State, for the personal use of that private individual, and who dispatches or transports such products, directly or indirectly, to such private individual;

“officer”, except in Chapter 4, means an officer of the Commissioners;

Inserted by S.58(a) of FA2014

“other fermented beverages” has the same meaning as it has in section 73 of the Finance Act 2003;

Inserted by S.47(1) of FA2021

“paper confirmation of receipt” has the meaning, as the case requires, assigned to it by section 109N(1), section 109TA(1) or section 109VA(3);

Inserted by S.47(1) of FA2021

“place of importation” means a place where excisable products are released for free circulation in accordance with Article 201 of the Council Regulation;

“prescribed” means prescribed by regulations made by the Commissioners under section 153;

“prohibited goods” has the same meaning as it has in either—

- (a) section 94 of the Finance Act 1999, or
- (b) section 73 (as amended by the Finance Act 2005) of the Finance Act 2003;

“records” means any books, accounts, documents or other recorded information including information in a computer or in other non-legible form;

“registered consignee” means, as the case requires, either—

Amended by S.31(a) of FA2016
Amended by S.47(1) of FA2021

- (a) a person, authorised by the Commissioners, in accordance with section 109IA, to receive, in the course of business, consignments of excisable products from another Member State under a suspension arrangement, or
- (b) a person in another Member State, authorised by the competent authority of that Member State, to receive, in the course of business, consignments of excisable products from another Member State under a suspension arrangement;

Amended by S.32(a) of FA2020
Amended by S.47(1) of FA2021

“registered consignor” means, as the case requires, either—

- (a) a person who is authorised by the Commissioners in accordance with section 109A to only dispatch, in the course of business, excisable products under a suspension arrangement, upon their release for free circulation in accordance with Article 201 of the Council Regulation, or
- (b) a person, who is authorised by the competent authorities of another Member State, to only dispatch, in the course of business, excisable products under a suspension arrangement, upon their release for free circulation in accordance with Article 201 of the Council Regulation;

Inserted by S.47(1) of FA2021

“report of receipt” means a report by means of the computerised system, in accordance with (as the case may be)—

- (a) Article 24(1) of the Directive, certifying that a consignment has been received by a designated consignee, or
- (b) Article 37(1) of the Directive certifying a consignment has been received by a certified consignee;

Inserted by S.47(1) of FA2021

“SEED register” means the register of economic operators and of premises authorised as tax warehouses that is required to be maintained by the Commissioners under Article 19 of Council Regulation (EU) No. 389/2012¹;

“simplified accompanying document” means the simplified accompanying document provided for in Commission Regulation (EEC) No. 3649/92 of 17 December 1992²;

¹ OJ No. L121, 8.5.2012, p. 1

² OJ No. L369 of 18 December 1992, p.17

Substituted by S.58(b) of FA2014 “spirits” has the same meaning as it has in section 73 of the Finance Act 2003;

Inserted by S.47(a)(iii) of F(No. 2)A2013. “standard rate”—

- (a) in relation to any mineral oil has the meaning assigned to it by section 97(2) of the Finance Act 1999, and
- (b) in relation to any other excisable product means the rate of excise duty chargeable on that product without the benefit of any relief;

“State vendor” means a person established in the State who sells excisable products, released for consumption in the State, to a private individual in another Member State for the personal use of that private individual, and who dispatches or transports such products, directly or indirectly, to such private individual;

Amended by S.47(1) of FA2021 “suspension arrangement” means an arrangement under which excisable products are produced, processed, held, stored or moved, excise duty being suspended;

Substituted by S.70(b) of FA2012 “tax representative” means a person approved by the Commissioners under section 109U for the purposes of that section;

Amended by S.47(1) of FA2021 “tax warehouse” means, as the case requires, either—

- (a) a premises or place approved by the Commissioners under section 109, where excisable products may be produced, processed, held, stored, received or dispatched under a suspension arrangement by an authorised warehousekeeper in the course of business, or
- (b) a premises or place approved by the competent authority of another Member State, where excisable products may be produced, processed, held, stored, received or dispatched under a suspension arrangement by an authorised warehousekeeper in the course of business;

Amended by S.58(d) of FA2014 “tobacco products” has the same meaning as it has in paragraph (b) of section 97;

Inserted by S.70(c) of FA2012 “transaction” means any action giving rise to a liability to, or a relief from, any duty of excise;

Substituted by S.70(d) of FA2012 “vehicle” means a mechanically propelled vehicle or any other conveyance and includes –

- (a) any craft or aircraft, and

- (b) any container, trailer, tank or any other thing, which –
 - (i) is or may be used for the storage of goods in the course of carriage, and
 - (ii) is designed or constructed to be placed on, in or attached to any such vehicle or other conveyance;

“wine” has the same meaning as it has in section 73 of the Finance Act 2003.

Amended by S.76(a)(ii) of The Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020.

(2) Subject to subsection (3), a word or expression that is used in this Part and which is also used in the Directive has, unless a meaning is provided by subsection (1) or section 109B or the contrary intention otherwise appears, the same meaning in this Part as it has in the Directive.

Inserted by S.76(a)(iii) of The Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020.

(3) In this Part, each reference to—

- (a) European Union, and
- (b) Member State,

shall apply as if the reference included a reference to Northern Ireland, save where either such reference occurs in section 104(4)(a), 109(7)(c) or 109A(8).

Inserted by S.47(1) of FA2021

(4) A reference in any other enactment to Council Directive No. 2008/118/EC of 16 December 2008¹ shall be construed as a reference to the Directive.

Excisable products (Part 2).

Section substituted by S.70(e) of FA2012

97.—For the purposes of this Part the following are excisable products:

- (a) alcohol products within the meaning of section 73 of the Finance Act 2003,
- (b) tobacco products within the meaning of section 71 of the Finance Act 2005, and
- (c) mineral oil within the meaning of section 94 of the Finance Act 1999, other than vehicle gas within the meaning of that section.

Paragraph substituted by S.39(1) of FA2016

[Amendment of paragraph (c) in S. 39(1) FA 2016 commenced on 1 January 2017 by S.I. No. 675/2016]

¹ OJ No. L9, 14.1.2009, p. 12

Importation from outside territory of European Union.

Substituted by S47(1) of FA2021

98.—(1) The Commissioners may require that, on the importation of excisable products from outside the territory of the European Union, the person who declares such products for free circulation in accordance with Article 201 of the Council Regulation shall provide such information as they require for the correct accounting for, and payment of, any excise duty that is payable on such products.

(2) Where the excisable products referred to in subsection (1) are to be moved upon release for free circulation from the place of importation in the State under a suspension arrangement, the declarant or any person directly or indirectly involved in the accomplishment of customs formalities in accordance with Article 15 of the Council Regulation shall provide to the Commissioners—

- (a) the unique excise number in the SEED register identifying the registered consignor for the movement,
- (b) the unique excise number in the SEED register identifying the consignee to whom the excisable products are being dispatched, and
- (c) if the movement is to be made in accordance with Chapter 2A, such evidence as the Commissioners may require to show that the imported excisable products are intended to be dispatched from the State to another Member State.

Release for consumption

Substituted by S47(1) of FA2021

98A.—(1) In this Part “release for consumption” means—

- (a) any release, including irregular release, of excisable products from a suspension arrangement,
- (b) any production, processing or extraction, including irregular production, processing or extraction, of excisable products outside a suspension arrangement,
- (c) any importation of excisable products from outside the European Union or any arrival in the State of products from within the European Union, except where the excisable products are, immediately upon such importation or arrival, placed under a suspension arrangement, or
- (d) any irregular entry of excisable products, except where the customs debt was extinguished under points (e), (f), (g) or (k) of Article 124(1) of the Council Regulation.

Substituted by S.70(f) of FA2012

(2) Where a consignment is to be delivered to a registered consignee or exempt consignee under section 109J(1), that consignment is, except in the case of an irregular release, released for consumption when it is so received by that consignee, or when it is delivered in accordance with section 109J(2).

Amended by S.47(1) of FA2021

(3) Any excisable products that are held or stored otherwise than under a suspension arrangement have been released for consumption under subsection (1).

Substituted by S47(1) of FA2021

(4) Without prejudice to subsection (1), excisable products shall be deemed not to have been released for consumption where they are shown to the satisfaction of the Commissioners to have been totally or partially lost—

(a) during production, processing, holding or storage in the State, or

(b) in the course of movement to, from or within the State,

under a suspension arrangement, and where such loss is shown to their satisfaction to have been—

(i) due to unforeseen circumstances or force majeure,

(ii) in the case of a loss referred to in paragraph (a), due to the nature of the excisable products, or

(iii) the result of destruction in accordance with such procedures as the Commissioners may require.

Inserted by S.47(1) of FA2021

(4A) Where excisable products are shown to the satisfaction of the Commissioners to have been partially lost during transport to the State from another Member State, and the loss is shown to their satisfaction to have been due to the nature of the excisable products, the products shall, unless an officer has reasonable grounds to suspect that a fraud or an irregular release has occurred in connection with the excisable products, be deemed not to have been released for consumption in so far as the amount of loss falls below a common partial loss threshold established in delegated acts adopted by the Commission in accordance with Article 51 of the Directive.

(4B) Where the Commissioners are satisfied that destruction or loss, as referred to in subsection (4), of the excisable products has been established and that no release for consumption has occurred, any security provided in accordance with section 109(7) or 109A(8), as the case may be, shall be released fully or partially, as appropriate, upon the production of satisfactory proof of such destruction or loss.

Amended by S.47(1) of FA2021

(5) For the purposes of this section excisable products are destroyed where they are rendered unusable as excisable products.

(6) Except where subsection (4) applies, a shortage or loss of excisable products under a suspension arrangement is a release for consumption, and such products are, accordingly, liable to excise duty at the rate applicable—

- (a) at the time such losses or shortages occurred, where such time can be established to the satisfaction of an officer, or
- (b) where such time cannot be so established, at the time such losses or shortages came to the notice of an officer.

Amended by S.47(1) of FA2021

(7) For the purposes of subsection (1)(a), an irregular release of excisable products from a consignment under a suspension arrangement is a release for consumption in the State only where that irregular release has occurred in the State or is, in accordance with prescribed criteria, deemed to have so occurred and in such circumstances, the Commissioners shall inform the competent authority of the Member State of dispatch.

Chargeability of excisable products released for consumption

Inserted by S.47(1) of FA2021

98B. (1) In the case of a movement of excisable products delivered to the State in accordance with Chapter 2B, excise duty shall not be chargeable in the State on such products where the products are shown to the satisfaction of the Commissioners to have been totally or partially lost in the course of movement to the State from the Member State in which they were released for consumption, and where such loss is shown to have been—

- (a) due to unforeseeable circumstances or force majeure, or
- (b) the result of destruction in accordance with such procedures as the Commissioners may require.

(2) Where excisable products are shown to the satisfaction of the Commissioners to have been partially lost in the State during transport from another Member State in which they were released for consumption, and the loss is shown to the satisfaction of the Commissioners to have been due to the nature of the excisable products, excise duty on those products shall, unless an officer has reasonable grounds to suspect that a fraud or an irregularity has occurred in connection with the excisable products, not be chargeable in so far as the loss falls below a common partial loss threshold established in delegated acts adopted by the Commission in accordance with Article 51 of the Directive.

(3) Where the Commissioners are satisfied that destruction or loss, as referred to in subsection (1), of the excisable products has been established and that excise duty shall not be chargeable on those excisable products, the security referred to in section 109SB(1) or 109U, as the case may be, shall be released fully or partially, as appropriate, upon the production of satisfactory proof of such destruction or loss.

(4) In the case of an irregularity occurring during the movement of excisable products released for consumption in another Member State, excise duty shall become chargeable on the products in the State if the irregularity occurred in the State or, where it is not

possible to determine where the irregularity occurred, if it is detected in the State.

(5) For the purposes of this section, excisable products are destroyed when they are rendered unusable as excisable products.

Liability of persons

Section substituted by S.93(1)(d) of FA2010.

99.—(1) An authorised warehousekeeper is liable for payment of the excise duty on excisable products released from a tax warehouse by such authorised warehousekeeper—

- (a) for consumption, or
- (b) for delivery under a suspension arrangement.

(2) The liability under subsection (1)(b) is fully or partly discharged where, and to the extent that, the consignment concerned has been (as the case may be)—

- (a) received, under a suspension arrangement, into another tax warehouse in the State, or
- (b) ended in accordance with subsection (1) of section 109K, and evidence to that effect has been received in accordance with subsection (2) of that section.

Substituted by S.47(1) of FA2021

(3) A registered consignor is liable for payment of the excise duty on any consignment dispatched by such registered consignor to another Member State under section 109E(1)(b) or to a place in the State, and that liability is fully or partly discharged where, and to the extent that, the consignment concerned has been (as the case may be)

- (a) received, under a suspension arrangement, into a tax warehouse in the State, or
- (b) ended in accordance with subsection (1) of section 109K, and evidence to that effect has been received in accordance with subsection (2) of that section.

(4) A registered consignee is liable for payment of excise duty on excisable products delivered to such consignee under a suspension arrangement.

Inserted by S.47(1) of FA2021 Subsections (4A) and (4B)

(4A) A certified consignee is liable for payment of excise duty on excisable products delivered to such certified consignee in the State in accordance with Chapter 2B.

(4B) Where excisable products are delivered to a person in the State in accordance with Chapter 2B and the person is not registered with the Commissioners in accordance with section 109RA(4), that person shall be liable for payment of excise duty on the excisable products.

Substituted by S.47(1) of FA2021

(5) Without prejudice to the liability of any person under subsection (1), (3), (4), (4A) or (4B), where an irregular release of excisable products from a suspension arrangement or an irregularity in a movement of excisable products in accordance with Chapter 2B gives rise to a liability to excise duty, any person who knowingly participated in that irregular release or irregularity, as the case may be, is liable for payment of that excise duty.

(6) A tax representative, acting on behalf of a non-State vendor in accordance with section 109U, is liable for the payment of the excise duty on excisable products delivered to the State by or on behalf of such non-State vendor.

Inserted by S.47(1) of FA2021

(6A) Where a tax representative is not appointed in accordance with section 109U or a tax representative so appointed fails to comply with the requirements of that section or with regulations made under section 153, the person liable to pay the excise duty is the person to whom the excisable products are consigned.

Amended by S.47(1) of FA2021

(7) Where excisable products are imported into the State from outside the European Union or there is an irregular entry of such products into the State, and the products are not then placed under a suspension arrangement, the person liable for payment of the excise duty is—

- (a) the person who declares such products for free circulation, in accordance with Article 201 of the Council Regulation, or any person who participated in the irregular entry, as the case may be, or
- (b) where the excisable products are not declared for free circulation, or in the case of an irregular entry of such products—
 - (i) any person who imports or participates in the irregular entry of the products, and
 - (ii) any person who arranged for the importation or irregular entry of the products, or on whose behalf such importation or irregular entry was arranged.

Amended by S.47(1) of FA2021

(8) Where excisable products are produced, extracted or processed otherwise than under a suspension arrangement in a tax warehouse, the person liable for payment of the excise duty is—

- (a) the producer, extractor or processor of the excisable products, and

- (b) any person who arranged for the production, extraction or processing or on whose behalf the production, extraction or processing was carried out.

Amended by S.47(1) of FA2021

(9) Where any person, otherwise than under a suspension arrangement, has—

- (a) sold or delivered, or
- (b) kept, held or stored for sale or delivery,

excisable products on which the appropriate excise duty has not been paid, then—

- (i) such person,
- (ii) any other person on whose behalf such excisable products have been so sold, kept, held, stored or delivered, and
- (iii) any person to whom such products have been delivered,

is liable for payment of the excise duty on such excisable products.

Amended by S.47(1) of FA2021

(10) Where any person has received excisable products on which excise duty has been relieved, rebated, repaid, or charged at a rate lower than the appropriate standard rate subject to a requirement that such excisable products are used for a specific purpose or in a specific manner, and where—

- (a) such requirement has not been satisfied, or
- (b) any requirement of excise law in relation to the holding, storage or delivery of such excisable products has not been complied with, and it is not shown, to the satisfaction of the Commissioners, that the excisable products have been used, or are held or stored for use, for such purpose or in such manner,

then the person who has received such excisable products, or who holds or stores them for sale or delivery, is liable for payment of the excise duty on such products at the rate appropriate to them, without the benefit of any such relief, rebate, repayment or lower rate.

Inserted by S.47(b)(i) of F(No. 2)A2013

(10A) Where any person—

- (a) makes a supply or delivery of excisable products on which excise duty has been relieved, rebated, repaid, or charged at a rate lower than the appropriate standard rate, subject to a requirement that the excisable products are used for a specific purpose or in a specific manner, and

(b) knew that, or was reckless as to whether or not, he or she in making that supply or delivery was participating in a transaction or series of transactions connected to the fraudulent evasion of excise duty,

then that person is liable for payment of the excise duty on the excisable products concerned at the rate appropriate to them, without the benefit of any such relief, rebate, repayment or lower rate.

Amended by S.47(b)(ii) of F(No. 2)A2013.

(11) Where under subsections (1) to (10A) more than one person is, in a particular case, liable for payment of an excise duty liability, such persons are jointly and severally liable.

(12) Subsections (1) to (11) are without prejudice to the liability of excisable products to excise duty, or their liability to forfeiture, under excise law.

[Insertion of subsection (13) in S. 99 by section 46 FA 2015 awaiting commencement.]

Assessment of excise duty payable

Section inserted by S.46(a) of F(No.2)A 2008. Subsection (1) substituted by S.70(h) of FA2012.

99A.—(1) In this section “authorised officer” means an officer authorised in writing by the Commissioners to exercise the powers conferred by this section.

(2) Where an authorised officer has reason to believe that a person is liable for payment of excise duty, then such officer may make an assessment of the amount that, in the opinion of such officer, such person is liable to pay.

(3) The authorised officer shall give notice to each person assessed of every assessment made by such officer, setting out the amount of the assessment, the type of excise duty covered by the assessment, the right of appeal against the assessment, under section 146, and the time allowed for giving notice of such appeal.

(4) (a) Where an authorised officer has reason to believe that the amount of any assessment is excessive or deficient, or that there is no such liability, then such officer shall reduce, increase or vacate such assessment, as the case may be.

(b) In any case where an assessment is reduced or increased under paragraph (a), an authorised officer shall, accordingly, issue a revision of the notice referred to in subsection (3), to the person assessed.

(c) In any case where an assessment is vacated under paragraph (a), an authorised officer shall inform the person assessed in writing.

(5) Any assessment under subsection (2), and any action to collect the amount assessed, is without prejudice to—

- (a) the liability to forfeiture, under the law relating to excise, of any goods or vehicles concerned in the assessment,
- (b) any proceedings in relation to an offence under the law relating to excise, involving any goods or vehicles concerned in the assessment.

Estimation of excise duty due

Section inserted by S.70(i) of FA2012

99AA.—(1) Where a person who is required, by any provision of excise law, to make a return of the excise duty payable by such person for any period fails to do so within the time specified in the provision concerned, the Commissioners may, subject to subsection (2) —

- (a) estimate the amount of duty payable by that person for such period, and
- (b) serve notice (in this section referred to as a “notice of estimation”) on the person of the amount estimated.

(2) (a) Where the Commissioners are satisfied that the amount of any estimation is excessive or deficient, or that there is no liability for the period concerned, then they may accordingly reduce, increase or withdraw such estimation.

- (b) In any case where an estimation is reduced or increased under paragraph (a), the Commissioners shall serve an amended notice of estimation on the person concerned.

(3) If at any time after a notice of estimation or amended notice of estimation, as the case may be, is served, the return referred to in subsection (1) is made, and excise duty is paid in accordance with that return together with any interest and costs that may have been incurred in connection with that payment, then the notice of estimation, or amended notice of estimation, shall stand discharged.

Time limits.

Section inserted by S.70(i) of FA2012.

99AB.—(1) In this section “taxable period” means a period in respect of which a person is required, by any provision of excise law, to make a return of the excise duty payable by that person for that period and to pay that amount.

(2) Subject to subsection (4), an assessment under section 99A or an estimation under section 99AA may be made at any time not later than 4 years from—

- (a) except where paragraph (b) applies, the date of the transaction giving rise to the liability concerned,

- (b) where the liability is in respect of a taxable period, the last day of such period.

(3) Subject to subsection (4), proceedings for the recovery of an amount of excise duty may not be instituted, or other action for such recovery taken, unless a notice of assessment, or another notification in writing stating that such amount is due, has been issued by the Commissioners before the expiry of a period of 4 years from—

- (a) except where paragraph (b) applies, the date of the transaction giving rise to the liability to that amount,
- (b) where the liability is in respect of a taxable period, the last day of such period.

- (4) (a) Subsections (2) and (3) shall not apply in any case where there are reasonable grounds to believe that any form of fraud or neglect has been committed by or on behalf of any person in connection with the liability concerned.
- (b) For the purposes of paragraph (a), and subject to paragraph (c), “neglect” means negligence or a failure to give any notice, information or record, or to make any return, required to be given or made under any provision of excise law, within such time limit as may be allowed under the provision concerned.
- (c) A person who fails, within the time limit referred to in paragraph (b), to satisfy any requirement referred to in that paragraph shall be deemed not to have neglected to do so where the person—
 - (i) satisfies the requirements within such further time as the Commissioners may allow in any particular case, or
 - (ii) shows to the satisfaction of the Commissioners that there was sufficient excuse for such failure, and where such person satisfies the requirements as soon as possible thereafter.

Penalty for deliberately or carelessly making incorrect returns, etc

Section inserted by S.45 of FA2011

99B.—(1) In this section—

“carelessly” means failure to take reasonable care;

“liability to tax” means a liability to the amount of the difference specified in subsection (11) or (12) arising from any matter referred to in subsection (2), (3), (5) or (6);

“period” means taxable period, accounting period or other period, as the context requires;

“prompted qualifying disclosure”, in relation to a person, means a qualifying disclosure that has been made to the Commissioners or to an officer in the period between—

- (a) the date on which a person is notified by an officer of the date on which an investigation or inquiry into any matter occasioning a liability to tax of that person will start, and
- (b) the date that the investigation or inquiry starts;

“qualifying disclosure”, in relation to a person, means—

- (a) in relation to a penalty referred to in subsection (4), a disclosure that the Commissioners are satisfied is a disclosure of—
 - (i) complete information in relation to, and full particulars of, all matters occasioning a liability to tax that gives rise to a penalty referred to in subsection (4), and
 - (ii) full particulars of all matters occasioning any liability to tax or duty that gives rise to—
 - (I) a penalty referred to in section 1077E(4) or 1077F(6), as appropriate, of the Taxes Consolidation Act 1997,
 - (II) a penalty referred to in section 134A(2) of the Stamp Duties Consolidation Act 1999,
 - (III) a penalty referred to in section 116(4) or 116A(6), as appropriate, of the Value-Added Tax Consolidation Act 2010, and
 - (IV) the application of section 1077E(4) or 1077F(6), as appropriate, of the Taxes Consolidation Act 1997 to the Capital Acquisitions Tax Consolidation Act 2003,
- and
- (b) in relation to a penalty referred to in subsection (7), a disclosure that the Commissioners are satisfied is a disclosure of complete information in relation to, and full particulars of, all matters occasioning a liability to tax that gives rise to a penalty referred to in subsection (7) for the relevant period,

Amended by S.77(5)(c) of
FA2021

and which is made in writing to the Commissioners or to an officer and signed by or on behalf of that person and is accompanied by—

- (A) a declaration, to the best of that person’s knowledge, information and belief, made in writing that all matters contained in the disclosure are correct and complete, and
- (B) a payment of the tax and duty payable in respect of any matter contained in the disclosure and the interest on late payment of that tax and duty;

“tax” means any duty of excise;

“transaction” means any action giving rise to a liability to, or relief from, tax;

“unprompted qualifying disclosure”, in relation to a person, means a qualifying disclosure that the Commissioners are satisfied has been voluntarily furnished to them—

- (a) before an investigation or inquiry had been started by them or by an officer into any matter occasioning a liability to tax of that person, or
- (b) where the person is notified by an officer of the date on which an investigation or inquiry into any matter occasioning a liability to tax of that person will start, before that notification.

(2) Where a person furnishes a return or makes a claim or declaration for the purposes of any requirement of excise law and, in so doing, the person deliberately—

- (a) furnishes an incorrect return, or
- (b) makes an incorrect claim or declaration,

then that person shall be liable to a penalty.

Amended by S.47(c) of F(No. 2)A2013

(3) Where a person deliberately fails to comply with a requirement in accordance with any provision of excise law to furnish a return or to make a declaration, then the person shall be liable to a penalty.

(4) The penalty referred to—

- (a) in subsection (2), shall be the amount specified in subsection (11), and
- (b) in subsection (3), shall be the amount specified in subsection (12),

reduced, where the person liable to the penalty cooperated fully with any investigation or inquiry started by the Commissioners or by an

officer into any matter occasioning a liability to tax of that person, to—

- (i) 75 per cent of that amount where paragraph (ii) or (iii) does not apply,
- (ii) 50 per cent of that amount where a prompted qualifying disclosure is made by that person,
- (iii) 10 per cent of that amount where an unprompted qualifying disclosure has been made by that person.

(5) Where a person furnishes a return or makes a claim or declaration for the purposes of any provision of excise law, and in so doing, the person carelessly but not deliberately—

- (a) furnishes an incorrect return, or
- (b) makes an incorrect claim or declaration,

then that person shall be liable to a penalty.

(6) Where a person carelessly but not deliberately fails to comply with a requirement in accordance with any provision of excise law to furnish a return, then the person shall be liable to a penalty.

(7) (a) The penalty referred to—

- (i) in subsection (5), shall be the amount specified in subsection (11), and
- (ii) in subsection (6), shall be the amount specified in subsection (12),

reduced to 40 per cent in a case where the excess referred to in subparagraph (I) of paragraph (b) applies and to 20 per cent in any other case.

(b) Where the person liable to the penalty cooperated fully with any investigation or inquiry started by the Commissioners or by an officer into any matter occasioning a liability to tax of that person, the penalty referred to—

- (i) in subsection (5), shall be the amount specified in subsection (11), and
- (ii) in subsection (6), shall be the amount specified in subsection (12),

reduced—

(I) where the difference referred to in subsection (11) or (12), as the case may be, exceeds 15 per cent of the amount referred to in paragraph (b) of subsection (11) or paragraph (b) of subsection (12), to—

(A) 30 per cent of that difference where clause (B) or (C) does not apply,

(B) 20 per cent of that difference where a prompted qualifying disclosure is made by that person,

(C) 5 per cent of that difference where an unprompted qualifying disclosure is made by that person,

or

(II) where the difference referred to in subsection (11) or (12), as the case may be, does not exceed 15 per cent of the amount referred to in paragraph (b) of subsection (11) or paragraph (b) of subsection (12) to—

(A) 15 per cent of that difference where clause (B) or (C) does not apply,

(B) 10 per cent of that difference where a prompted qualifying disclosure is made by that person,

(C) 3 per cent of that difference where an unprompted qualifying disclosure is made by that person.

(8) Where, for the purposes of any requirement under excise law, a person deliberately or carelessly produces, furnishes, gives, sends or otherwise makes use of, any incorrect invoice, registration number, credit note, debit note, receipt, account, voucher, bank statement, estimate, statement, information, book, document or record, then the person shall be liable to—

(a) a penalty of €3,000 where that person has acted carelessly, or

(b) a penalty of €5,000 where that person has acted deliberately.

(9) Where any return, claim or declaration as is referred to in subsection (2) or (5) was furnished or made by a person, neither deliberately nor carelessly, and it comes to the person's notice that it

was incorrect, then, unless the error is remedied without unreasonable delay, the return, claim or declaration shall be treated for the purposes of this section as having been deliberately made or submitted by that person.

Amended by Schedule 2 to FA
2018

(10) Subject to section 1077D(2) of the Taxes Consolidation Act 1997, proceedings or applications for the recovery of any penalty under this section shall not be out of time by reason that they are commenced after the time allowed by section 99AB.

(11) The amount referred to in paragraph (a) of subsection (4) and in paragraph (a)(i) of subsection (7) shall be the difference between—

- (a) the amount of tax (if any) paid or claimed by the person concerned for the relevant period or transaction on the basis of the incorrect return, claim or declaration as furnished or otherwise made, and
- (b) the amount properly payable by, or refundable to, that person for that period or transaction.

(12) The amount referred to in paragraph (b) of subsection (4) and in paragraph (b)(ii) of subsection (7) shall be the difference between—

- (a) the amount of tax (if any) paid by that person for the relevant period or transaction before the start, by the Commissioners or by an officer, of any inquiry or investigation where the Commissioners had announced publicly that they had started an inquiry or investigation or where the Commissioners or an officer have carried out an inquiry or investigation in respect of any matter that would have been included in the return if the return had been furnished by that person and the return had been correct, and
- (b) the amount of tax properly payable by that person for that period or transaction.

(13) Where a second qualifying disclosure is made by a person within 5 years of that person's first qualifying disclosure, then, as regards matters pertaining to that second disclosure—

- (a) in relation to subsection (4)—
 - (i) paragraph (ii) shall apply as if “75 per cent” were substituted for “50 per cent”, and
 - (ii) paragraph (iii) shall apply as if “55 per cent” were substituted for “10 per cent”,

and

- (b) in relation to subparagraph (I) of subsection (7)(b)—
 - (i) clause (B) shall apply as if “30 per cent” were substituted for “20 per cent”, and
 - (ii) clause (C) shall apply as if “20 per cent” were substituted for “5 per cent”.

(14) Where a third or subsequent qualifying disclosure is made by a person within 5 years of that person’s second qualifying disclosure, then, as regards matters pertaining to that third or subsequent disclosure, as the case may be—

- (a) the penalty referred to in paragraphs (a) and (b) of subsection (4) shall not be reduced, and
- (b) the reduction referred to in subparagraph (I) of subsection (7)(b) shall not apply.

(15) A disclosure in relation to a person shall not be a qualifying disclosure where—

- (a) before the disclosure is made, an officer had started an inquiry or investigation into any matter contained in that disclosure and had contacted or notified that person, or a person representing that person, in this regard, or
- (b) matters contained in the disclosure are matters—
 - (i) that have become known, or are about to become known, to the Commissioners through their own investigations or through an investigation conducted by a statutory body or agency,
 - (ii) that are within the scope of an inquiry being carried out wholly or partly in public, or
 - (iii) to which the person who made the disclosure is linked, or about to be linked, publicly.

(16) For the purposes of this section, any return, claim or declaration submitted on behalf of a person shall be deemed to have been submitted by that person unless that person proves that it was submitted without that person’s consent or knowledge.

(17) Where a person referred to in subsection (2), (3), (5) or (6) is a body of persons, then the person acting in the capacity of secretary to such body is liable to a separate penalty of €1,500 or, in the case of deliberate behaviour, €3,000.

(18) This section shall not apply in respect of any disclosure made, act done or omission made after the date of the passing of the Finance Act 2022.

Penalty for deliberately or carelessly making incorrect returns or failing to make certain returns, etc

Section inserted by S.85 of FA2022

99C.—(1) In this section—

“carelessly” means failure to take reasonable care;

“liability to tax” means a liability to the amount of the difference specified in subsection (3) or (5), as the case may be, arising from any matter referred to in subsection (2) or (4), as the case may be;

“period” means taxable period, accounting period or other period, as the context requires;

“prompted qualifying disclosure”, in relation to a person, means a qualifying disclosure that has been made to the Commissioners or to an officer in the period between—

(a) the date on which a person is notified by an officer of the date on which an inquiry or investigation into any matter occasioning a liability to tax of that person will start, and

(b) the date that the inquiry or investigation starts;

“qualifying disclosure”, in relation to a person, means—

(a) in relation to a penalty referred to in subsection (6), a disclosure that the Commissioners are satisfied is a disclosure of—

(i) complete information in relation to, and full particulars of, all matters occasioning a liability to tax that gives rise to a penalty referred to in subsection (6), and

(ii) full particulars of all matters occasioning any liability to tax or duty that gives rise to—

(I) a penalty referred to in section 1077F(6) of the Taxes Consolidation Act 1997,

(II) a penalty referred to in section 134A(2) of the Stamp Duties Consolidation Act 1999,

(III) a penalty referred to in section 116A(6) of the Value-Added Tax Consolidation Act 2010, and

(IV) the application of section 1077F(6) of the Taxes Consolidation Act 1997 to the Capital Acquisitions Tax Consolidation Act 2003,

and

(b) in relation to a penalty referred to in subsection (7) or (8), as the case may be, a disclosure that the Commissioners are satisfied is a disclosure of complete information in relation to, and full particulars of, all matters occasioning a liability to tax that gives rise to a penalty referred to in subsection (7) or (8), as the case may be, for the period to which the disclosure relates,

made in writing to the Commissioners or to an officer and signed by or on behalf of that person and that is accompanied by

(A) a declaration, to the best of that person's knowledge, information and belief, made in writing that all matters contained in the disclosure are correct and complete, and

(B) a payment of the tax and duty payable in respect of any matter contained in the disclosure and the interest on late payment of that tax and duty;

“tax” means any duty of excise;

“transaction” means any action giving rise to a liability to, or relief from, tax;

“unprompted qualifying disclosure”, in relation to a person, means a qualifying disclosure that the Commissioners are satisfied has been voluntarily furnished to them—

(a) before an inquiry or investigation had been started by them or by an officer into any matter occasioning a liability to tax of that person,
or

(c) where the person is notified by an officer of the date on which an inquiry or investigation into any matter occasioning

(2) Where a person—

(a) furnishes a return or makes a claim or declaration for the purposes of any requirement of excise law and, in so doing, the person deliberately—

(i) furnishes an incorrect return, or

(ii) makes an incorrect claim or declaration,

or

(b) furnishes a return or makes a claim or declaration for the purposes of any requirement of excise law and, in so doing, the person carelessly but not deliberately—

(i) furnishes an incorrect return, or

(ii) makes an incorrect claim or declaration,

then—

(I) in the case of paragraph (a), that action shall be a deliberate default for the purposes of this section, and

(II) in the case of paragraph (b), that action shall be a careless default for the purposes of this section.

and the person shall be liable to a penalty.

(3) The penalty referred to in subsection (2) shall be the difference between—

(a) the amount of tax (if any) paid or claimed by the person concerned for the relevant period or transaction on the basis of the incorrect return, claim or declaration referred to in subsection (2) as furnished or otherwise made, and

(b) the amount properly payable by, or refundable to, that person for that period or transaction.

(4) Where a person—

(a) deliberately fails to comply, or

(b) carelessly (but not deliberately) fails to comply,

with a requirement in accordance with any provision of excise law to furnish a return or make a declaration, that failure to comply with a requirement shall—

(i) in the case of paragraph (a), be a deliberate default for purposes of this section, and

(ii) in the case of paragraph (b), be a careless default for the purposes of this section,

and the person shall be liable to a penalty.

(5) In relation to any matter that would have been included in a return or declaration referred to in subsection (4) if the return or declaration had been delivered by a person and had been correct, the

penalty referred to in subsection (4) shall be the difference between—

(a) the amount of tax (if any) paid by the person for the relevant period or transaction before—

(i) unless subparagraph (ii) applies, the date of the notice in writing from the Commissioners to the person concerned of an inquiry or investigation by the Commissioners or an officer into the matter, or

(ii) where the Commissioners had announced publicly that they had started an inquiry or investigation into the matter, the date of that public announcement,

and

(b) the amount of tax properly payable by the person for that period or transaction.

(6) (a) (i) Subject to subparagraphs (ii), (iii) and (iv), where a person is liable to a penalty under subsection (2) or (4), as the case may be, for a deliberate default, the penalty referred to in subsection (3) or (5), as the case may be, shall not be reduced.

(ii) Where subparagraph (i) applies and the person cooperated fully with any inquiry or investigation started by the Commissioners or by an officer into any matter occasioning a liability to tax of that person, the penalty referred to in subsection (3) or (5), as the case may be, shall be reduced to 75 per cent of the difference referred to in subsection (3) or (5), as the case may be (referred to in this subsection and subsections (7) and (8) as “the difference”).

(iii) Where subparagraph (ii) applies and the person made a prompted qualifying disclosure, the penalty referred to in subsection (3) or (5), as the case may be, shall be reduced to 50 per cent of the difference.

(iv) Where subparagraph (ii) applies and the person made an unprompted qualifying disclosure, the penalty referred to in subsection (3) or (5), as the case may be, shall be reduced to 10 per cent of the difference.

(b) (i) Subject to subparagraph (ii), where a second qualifying disclosure is made by a person within 5 years of such person's first qualifying disclosure, the penalty referred to in subsection (3) or (5), as the case may be, for a deliberate default shall not be reduced.

(ii) Where subparagraph (i) applies and the person cooperated fully with any inquiry or investigation started by the Commissioners or by an officer into any matter occasioning a liability to tax of that person, then—

(I) where that person made a prompted qualifying disclosure, the penalty referred to in subsection (3) or (5), as the case may be, shall be reduced to 75 per cent of the difference, and

(II) where the person made an unprompted qualifying disclosure, the penalty referred to in subsection (3) or (5), as the case may be, shall be reduced to 55 per cent of the difference.

(c) Where a third or subsequent qualifying disclosure is made by a person within 5 years of such person's second qualifying disclosure, the penalty referred to in subsection (3) or (5), as the case may be, for a deliberate default under subsection (2) or (4), as the case may be, shall not be reduced.

(7) (a) In this subsection and subsection (8), “significant consequences” means, where subsection (2) applies, the amount of the difference referred to in subsection (3) exceeds 15 per cent of the amount referred to in paragraph (b) of subsection (3) and, where subsection (4) applies, the amount of the difference referred to in subsection (5) exceeds 15 per cent of the amount referred to in paragraph (b) of subsection (5).

(b) (i) Subject to subparagraphs (ii), (iii) and (iv), where a person is liable to a penalty under subsection (2) or (4), as the case may be, for a careless default which has significant consequences, the penalty referred to in subsection (3) or (5), as the case may be, shall be reduced to 40 per cent of the difference.

(ii) Where subparagraph (i) applies and the person cooperated fully with any inquiry or investigation started by the Commissioners or by an officer into any matter occasioning a liability to tax of that person, the penalty referred to in subsection (3) or (5), as the case may be, shall be reduced to 30 per cent of the difference.

(iii) Where subparagraph (ii) applies and the person also made a prompted qualifying disclosure, the penalty referred to in subsection (3) or (5), as the case may be, shall be reduced to 20 per cent of the difference.

(iv) Where subparagraph (ii) applies and the person also made an unprompted qualifying disclosure, the penalty referred to in subsection (3) or (5), as the case may be, shall be reduced to 5 per cent of the difference.

(c) (i) Subject to subparagraph (ii), where a second qualifying disclosure is made by a person within 5 years of such person's first qualifying disclosure, the penalty referred to in subsection (3) or (5), as the case may be, for a careless default with significant consequences shall be reduced to 40 per cent of the difference.

(ii) Where subparagraph (i) applies and the person cooperated fully with any inquiry or investigation started by the Commissioners or by an officer into any matter occasioning a liability to tax of that person, then—

(I) where the person made a prompted qualifying disclosure, the penalty referred to in subsection (3) or (5), as the case may be, shall be reduced to 30 per cent of the difference, and

(II) where the person made an unprompted qualifying disclosure, the penalty referred to in subsection (3) or (5), as the case may be, shall be reduced to 20 per cent of the difference.

(d) Where a third or subsequent qualifying disclosure is made by a person within 5 years of such person's second qualifying disclosure, the penalty referred to in subsection (3) or (5), as the case may be, for a careless default with significant consequences shall be reduced to 40 per cent of the difference.

(8) (a) Subject to paragraphs (b), (c) and (d), where a person is liable to a penalty under subsection (2) or (4), as the case may be, for a careless default which does not have significant consequences, the penalty referred to in subsection (3) or (5), as the case may be, shall be reduced to 20 per cent of the difference.

(b) Where paragraph (a) applies and the person cooperated fully with any inquiry or investigation started by the Commissioners or by an officer into any matter occasioning a liability to tax of that person the penalty referred to in subsection (3) or (5), as the case may be, shall be reduced to 15 per cent of the difference.

(c) Where paragraph (b) applies and the person also made a prompted qualifying disclosure, the penalty referred to in subsection (3) or (5), as the case may be, shall be reduced to 10 per cent of the difference.

(d) Where paragraph (b) applies and the person also made an unprompted qualifying disclosure, the penalty referred to in subsection (3) or (5), as the case may be, shall be reduced to 3 per cent of the difference.

(9) Where—

(a) the aggregate amount of—

(i) the liability to tax (within the meaning of subsection (1)),

(ii) the liability to tax (within the meaning of section 1077F(1) of the Taxes Consolidation Act 1997),

(iii) the liability to tax (within the meaning of section 116A(1) of the Value-Added Tax Consolidation Act 2010),

(iv) the liability to duty (within the meaning of section 134A(15) of the Stamp Duties Consolidation Act 1999), and

(v) the differences specified in subsections (5) and (5A), as appropriate, of section 58 of the Capital Acquisitions Tax Consolidation Act 2003,

does not exceed €6,000, and

(b) but for this subsection, the penalty would be reduced in accordance with subsection (7) or (8) of this section, subsection (7) or (8) of section 1077F of the Taxes Consolidation Act 1997, subsection (7) or (8) of section 116A of the Value-Added Tax Consolidation Act 2010 or subsection (5)(b) or (5A)(b) of section 134A of the Stamp Duties Consolidation Act 1999, as the case may be,

then, notwithstanding subsection (2) or (4), as the case may be, that person shall not be liable to a penalty

(10) Where any person is liable to a penalty under subsection (2) so much of the difference specified in subsection (3) as is attributable to a technical adjustment or an innocent error shall not be liable to a penalty.

(11) Where, for the purposes of any requirement under excise law, a person deliberately or carelessly produces, furnishes, gives, sends or otherwise makes use of, any incorrect invoice, registration number, credit note, debit note, receipt, account, voucher, bank statement, estimate, statement, information, book, document or record, the person shall be liable to—

(a) a penalty of €3,000 where that person has acted carelessly, or

(b) a penalty of €5,000 where that person has acted deliberately.

(12) Where any return, claim or declaration referred to in subsection (2) was furnished or made by a person, neither deliberately nor carelessly, and it comes to the person's notice that it

was incorrect, then, unless the error is remedied without unreasonable delay, the incorrect return, claim or declaration shall be treated for the purposes of this section as having been deliberately made or submitted by that person.

(13) Subject to section 1077D(2) of the Taxes Consolidation Act 1997, proceedings or applications for the recovery of any penalty under this section shall not be out of time because they are commenced after the time allowed by section 99AB.

(14) A disclosure in relation to a person shall not be a qualifying disclosure where—

(a) before the disclosure is made, an officer had started an inquiry or investigation into any matter contained in that disclosure and had contacted or notified that person, or a person representing that person, in this regard, or

(b) matters contained in the disclosure are matters—

(i) that have become known, or are about to become known, to the Commissioners through their own investigations or through an investigation conducted by a statutory body or agency,

(ii) that are within the scope of an inquiry being carried out wholly or partly in public, or

(iii) to which the person who made the disclosure is linked, or about to be linked, publicly.

(15) For the purposes of this section, any return, claim or declaration referred to in subsection (2) submitted on behalf of a person shall be deemed to have been submitted by that person unless that person proves that it was submitted without that person's consent or knowledge.

(16) Where a person referred to in subsection (2) or (4), as the case may be, is a body of persons, then the person acting in the capacity of secretary to such body shall be liable to a separate penalty of €1,500 or, in the case of deliberate behaviour, €3,000.

Duties to apply to excisable products released for consumption in another Member State

All excisable products are liable for all liabilities, penalties and forfeitures of a warehousekeeper

100.— [Deleted by S.70(j) of FA2012.]

101.—(1) Where any duty of excise has been charged or become chargeable on any excisable product, and where an authorised warehousekeeper is liable for such duty, then—

(a) all excisable products and all ingredients and materials used in the manufacture or processing of such products,

- (b) all articles and equipment used either in the manufacture or processing of such excisable products or in the course of business relating to them,

which are in the possession or custody of such authorised warehousekeeper or any other person acting on his or her behalf, shall be subject and liable to and chargeable with any duty of excise which has been so charged or become chargeable during the time of any such custody or possession.

(2) The products, ingredients, materials, articles and equipment referred to in paragraphs (a) and (b) of subsection (1) shall be subject and liable to all excise penalties and forfeitures incurred by such authorised warehousekeeper during the time of custody and possession referred to in that subsection.

102.— [Deleted by S. 93(f) of FA 2010.]

Payment

103.—(1) Except where otherwise required by any provision of the statutes which relate to the duties of excise or any instrument relating to the duties of excise made under statute, any person liable for payment of any duty of excise shall account for and pay such duty at such time and place and to such person as shall from time to time be directed by the Commissioners.

(1A) — [Deleted by S. 97, and Part 2 of Schedule 4, of F(No. 2)A 2008.]

Inserted by S. 97 FA. 2003
Amended by S.70(k) of FA2012.

(2) (a) Where any amount of excise duty becomes payable under subsection (1) or under any other provision of the statutes which relate to the duties of excise, or any instrument relating to the duties of excise made under statute, and is not paid, simple interest on the amount shall be paid by the person liable to pay the duty and such interest shall be calculated from the date on which the amount became payable—

(i) for any day or part of a day before 1 July 2009 during which the amount remains unpaid, at a rate of 0.0322 per cent, and

(ii) for any day or part of a day on or after 1 July 2009 during which the amount remains unpaid, at the rate of 0.0274 per cent.

[Section 6 of The Financial Provisions (Covid-19) (No. 2) Act 2020 amends the rate of interest to 0.0082 per cent from the later of 1 August 2020 or the date, if before 30 September 2020, on which an agreement is requested or entered into between the person and the Collector-General.]

(b) [**Deleted** by S. 90 of FA 2005.]

(c) [**Deleted** by S. 97, and Part 2 of Schedule 4, of F(No. 2)A 2008.]

Inserted by S.70(1) of FA2012

(3) Where an amount of excise duty has been repaid to a person, and where all or part of that amount is then found not to be properly refundable under any provision of excise law, simple interest shall be paid by the person on that amount or part of that amount at the rate of 0.0274 per cent for each day from the date the repayment is made to the date on which it was returned to the Commissioners or otherwise accounted for to their satisfaction.

Reliefs.

Subsections (1), (2) and (3) substituted by S. 70(m) of FA2012.

104.— (1) Subject to such conditions as the Commissioners may prescribe or otherwise impose, a full relief from excise duty shall be granted, by way of remission or repayment, on any excisable products that are shown to the satisfaction of the Commissioners to be delivered—

- (a) under diplomatic arrangements in the State,
- (b) to international organisations recognised as such by the State, and the members of such organisations based in the State, within the limits and under the conditions laid down by international conventions establishing such organisations or by other agreements,
- (ba) to the armed forces of a State party to the North Atlantic Treaty (signed at Washington on 4 April 1949) in the State, but not the Defence Forces, for the use of those armed forces, for the civilian staff accompanying them or for supplying their messes or canteens,
- (bb) to the armed forces of a Member State (other than the Defence Forces) in the State, for the use of those armed forces, for the civilian staff accompanying them or for supplying their messes or canteens, when such forces take part in a defence effort carried out for the implementation of an activity of the European Union under the common security and defence policy as set out in Section 2 of Chapter 2 of Title V of the Treaty on European Union;
- (c) for consumption under any agreement entered into between the State and a country other than a Member State where such agreement also provides for exemption from value-added tax,
- (d) for export or re-export from the State to a place outside the European Union, or

Inserted by S.30(1)(a) of FA2020

Inserted by S.30(1)(b) of FA2020.

Amended by S.76(b) of The
Withdrawal of the United
Kingdom from the European
Union (Consequential
Provisions) Act 2020

- (e) to a tax-free shop at an airport or port for supply to passengers travelling to a destination outside of the European Union.

(2) Subject to such conditions as the Commissioners may prescribe or otherwise impose, a full relief from excise duty shall be granted on any alcohol products or tobacco products released for consumption in another Member State which—

- (a) have been acquired by a private individual in such another Member State for his or her own use and not for commercial purposes, and
- (b) are transported into the State by that private individual, and accompanied by him or her during such transportation.

(3) For the purpose of subsection (2) the question of whether the alcohol products or tobacco products, as the case may be, are for a private individual's own use or are for commercial purposes shall be determined in accordance with regulations under section 153.

Inserted by S.46 (a) of FA2004

Amended by Regulation 2(a) of
S.I. No. 608 of 2010.

- (4) (a) Where, as allowed under the terms of the treaty of accession which applies to a Member State, such Member State applies to any tobacco product a rate of excise duty which is less than the minimum rate stipulated for that product in either Council Directive 92/79/EEC of 19 October 1992¹ or Council Directive 92/80/EEC of 19 October 1992² (as amended by Council Directive 2010/12/EU of the 16 February 2010), the Minister for Finance may by order provide that—

- (i) subsection (2)(a) shall not apply, and

- (ii) the quantitative limits set down in such order shall apply, to such tobacco products which, in the circumstances outlined in that subsection, have been acquired in such Member State and transported into the State.

Inserted by Regulation 2(b) of
S.I. No. 608 of 2010, substituted
by S.47(d) of F(No. 2)A 2013

- (aa) An order under paragraph (a) may, in addition to the circumstances outlined in that paragraph, be made where allowed for under paragraph (3) (inserted by Council Directive 2010/12/EU of 16 February 2010³ and amended by Decision of the Council of the European Union of 5 December 2011⁴ on the admission of the Republic of Croatia to the European Union) of Article 46 of the Directive.

¹ OJ No. L316, 31.12.1992, p. 8

² OJ No. L316, 31.12.1992, p. 10

³ OJ No. L509, 27.2.2010, p.1

⁴ OJ No. L112, 24.4.2012, p.6

Amended by Regulation 2(c) of S.I. No. 608 of 2010.

- (b) The Minister may by order amend or revoke an order made under paragraph (a) or (aa).
- (c) An order under this subsection shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the order is passed by Dáil Éireann within the next 21 sitting days on which Dáil Éireann has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Inserted by S.70(n) of FA2012
Amended by S.47(1) of FA2021

(5) Subject to such conditions as the Commissioners may prescribe or otherwise impose, a full relief from excise duty shall be granted, by way of repayment, on any excisable products that have been released for consumption in the State and which—

- (a) have been dispatched to another Member State in accordance with section 109SA or section 109VA,
- (b) have been sold and dispatched by a State vendor to a private individual in another Member State in accordance with section 109W, or
- (c) have been dispatched to another Member State in accordance with section 109SA or section 109VA, where an irregularity occurred or was detected during the movement.

Inserted by S.47(1) of FA2021

(5A) A repayment of excise duty for the purposes of subsection (5)(a) shall be on the basis of a report of receipt received from the competent authority in the destination Member State in accordance with section 109SC(4) or 109VA(3), as the case may be.

Repayments

105.— [Deleted by S.70(o) of FA 2012.]

Underpayments

105A.— [Deleted by S.70(p) of FA 2012.]

Repayment of overpaid duty
Section substituted by S.70(q) of FA2012, amended by S.52(a) of FA2013

105B.—(1) Subject to subsections (2), (3) and (4) and to section 105BA, and without prejudice to the provisions of section 960H of the Taxes Consolidation Act 1997 relating to the offset of overpayments, where a person has, in respect of any period or transaction, paid an amount of excise duty, or interest on excise duty, which was not due, the Commissioners shall repay such amount to such person.

(2) Subject to subsection (3), a repayment shall only be made under subsection (1) where a claim for that repayment, in writing or such other form as the Commissioners may allow, is made to them within a period of 4 years from the date of payment to which the claim

relates or from the date of any other transaction giving rise to an entitlement to a repayment.

(3) Subsection (2) does not apply where a person would, on due claim, be entitled to repayment of excise duty or interest paid on that duty under any other provision of excise law which provides for a shorter period within which a claim for repayment is to be made.

(4) Except as provided for by this section or by any other provision of excise law, or by section 941 of the Taxes Consolidation Act 1997 as it applies for the purposes of the duties of excise, the Commissioners shall not repay an amount of excise duty paid to them or pay interest in respect of an amount of excise duty paid to them.

Unjust enrichment
Section inserted by S.52(b) of
FA2013

105BA.—(1) In this section—

“claimant” means a person who submits a claim for repayment under section 105B(1);

“overpaid amount” means an amount which is subject to repayment under section 105B(1).

(2) Where the Commissioners, in accordance with subsection (3), determine that the repayment of an overpaid amount, or any part of that amount, would result in the unjust enrichment of the claimant, they shall not repay that amount or part thereof.

(3) For the purposes of determining whether a repayment referred to in subsection (2) would result in the unjust enrichment of the claimant, the Commissioners shall, in relation to the overpaid amount concerned, have regard to—

- (a) the extent to which the cost of that overpaid amount was, for practical purposes, passed on by that claimant to any other person or persons in the price charged for the excisable products, vehicles or other goods or services concerned,
- (b) any net loss of profits which, based on their own analysis and on any information that may be provided by that claimant, they have reason to believe to have been borne by the claimant as a result, and
- (c) any other factors that the claimant brings to their attention.

(4) The Commissioners may request from the claimant any information relating to the circumstances of the overpaid amount and claim for repayment under section 105B(1) as is reasonable in the circumstances and which may assist them in making a determination under subsection (2).

(5) Notwithstanding the generality of subsection (2) where, having regard to subsection (3)(a), a repayment of an overpaid amount has,

in whole or in part, been refused because of the extent to which the cost of the overpaid amount has been passed on to another person or other persons and—

- (a) the claimant undertakes to pay to such person or persons an amount equivalent to the amount so passed on, and
- (b) the Commissioners are satisfied that the claimant has adequate arrangements in place to identify and pay such person or persons,

the Commissioners shall, subject to subsection (6), repay to the claimant an amount equivalent to the amount that the claimant has so undertaken to pay.

(6) Where the claimant who has received a repayment of an overpaid amount under subsection (5) fails, by the 30th day next following the date on which the repayment was made, to pay the person or persons concerned as undertaken under subsection (5)(a), then the amount so repaid is, from that date, deemed not to be properly refundable and shall be returned to the Commissioners together with any interest due under section 103(3).

Period for repayment claims

105C.— [~~Deleted~~ by S.70(r) of FA 2012.]

Interest on repayment of duty

Inserted by S.98 of FA2003

105D.—(1) For the purposes of this section—

“claimant” means a person who submits a valid claim for a repayment amount;

[Definition of “excise law” ~~deleted~~ by S.93(j) of FA2010.]

“repayment amount” means an amount which a person becomes entitled to receive from the Commissioners and which is claimed—

- (a) within such period (if any) set down in respect of the provision of excise law under which the claim for repayment is made, where this applies, or
- (b) in all other cases, within a period of 4 years from the date of payment of excise duty or of any other act or event giving rise to an entitlement to repayment,

but such amount does not include interest payable under this section;

[Definition of “valid claim” ~~deleted~~ by S.70(s) of FA2012.]

(2) Where a mistaken assumption in the application of a provision of excise law is made by the Commissioners and as a result a repayment amount is payable to a claimant, interest is, subject to

section 960H(4) of the Taxes Consolidation Act 1997, payable by the Commissioners on that amount from—

- (a) in the case of an overpaid amount, the date that overpaid amount was received by the Commissioners, and
- (b) in all other cases, the date on which the claimant would have been entitled to the repayment amount but for that mistaken assumption,

to the date on which the repayment amount is paid by the Commissioners to the claimant.

Amended by S.121(3) of FA2007
Amended by Schedule 2 to FA
2018

(3) Where, for any reason other than a mistaken assumption made by the Commissioners in the application of a provision of excise law, a repayment amount is payable to a claimant but is not paid until after the expiry of 93 days from the date the Commissioners receive a valid claim for that amount, interest is, subject to section 960H(4) of the Taxes Consolidation Act 1997, payable by the Commissioners on that amount from the date on which that 93 day period expires to the date on which the repayment amount is paid by the Commissioners to the claimant.

(4) Interest payable in accordance with this section, shall be simple interest payable at the rate of 0.011 per cent per day or part of a day, or such other rate as may be prescribed by the Minister for Finance by order under subsection (7).

(5) Interest shall not be payable under this section if it amounts to less than €10.

(6) This section shall not apply in relation to any repayment or part of a repayment in respect of which interest is payable under or by virtue of any provision of any other enactment.

(7) (a) The Minister for Finance may, from time to time, make an order prescribing a rate for the purposes of subsection (4).

(b) Every order made by the Minister for Finance under paragraph (a) shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the order is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done under it.

(8) The Commissioners may make regulations as necessary governing the operation of this section.

(9) This section comes into operation on such day as the Minister for Finance may appoint by order.

[Commenced on 1 November 2003 by S.I. No. 511 of 2003]

Remission of losses

106.— [Deleted by section 93(k) of FA2010.]

107.— [Repealed by S.I. No. 711 of 2003.]

108.— [Repealed by S.I. No. 462 of 2002.]

Warehousing

Inserted by S.69(1)(a) of FA2008

108A.— (1) Subject to subsections (2) and (3), the following shall take place only in a tax warehouse—

(a) the production and processing of excisable products, and

Subsection substituted by S.93(l) of FA2010
Amended by S.47(1) of FA2021

(b) the holding or storage of excisable products under a suspension arrangement, or on which the appropriate rate of excise duty has not been paid.

(2) Subsection (1)(a) does not apply to—

(a) [Deleted by S.47(e) of F(No. 2)A 2013.]

(b) any operation by which the user of mineral oil makes its re-use possible in his or her own undertaking, and where the mineral oil tax already paid on that mineral oil is not less than that which would be due if the mineral oil resulting from such operation was liable to excise duty,

Paragraphs (c) and (d) substituted for paragraph (c) by S.70(t) of FA2012

(c) the mixing or blending of excisable products with other excisable products or other materials, but only where—

(i) excise duty has been paid in full on the excisable products so mixed or blended, and

(ii) the amount so paid is not less than the amount chargeable on the mixture or blend,

(d) the production by a private individual of wine, beer or other fermented beverage to which a relief from alcohol products tax under section 77(f) of the Finance Act 2003 applies.

(3) Without prejudice to the generality of subsection (1)(a), the Commissioners may, where a written application is made to them, exempt from that subsection—

(a) operations during which small quantities of excisable products are produced incidentally, and

(b) subject to such conditions as they deem fit to impose, production and processing operations involving excisable products on which the proper excise duty has already been paid, and where the amount so paid is not less than the

excise duty that would be chargeable following such production or processing.

Amended by S.47(1) of FA2021

(4) Excisable products held or stored under a suspension arrangement in a tax warehouse are deemed to be so held or stored until such time as such products are removed from the tax warehouse.

(5) An authorised warehousekeeper, or any person acting on behalf of such warehousekeeper, shall provide such appliances, facilities and assistance as an officer may reasonably require to take account of any excisable products or materials, and allow an officer at any reasonable time to use anything so provided.

[Section 108A came into operation on 1 October 2008, by virtue of section 69(2) of FA2008.]

Authorisation of warehousekeepers and approval of tax warehouses

Section substituted by S.69(1)(b) of FA2008

109.—(1) In this section—

“applicant” means a person who has applied in writing for authorisation under subsection (2);

“authorised” means authorised as an authorised warehousekeeper under this section;

“conditions of authorisation” means the conditions referred to in subsection (2)(c);

*[Definition of “excise law” **deleted** by S.47(f) of F(No. 2)A 2013.]*

“proprietor”, in relation to a tax warehouse, means the authorised warehousekeeper who, for the time being, has possession or control of such tax warehouse;

“tenant”, in relation to a tax warehouse, means an authorised warehousekeeper who has been accepted by a proprietor as a tenant in such tax warehouse in accordance with subsection (4).

(2) The Commissioners may, under this section, authorise a person, who has applied to them in writing,—

- (a) as the proprietor of a tax warehouse or tax warehouses approved in relation to such proprietor in accordance with subsection (5), or as a tenant in accordance with subsection (4),
- (b) for specific activities, in relation to specific types of excisable products, in such tax warehouse or tax warehouses, and
- (c) for such periods, and subject to such conditions as they may think fit to impose in any particular case.

Inserted by S.47(a) of FA2015

(2A) The granting to, or the holding by, an applicant or holder, as the case may be, of an authorisation shall be conditional on the applicant or authorised warehousekeeper complying with excise law in relation to excisable products, including the requirements of this Chapter relating to the systems (including the accounting and stock control systems) and procedures of the business to which the authorisation relates.

Subsection substituted by S.47(b) of FA2015

(3) (a) The Commissioners shall grant an authorisation under this section only where it is shown to their satisfaction that the applicant, or where the applicant is a company, any director or person having control (within the meaning of section 11 of the Taxes Consolidation Act 1997) of that company, can satisfy the conditions of authorisation.

(b) The Commissioners shall grant an authorisation only where it is shown to their satisfaction that the business activity to be carried out in the tax warehouse under the authorisation is to be undertaken with a view to the realisation of profits from legitimate trade in excisable products.

(c) The Commissioners shall not grant an authorisation where an applicant or, where the applicant is a company, any director or person having control (within the meaning of section 11 of the Taxes Consolidation Act 1997) of that company has, in the 10 years prior to such application for the authorisation, been convicted of—

(i) any indictable offence under the Acts referred to in section 1078(1) of the Taxes Consolidation Act 1997, or

(ii) any corresponding offence under the law of another Member State or of the United Kingdom.

Amended by S.76(c) of The Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020

(d) The Commissioners shall not grant an authorisation where an applicant or, where the applicant is a company, any director or person having control (within the meaning of section 11 of the Taxes Consolidation Act 1997) of that company, does not hold a current tax clearance certificate issued under section 1094 of the Taxes Consolidation Act 1997.

(e) The Commissioners shall not grant an authorisation to an applicant for the production or processing of excisable products where such applicant does not hold a current licence for such production or processing where such licence is required under excise law.

(f) The Commissioners shall grant an authorisation to an applicant only where it is shown to their satisfaction that the

systems (including the accounting and stock control systems) and procedures of the business to which the application for the authorisation relates will provide a full and true record of all transactions of that business in a form readily accessible to the Commissioners.

(g) The Commissioners shall grant an authorisation to an applicant only where it is shown to their satisfaction that the activity to be carried out under the authorisation will be conducted solely for the benefit of the applicant.

(h) The Commissioners shall not grant an authorisation where the applicant or, where the applicant is a company, any director or person having control (within the meaning of section 11 of the Taxes Consolidation Act 1997) of that company, has been authorised previously and there has been a contravention of, or a failure to comply with, the conditions of that authorisation and the applicant has not shown to the satisfaction of the Commissioners that the contravention or failure has been remedied.

Amended by S.47(1) of FA2021

(i) The Commissioners shall grant an authorisation only where it is shown to their satisfaction that the premises or place relating to the approval of a tax warehouse under subsection (5) is suitable for the security of the excisable products to be produced, held, stored or processed in, or to be dispatched from or received into, such premises or place.

Amended by S.47(1) of FA2021

(4) Without prejudice to subsections (2), (2A) and (3), an applicant who has applied in relation to a tax warehouse of which he or she is not to be the proprietor, may only be so authorised where—

(a) such applicant has been accepted by the proprietor to be a tenant in that tax warehouse,

(b) the terms of that acceptance, including a statement of the responsibilities of the proprietor in relation to products to be held or stored by the tenant, are set out in a document signed or sealed by both and approved by an officer, and

(c) a copy of such document is included in the authorisation documents of both proprietor and tenant.

(5) (a) A premises or place shall be approved as a tax warehouse in relation to the authorisation of a proprietor, and such approval shall terminate when such authorisation is revoked or, for any other reason, ceases to have effect.

(b) The approval of a tax warehouse shall be subject to such requirements as the Commissioners may think fit to impose

in any particular case, and such requirements shall be included in the conditions of authorisation of the proprietor.

(6) (a) The details of the authorisation, including the conditions of authorisation, shall be set down in a document, referred to in this section as the “authorisation document”.

(b) The authorisation document shall be signed by the applicant and by an officer, and it shall, unless another date is specified, be effective from the date on which it is so signed.

Amended by S.47(1) of FA2021

(7) (a) The proprietor shall at all times be responsible for the excise duty on the excisable products held or stored in the tax warehouse, and shall, where required under the conditions of authorisation, provide security, at a level specified in the authorisation document, for such excise duty.

Substituted by S.70(u) of FA2012

(b) (i) Without prejudice to paragraph (a), and subject to subparagraph (ii), a tenant shall, at a level specified in the authorisation document, provide security for any excisable products received by such tenant as a consignee under a suspension arrangement.

(ii) Subparagraph (i) does not apply to consignments of mineral oil by sea that are received by a tenant and delivered immediately into storage tanks in the tax warehouse that are under the direct control of the proprietor.

Substituted by S.93(m) of FA2010

(c) Any authorised warehousekeeper who dispatches excisable products from a tax warehouse under a suspension arrangement shall, before any such dispatch, provide security, valid throughout the European Union, at a level specified in the authorisation document, for the excise duty on such products.

(8) An authorised warehousekeeper shall inform an officer of any changes or proposed changes that are relevant to the conditions of authorisation including, in the case of a proprietor, any changes or proposed changes to the tax warehouse.

(9) The Commissioners may at any time, following such notice as is reasonable in the circumstances, vary the conditions of authorisation.

(10) Where an authorised warehousekeeper is a company, the authorisation of such warehousekeeper, and the approval of any tax warehouse of which such warehousekeeper is the proprietor, shall expire immediately upon a change of control of such company, within the meaning of section 11 of the Taxes Consolidation Act 1997.

Amended by S.47(1) of FA2021

(11) Before the date when an authorised warehousekeeper ceases to act as such, all excisable products held or stored by such authorised warehousekeeper, or by any tenant in respect of whom he or she acts as proprietor, shall be either—

- (a) removed from the tax warehouse, either on payment of the proper excise duty or under a suspension arrangement, or
- (b) otherwise disposed of to the satisfaction of an officer.

Subsection inserted by S.47(c) of FA2015

(11A) Where an authorised warehousekeeper ceases to carry out the activities for which the authorisation was granted—

- (a) the authorisation shall cease to have effect, and
- (b) the authorised warehousekeeper shall notify the Commissioners, in writing, of the cessation of the activity for which the authorisation was granted before the date on which the authorised warehousekeeper ceases to act as such.

Subsection substituted by S.47(d) of FA2015.

(12) An authorisation under this section is at all times subject to the conditions of authorisation, and the Commissioners may revoke an authorisation where—

- (a) the authorised warehousekeeper or, where the authorised warehousekeeper is a company, any director or person having control (within the meaning of section 11 of the Taxes Consolidation Act 1997) of that company has in the preceding 10 years been convicted of—
 - (i) any indictable offence under the Acts referred to in section 1078(1) of the Taxes Consolidation Act 1997, or
 - (ii) any corresponding offence under the law of another Member State or of the United Kingdom,
- (b) the Commissioners are satisfied that there has been a contravention of, or failure to comply with, a requirement of excise law in relation to the excisable products for which the authorisation was granted—
 - (i) by the authorised warehousekeeper or, where the holder of the authorisation is a company, any director or person having control (within the meaning of section 11 of the Taxes Consolidation Act 1997) of that company, or
 - (ii) at the premises or place approved as a tax warehouse, and the authorised warehousekeeper has not shown to the

Amended by S.76(c) of The Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020.

satisfaction of the Commissioners that the contravention or failure has been remedied,

(c) the Commissioners are satisfied that there has been a contravention of, or failure to comply with, any of the conditions of authorisation by the authorised warehousekeeper and the authorised warehousekeeper has not shown to the satisfaction of the Commissioners that the contravention or failure has been remedied,

(d) the authorised warehousekeeper, when applying for that authorisation, or for approval of a tax warehouse, provided information that was false or misleading in a material respect,

(e) the authorised warehousekeeper does not, when required to do so by the Commissioners, show to the satisfaction of the Commissioners that the activity carried out under the authorisation is undertaken with a view to the realisation of profits from legitimate trade in excisable products,

(f) the authorised warehousekeeper does not, when required to do so by the Commissioners, show to the satisfaction of the Commissioners that the activity carried out under the authorisation is conducted solely for the benefit of the authorised warehousekeeper,

(g) the authorised warehousekeeper does not, when required to do so by the Commissioners, show to the satisfaction of the Commissioners that the systems (including the accounting and stock control systems) and procedures of the business to which the authorisation relates provide a full and true record of all transactions of that business in a form readily accessible to the Commissioners, or

Amended by S.47(1) of FA2021

(h) the authorised warehousekeeper does not, when required to do so by the Commissioners, show to their satisfaction that the premises or place approved as a tax warehouse is suitable for the security of the excisable products produced, held, stored or processed in, or to be dispatched from or received into, such premises or place.

(13) Where the Commissioners propose to revoke an authorisation, they shall inform the holder of that authorisation of that intention, and afford such holder an opportunity to make representations to them in relation to the matter.

(14) (a) Subject to paragraph (b), this section as amended by section 69 of the Finance Act 2008 shall, as appropriate, apply to all authorisations and approvals granted under this section prior to it being so amended.

- (b) The conditions attaching to any authorisation or approval granted under this section prior to its amendment by section 69 of the Finance Act 2008 shall remain in force until such time as such conditions are varied in accordance with subsection (9).

[The new section 109, substituted by section 69 of FA2008 came into operation on 1 October 2008, by virtue of subsection (2) of that section.]

Authorisation of registered consignors

Section inserted by S.93(n) of FA2010, substituted by S.31(b) of FA2016

109A.— (1) In this section—

“applicant” means a person who has applied in writing for authorisation under subsection (2);

“authorised” means authorised as a registered consignor under this section;

“conditions of authorisation” means the conditions referred to in subsection (2)(c).

(2) The Commissioners may, under this section, authorise a person, who has applied to them in writing, as a registered consignor—

- (a) for consignments of specific types of excisable products,

- (b) in respect of a premises or place, and

- (c) for such period, and subject to such conditions as they may think fit to impose in any particular case.

(3) The granting to, or the holding by, an applicant or holder, as the case may be, of an authorisation shall be conditional on the applicant or registered consignor complying with excise law in relation to excisable products, including the requirements of this Chapter relating to the systems (including the accounting and stock control systems) and procedures of the business to which the authorisation relates.

(4) The Commissioners shall grant an authorisation under subsection (2) only where it is shown to their satisfaction that—

- (a) the applicant can satisfy the conditions of authorisation,

- (b) the business activity to be carried out under the authorisation is to be undertaken with a view to the realisation of profits arising out of or related to legitimate trade in excisable products,

- (c) the activity to be carried out under the authorisation will be conducted solely for the benefit of the applicant,

(d) the systems (including the accounting and stock control systems) and procedures of the business to which the application for the authorisation relates will provide a full and true record of all transactions of that business in a form readily accessible to the Commissioners, and

(e) the premises or place in respect of which the authorisation is to be granted is suitable for the security of excisable products.

(5) The Commissioners shall not grant an authorisation where the applicant or, where the applicant is a company, any director or person having control (within the meaning of section 11 of the Taxes Consolidation Act 1997) of that company—

(a) has, in the 10 years prior to the date of the application for the authorisation, been convicted of—

(i) any indictable offence under the Acts referred to in section 1078(1) of the Taxes Consolidation Act 1997, or

(ii) any corresponding offence under the law of another Member State or of the United Kingdom,

(b) does not hold a current tax clearance certificate issued under section 1094 of the Taxes Consolidation Act 1997, or

(c) has been authorised previously as—

(i) a registered consignor under this section,

(ii) an authorised warehousekeeper under section 109, or

(iii) a registered consignee under section 109IA,

where there has been a contravention of, or a failure to comply with, the conditions of that previous authorisation and the applicant has not shown to the satisfaction of the Commissioners that the contravention or failure has been remedied.

(6) The details of an authorisation granted under subsection (2), including the conditions of authorisation, shall be set down in a document, referred to in this section as an “authorisation document”.

(7) An authorisation document shall be signed by the applicant and by an officer, and it shall, unless another date is specified, be effective from the later of—

(a) the date on which it is signed by the applicant, and

(b) the date on which it is signed by the officer.

Amended by S.76(d) of The
Withdrawal of the United
Kingdom from the European
Union (Consequential
Provisions) Act 2020

(8) Before any excisable products are consigned by a registered consignor, that registered consignor shall provide security, valid throughout the European Union, at a level specified in the authorisation document, for the excise duty on such consignment.

(9) A registered consignor shall inform an officer of any changes or proposed changes that are relevant to the conditions of authorisation.

(10) The Commissioners may at any time, following such notice as is reasonable in the circumstances, vary the conditions of authorisation.

(11) Where a registered consignor is a company, the authorisation shall expire immediately upon a change of control, within the meaning of section 11 of the Taxes Consolidation Act 1997, of such company.

(12) (a) Where a registered consignor has ceased, or intends to cease, carrying out the activities for which an authorisation was granted to it, it shall—

(i) where the registered consignor has ceased carrying out those activities, notify the Commissioners in writing of the date those activities ceased, and

(ii) where the registered consignor intends to cease carrying out those activities, notify the Commissioners in writing of that intention and the date on which the registered consignor intends to cease to carry out those activities.

(b) An authorisation granted to a registered consignor under this section shall stand revoked from such date as is specified in a notification given to the Commissioners in accordance with paragraph (a).

(13) An authorisation under this section is at all times subject to the conditions of authorisation, and the Commissioners may revoke an authorisation where—

(a) the registered consignor or, where the registered consignor is a company, any director or person having control (within the meaning of section 11 of the Taxes Consolidation Act 1997) of that company has in the preceding 10 years been convicted of—

(i) any indictable offence under the Acts referred to in section 1078(1) of the Taxes Consolidation Act 1997, or

(ii) any corresponding offence under the law of another Member State or of the United Kingdom,

(b) the Commissioners are satisfied that there has been a contravention of, or failure to comply with, a requirement of excise law in relation to the excisable products for which the authorisation was granted by—

(i) the registered consignor, or

(ii) where the holder of the authorisation is a company, any director or person having control (within the meaning of section 11 of the Taxes Consolidation Act 1997) of that company,

and the registered consignor or the person referred to in subparagraph (ii), as the case may be, has not shown to the satisfaction of the Commissioners that the contravention or failure has been remedied,

(c) the Commissioners are satisfied that there has been a contravention of, or failure to comply with, any of the conditions of authorisation by the registered consignor and the registered consignor has not shown to the satisfaction of the Commissioners that the contravention or failure has been remedied,

(d) the registered consignor, when applying for that authorisation, provided information that was false or misleading in a material respect,

(e) the registered consignor does not, when required to do so by the Commissioners, show to the satisfaction of the Commissioners that the activity carried out under the authorisation is undertaken with a view to the realisation of profits arising out of or related to legitimate trade in excisable products,

(f) the registered consignor does not, when required to do so by the Commissioners, show to the satisfaction of the Commissioners that the activity carried out under the authorisation is conducted solely for the benefit of the registered consignor,

(g) the registered consignor does not, when required to do so by the Commissioners, show to the satisfaction of the Commissioners that the systems (including the accounting and stock control systems and procedures of the business to which the authorisation relates

(h) the registered consignor does not, when required to do so by the Commissioners, show to their satisfaction that the premises or place in respect of which the authorisation was granted is suitable for the security of those excisable products.

(14) Where the Commissioners propose to revoke an authorisation under this section, they shall notify the registered consignor concerned in writing of their intention, and afford such registered consignor a period of at least 15 working days from the date of that notification to make representations to them in relation to the matter.

CHAPTER 2A

Intra-European Union Movement under a Suspension Arrangement

Interpretation (Chapter 2A)

Chapters 2A and 2B substituted
for Chapter 2 by S.93(o) of
FA2010. Amended by S.47(1) of
FA2021

109B.—In this Chapter—

“administrative reference code” means the unique administrative reference to be assigned to the draft electronic administrative document, in accordance with Article 20(3) of the Directive;

“completely denatured alcohol products” means alcohol products that are exempt from excise duty under Article 27(1)(a) of Council Directive No. 92/83/EEC;

“consignment” means the single movement of a specific quantity of excisable products under a suspension arrangement;

“consignor” means, as the case requires, either—

- (a) an authorised warehousekeeper or registered consignor in the State who dispatches a consignment under section 109E(1), or
- (b) an authorised warehousekeeper or registered consignor in another Member State who dispatches a consignment;

Amended by S.47(1) of FA2021

“customs electronic data” in respect of a consignment, means the export data that, under Chapter 2 of Title II of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015¹ are to be exchanged between customs authorities using information technology and computer networks;

Amended by S.47(1) of FA2021

“customs office of exit” means the customs office of exit referred to in Article 329(5) of Commission Implementing Regulation (EU) 2015/2447;

Amended by S.47(1) of FA2021

“customs office of export” means the customs office of export where an export declaration is lodged in accordance with Article 221 of Commission Implementing Regulation (EU) 2015/2447;

Inserted by S.47(1) of FA2021

“customs special procedure” means any one of the special procedures provided for under the Council Regulation relating to the customs supervision to which non-European Union goods are subjected upon their entry into the European Union customs territory, temporary storage, free zones or free warehouses, as well as any of the procedures referred to in Article 210 of that Regulation;

¹ OJ No. L343, 29.12.2015, p. 558

“designated consignee” means the authorised warehousekeeper, registered consignee, or exempt consignee, identified as the consignee in the electronic administrative document, or any other document under cover of which a consignment is dispatched;

Amended by S.47(1) of FA2021

“electronic administrative document” means the electronic administrative document referred to in Article 20(2) of the Directive;

“exemption certificate” means, as the case requires, the certificate referred to in paragraph (a) or (b) of the definition of “exempt consignee” in section 96;

“paper confirmation of export” has the meaning given by section 109N(4);

Substituted by S.53(a) of FA2013

“place of direct delivery” means a place appointed by a designated consignee as the place of delivery for a consignment, other than—

- (a) where the designated consignee is an authorised warehousekeeper, a tax warehouse approved in relation to that authorised warehousekeeper under section 109 and entered as such on the SEED register, or
- (b) where the designated consignee is a registered consignee, the address of that registered consignee as entered on the SEED register;

“place of exportation” means a place where, in accordance with customs procedures, excisable products leave the territory of the European Union;

“report of export” means a report by means of the computerised system, in accordance with Article 25(1) of the Directive, certifying that a consignment has been exported from the territory of the European Union;

Amended by S.47(1) of FA2021

“small wine producer” means a person in another Member State who produces on average less than 1,000 hectolitres of wine per wine year, and who is, under Article 48 of the Directive, exempted by the competent authorities of that Member State from the requirements of Articles 14 to 31 of the Directive;

Amended by S.32(a) of FA2016

“temporary registered consignee” means a registered consignee who receives consignments only occasionally, and whose authorisation is limited accordingly under section 109IA.

**Product scope
(Chapter 2A)**

109C.—(1) Subject to subsections (2) and (3), this Chapter applies to all excisable products.

(2) This Chapter applies only to—

Amended by S.47(1) of FA2021

- (a) those mineral oils specified in paragraph (1) of Article 20 of Council Directive No. 2003/96/EC of 27 October 2003¹, or which have, by a decision under paragraph (2) of that Article, been made subject to Chapters III, IV, and V of the Directive,
- (b) consignments from small wine producers to the extent provided for in section 109O(2),
- (c) consignments of completely denatured alcohol products to the extent provided for in section 109O(1).

Amended by S.47(1) of FA2021

(3) This Chapter does not apply to any excisable products that are under a customs special procedure.

**Member State territories,
exceptional arrangements
(Chapter 2A)**

109D.—Without prejudice to the definition of “European Union” in section 96, a consignment under a suspension arrangement to or from—

- (a) the Principality of Monaco shall be treated as a movement to or from France,
- (b) San Marino shall be treated as a movement to or from Italy,
- (c) the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia shall be treated as a movement to or from Cyprus,
- (d) [~~Deleted~~ by S.76(e) of The Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020.]
- (e) Jungholz and Mittelberg (Kleines Walsertal) shall be treated as a consignment to or from Germany.

**Consignments to another
Member State under a
suspension arrangement**

109E.—(1) A consignment under a suspension arrangement from a place in the State to another Member State begins when that consignment is dispatched from—

- (a) a tax warehouse, where the consignor is an authorised warehousekeeper, or
- (b) a place of importation, where the consignor is a registered consignor.

¹ OJ No. L283 of 31 October 2003, p.51

Amended by S.47(1) of FA2021

(2) Subject to the relevant provisions of this Chapter, a consignor may dispatch a consignment to—

- (a) a tax warehouse, where the designated consignee is an authorised warehousekeeper,
- (b) a registered consignee,
- (c) a place of exportation,
- (d) an exempt consignee, or
- (e) the customs office of exit, where that office is also the customs office of departure for the external transit procedure where provided for in Article 189(4) of Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015,¹

Inserted by S.47(1) of FA2021

in another Member State.

Substituted by S.71(a) of FA2012.

(3) Except where, in accordance with section 109I(1)(b), a consignment is accompanied by a paper document, a consignment from a place in the State to another Member State shall be dispatched under the computerised system and under cover of the electronic administrative document.

Amended by S.47(1) of FA2021

(4) The consignor shall ensure that a consignment under cover of the electronic administrative document is accompanied at all times by—

- (a) the administrative reference code, and
- (b) in the case of a consignment to an exempt consignee, an exemption certificate,

and that such code, and where applicable such certificate, is made available on request to an officer.

Inserted by S.47(1) of FA2021

(5) Where an officer deems it appropriate, the officer may request the consignor, or any person acting on behalf of such consignor, to make available a printed copy of the electronic administrative document or a commercial document with the same information.

Consignment to consignee in another Member State under computerised system

109F.—(1) For a consignment to a designated consignee in another Member State, a consignor shall submit a draft electronic administrative document, completed in accordance with Article 3 of the Commission Regulation, to the Commissioners.

¹ OJ No. L343, 29.12.2015, p. 1

(2) The Commissioners shall carry out an electronic verification of the data in the draft electronic administrative document by reference to the requirements of the Commission Regulation.

(3) Where the data in the draft electronic administrative document are verified in accordance with subsection (2), the Commissioners shall assign an administrative reference code to it, and forward it without delay to the consignor and to the competent authority of the destination Member State.

(4) Where the data in the draft electronic administrative document cannot be verified in accordance with subsection (2), the Commissioners shall, without delay, advise the consignor accordingly by means of the computerised system.

(5) Where in respect of an electronic administrative document that has, under subsection (3), been forwarded to the competent authority of the destination Member State, the Commissioners receive a report of receipt from that authority, they shall forward that report to the consignor.

Consignment to place of
exportation in another
Member State under
computerised system

109G.—(1) For a consignment to a place of exportation in another Member State, a consignor shall submit a draft electronic administrative document, completed in accordance with Article 3 of the Commission Regulation, to the Commissioners.

(2) The Commissioners shall carry out an electronic verification of the data in the draft electronic administrative document by reference to the requirements of the Commission Regulation.

(3) (a) Where the data in the draft electronic administrative document are verified in accordance with subsection (2), the Commissioners shall assign an administrative reference code to it, and forward it without delay to the consignor.

(b) Where the data in the draft electronic administrative document cannot be verified in accordance with subsection (2), the Commissioners shall, without delay, advise the consignor accordingly by means of the computerised system.

(4) Where an administrative reference code has been assigned in accordance with subsection (3)(a), and where the export declaration for the consignment is lodged at a customs office of export in another Member State, the Commissioners shall without delay forward the electronic administrative document to the competent authority of that Member State.

(5) Where in respect of a consignment for which an administrative reference code has been assigned in accordance with subsection (3)(a), the Commissioners find that the data in the electronic

administrative document do not accord with the customs electronic data for that consignment—

- (a) the Commissioners shall advise the consignor accordingly, and
- (b) the consignor shall, where required by the Commissioners, ensure that the consignment is halted until such time as the discrepancy is resolved.

(6) Where in respect of an electronic administrative document that has, under subsection (4), been forwarded to the competent authority of another Member State the Commissioners receive a report of export from that authority, they shall forward that report to the consignor.

(7) This section does not apply to any consignment for which customs electronic data are not available.

Cancellation or amendment of electronic administrative document
Amended by S.47(1) of FA2021

109H.—(1) A consignor may only cancel an electronic administrative document, using the computerised system, document where the consignment has not yet been dispatched from (as the case may be) the tax warehouse or place of importation.

Amended by S.81, Schedule 3, 5(b) of FA2011.
Amended by S.47(1) of FA2021.
Amended by S.56(b)(i) of F(No. 2)A 2023

(2) Where a consignment has been dispatched, the consignor may by means of the computerised system, in accordance with Article 6 of the Commission Regulation, and subject to verification under (as the case may be) section 109F(2) or 109G(2), amend the destination of the consignment or the consignee of the excisable products as recorded in the electronic administrative document to any other destination that is allowable under section 109E(2) and, for that purpose, the consignor shall submit a draft electronic change of destination document to the Commissioners using the computerised system.

(3) Subsection (2) does not apply to any consignment to an exempt consignee.

Inserted by S.71(b) of FA2012.

(3A) In the case of a consignment of mineral oil, the Commissioners may, subject to such conditions as they may prescribe or otherwise impose, permit the consignor to split the consignment into 2 or more consignments—

- (a) where the splitting is carried out—
 - (i) in the territory of a Member State that allows such splitting, and the Member State has informed the European Commission accordingly under Article 23 of the Directive, and
 - (ii) under the computerised system in accordance with Article 7 of the Commission

Amended by S.56(b)(ii) of F(No. 2)A 2023

Regulation, and the competent authority of the Member State referred to in paragraph (a) is, by such means, informed of the place where such splitting is to take place,

and

(b) where the quantity consigned does not change.

(4) (a) In the case of a consignment of mineral oil by sea, the Commissioners may, subject to such conditions as they may prescribe or otherwise require, permit the consignor to omit the data concerning the designated consignee from the draft electronic administrative document, where those data have not been determined at the time that document is submitted.

(b) Where paragraph (a) applies, the consignor shall, by means of the computerised system, submit the relevant data to the Commissioners as soon as they are determined, and at the latest when the consignment ends.

Inserted by S.47(1) of FA2021

(c) Paragraphs (a) and (b) shall not apply to the movements referred to in paragraphs (c) and (e) of section 109E(2).

Inserted by S.47(1) of FA2021

(5) (a) In the case of a consignment from another Member State dispatched to a place of exportation in the State, where the excisable products are no longer to be taken out of the European Union customs territory, the Commissioners shall, subject to subsection (7), by means of the computerised system notify the competent authority in the Member State of dispatch of that fact as soon as they become aware thereof.

(b) In the case of a consignment dispatched from a place in the State to a place of exportation in another Member State, where the excisable products are no longer to be taken out of the European Union customs territory, the Commissioners shall, upon receipt of notification of that fact from the Member State of export, forward the notification without delay to the consignor.

(6) On receipt of a notification under subsection (5)(b), the consignor shall cancel the electronic administrative document in accordance with subsection (1) or amend the destination of the products in accordance with subsection (2), as appropriate.

(7) A notification referred to in subsection (5)(a) may, until 13 February 2024, be made by means other than the computerised system.

Consignment to another Member State where computerised system is unavailable

109I.—(1) Where the computerised system is unavailable to a consignor, that consignor may, in accordance with subsections (1) and (2) of section 109E, dispatch a consignment where—

- (a) the consignor informs the Commissioners in advance, in accordance with such procedures as they may prescribe or otherwise require, of the intention to dispatch and the reason for the unavailability,
- (b) the consignment is accompanied by a paper document (referred to as such in this section) containing all the data required for an electronic administrative document.

(2) The Commissioners may prescribe—

- (a) the circumstances and situations in which, for the purposes of subsection (1), the computerised system may be considered to be unavailable to a consignor,
- (b) the form of the paper document.

(3) The Commissioners may, in any particular case, require that—

- (a) a copy of the paper document is sent to them,
- (b) the unavailability of the computerised system, and the validity of the paper document, are established to their satisfaction before the consignment is dispatched.

(4) (a) A consignor who has consigned in accordance with subsection (1) shall, as soon as the computerised system is available to that consignor, submit a draft electronic administrative document for the consignment concerned.

- (b) From such time as an administrative reference code is assigned to the draft electronic administrative document submitted in accordance with paragraph (a), the consignment is under cover of that document, and subject to the provisions of this Chapter that relate to the computerised system.

(5) Where a consignment is under cover of a paper document, the consignor may, in accordance with such procedures as the Commissioners may prescribe—

- (a) change the destination for that consignment, as recorded in that paper document, to any other destination that is allowable under section 109E(2), or
- (b) in the case of a consignment of mineral oil, split the consignment in accordance with section 109H(3A),

Substituted by S.47(1) of FA2021

and shall inform the Commissioners before the change of destination or the splitting of the consignment is initiated.

Inserted by S.47(1) of FA2021

(6) Where the computerised system is unavailable to the consignor in the cases referred to in section 109E(2)(c) and (e)—

(a) the consignor shall provide a copy of the paper document referred to in subsection (1)(b) to the declarant, and

(b) the declarant, on receipt of the paper document, shall provide the customs office of export with a copy of that paper document, the contents of which shall correspond to the excisable products declared in the export declaration, or the unique identifier of the paper document.

Authorisation of registered consignees

Inserted by S.32(b) of FA2016.

109IA.— (1) In this section—

“applicant” means a person who has applied in writing for authorisation under subsection (2);

“authorised” means authorised as a registered consignee under this section;

“conditions of authorisation” means the conditions referred to in subsection (2)(b).

(2) The Commissioners may, under this section, authorise a person who has applied to them in writing as a registered consignee—

(a) for consignments of specific types of excisable products, and

(b) for such period, and subject to such conditions as the Commissioners may think fit to impose.

(3) Without prejudice to the generality of subsection (2)(b), an authorisation under subsection (2) may be limited to—

(a) a specified quantity of excisable products,

(b) a single consignment,

(c) a single consignor, or

(d) a specified period,

in any case where consignments are to be delivered only occasionally.

(4) A registered consignee shall—

(a) provide security for the excise duty on every consignment to be received, before such consignment is dispatched, and

(b) enter in its accounts details of excisable products received under a duty suspension arrangement, at the end of the movement of such excisable products.

(5) The granting to an applicant, or the holding by a registered consignee, as the case may be, of an authorisation shall be conditional on the applicant or registered consignee complying with excise law in relation to excisable products, including the requirements of this Chapter relating to the systems (including the accounting and stock control systems) and procedures of the business to which the authorisation relates.

(6) The Commissioners shall grant an authorisation under subsection (2) only where it is shown to their satisfaction that—

(a) the applicant can satisfy the conditions of authorisation,

(b) the business activity to be carried out under the authorisation is to be undertaken with a view to the realisation of profits arising out of or related to legitimate trade in excisable products,

(c) the activity to be carried out under the authorisation will be conducted solely for the benefit of the applicant,

(d) the systems (including the accounting and stock control systems) and procedures of the business to which the application for the authorisation relates will provide a full and true record of all transactions of that business in a form readily accessible to the Commissioners, and

(e) the applicant has a secure premises or place to which consignments are to be delivered, and where they can be examined as required by an officer.

(7) The Commissioners shall not grant an authorisation where an applicant or, where the applicant is a company, any director or person having control (within the meaning of section 11 of the Taxes Consolidation Act 1997) of that company—

(a) has, in the 10 years prior to the date of the application for the authorisation, been convicted of—

(i) any indictable offence under the Acts referred to in section 1078(1) of the Taxes Consolidation Act 1997, or

(ii) any corresponding offence under the law of another Member State or of the United Kingdom,

(b) does not hold a current tax clearance certificate issued under section 1094 of the Taxes Consolidation Act 1997,

(c) does not hold a current licence where such licence is required to be held by that applicant under excise law, or

(d) has been authorised previously as—

(i) a registered consignee under this section,

(ii) an authorised warehousekeeper under section 109, or

(iii) a registered consignor under section 109A,

where there has been a contravention of, or a failure to comply with, the conditions of that previous authorisation and the applicant has not shown to the satisfaction of the Commissioners that the contravention or failure has been remedied.

(8) The details of an authorisation granted under subsection (2), including the conditions of authorisation, shall be set down in a document, referred to in this section as an “authorisation document”.

(9) An authorisation document shall be signed by the applicant and by an officer, and it shall, unless another date is specified, be effective from the later of—

(a) the date on which it is signed by the applicant, and

(b) the date on which it is signed by the officer.

(10) A registered consignee shall inform an officer of any changes or proposed changes that are relevant to the conditions of authorisation.

(11) The Commissioners may at any time, following such notice as is reasonable in the circumstances, vary the conditions of authorisation.

(12) Where a registered consignee is a company, the authorisation shall expire immediately upon a change of control, within the meaning of section 11 of the Taxes Consolidation Act 1997, of such company.

(13) (a) Where a registered consignee has ceased, or intends to cease, carrying out the activities for which an authorisation was granted to it, it shall—

(i) where the registered consignee has ceased carrying out those activities, notify the Commissioners in writing of the date those activities ceased, and

(ii) where the registered consignee intends to cease carrying out those activities, notify the Commissioners in

writing of that intention and the date on which the registered consignee intends to cease to carry out those activities.

(b) An authorisation granted to a registered consignee under this section shall stand revoked from such date as is specified in a notification given to the Commissioners in accordance with paragraph (a).

(14) An authorisation under this section is at all times subject to the conditions of authorisation and the Commissioners may revoke an authorisation where—

(a) the registered consignee or, where the registered consignee is a company, any director or person having control (within the meaning of section 11 of the Taxes Consolidation Act 1997) of that company has in the preceding 10 years been convicted of—

(i) any indictable offence under the Acts referred to in section 1078(1) of the Taxes Consolidation Act 1997, or

(ii) any corresponding offence under the law of another Member State or of the United Kingdom,

(b) the Commissioners are satisfied that there has been a contravention of, or failure to comply with, a requirement of excise law in relation to the excisable products for which the authorisation was granted by—

(i) the registered consignee, or

(ii) where the holder of the authorisation is a company, any director or person having control (within the meaning of section 11 of the Taxes Consolidation Act 1997) of that company,

and the registered consignee, or the person referred to in subparagraph (ii), as the case may be, has not shown to the satisfaction of the Commissioners that the contravention or failure has been remedied,

(c) the Commissioners are satisfied that there has been a contravention of, or failure to comply with, any of the conditions of authorisation by the registered consignee and the registered consignee has not shown to the satisfaction of the Commissioners that the contravention or failure has been remedied,

(d) the registered consignee, when applying for that authorisation, provided information that was false or misleading in a material respect,

Amended by S.76(f) of The
Withdrawal of the United
Kingdom from the European
Union (Consequential
Provisions) Act 2020.

(e) the registered consignee does not, when required to do so by the Commissioners, show to the satisfaction of the Commissioners that the activity carried out under the authorisation is undertaken with a view to the realisation of profits arising out of or related to legitimate trade in excisable products,

(f) the registered consignee does not, when required to do so by the Commissioners, show to the satisfaction of the Commissioners that the activity carried out under the authorisation is conducted solely for the benefit of the registered consignee,

(g) the registered consignee does not, when required to do so by the Commissioners, show to the satisfaction of the Commissioners that the systems (including the accounting and stock control systems) and procedures of the business to which the authorisation relates provide a full and true record of all transactions of that business in a form readily accessible to the Commissioners, or

(h) the registered consignee does not, when required to do so by the Commissioners, show to their satisfaction that the premises or place referred to in subsection (6)(e) is suitable

(15) Where the Commissioners propose to revoke an authorisation under this section, they shall notify the registered consignee accordingly in writing of their intention, and afford such registered consignee a period of at least 15 working days from the date of that notification, to make representations to them in relation to the matter.

(16) A person who, immediately before the commencement of section 32 of the Finance Act 2016, was a registered consignee shall be deemed to be a registered consignee authorised under an authorisation granted under this section, the conditions of authorisation of which shall be deemed to be the conditions prescribed or otherwise imposed under subsection (3) of section 109J prior to the deletion of that subsection by section 32 of the Finance Act 2016 and, accordingly, subsections (4), (5), (8), (10), (11), (12), (13), (14) and (15) shall apply in respect of that person.

**Consignments to the State
under suspension arrangement**

109J.—(1) A consignment from another Member State may be delivered to—

- (a) a tax warehouse, where the designated consignee is an authorised warehousekeeper,
- (b) a registered consignee,
- (c) an exempt consignee, or
- (d) a place of exportation,

Paragraph (b) amended by
S.32(c) of FA2016

in the State.

(2) Without prejudice to subsection (1), the Commissioners may, subject to such conditions as they may prescribe or otherwise require, in the case of any consignment for—

- (a) a tax warehouse, or
- (b) a registered consignee other than a temporary registered consignee,

allow that consignment to be delivered to a place of direct delivery.

[Subsections (3) and (4) **deleted** by section 32(d) of FA 2016.]

(5) Where, in respect of any consignment under the computerised system to an authorised warehousekeeper or registered consignee, the Commissioners receive an electronic administrative document from the competent authority of the Member State of dispatch, they shall forward that electronic administrative document to that authorised warehousekeeper or registered consignee.

(6) The consignments referred to in subsection (1), and any other consignment from another Member State that enters the territory of the State, shall at all times be under cover of—

Amended by Sch. 3(5)(a)(i) of FA2014.

- (a) an electronic administrative document, or

Amended by Sch. 3(5)(a)(ii) of FA2014.
Amended by S.47(1) of FA2021

- (b) in any case where the computerised system was unavailable at the time of consignment, and Article 26(1) of the Directive applied for the time being, a paper document containing all the data required for an electronic administrative document.

(c) [**Deleted** by Sch. 3(5)(a)(iii) of FA2014.]

Amended by S.47(1) of FA2021

(7) In the case of a consignment to an exempt consignee under subsection (1)(c) that consignee shall take all reasonable steps to ensure that, in addition to the document required for that consignment under subsection (6), the consignment is accompanied by a copy of the exemption certificate of the exempt consignee.

Inserted by S.47(1) of FA2021

(8) In the case of a consignment referred to in subsection (1)(d)—

(a) the declarant shall provide the Commissioners with the administrative reference code indicating the excisable products referred to in the export declaration,

(b) before the release for export of the excisable products, the Commissioners shall verify that the data in the electronic

administrative document correspond to those contained in the export declaration, and

(c) where there are any inconsistencies between the electronic administrative document and the export declaration, the Commissioners shall notify the competent authority in the Member State of dispatch using the computerised system.

Completion of consignment
Amended by S.47(1) of FA2021

109K.—(1) A consignment shall end—

- (a) in the case of a consignment to a designated consignee, when that designated consignee has taken delivery of the consignment,
- (b) in the case of a consignment to a place of exportation, when that consignment has left the territory of the European Union, or
- (c) in a case referred to in section 109E(2)(e), when the goods are placed under the external transit procedure.

- (2) (a) A report of receipt, report of export, paper confirmation of receipt or paper confirmation of export shall, unless and until there is evidence to the contrary, be evidence that a consignment has ended.
- (b) Without prejudice to paragraph (a), the Commissioners may, in any case where evidence under that paragraph is unavailable, accept alternative evidence that a consignment has ended.

Report of receipt

109L.—(1) (a) Except where section 109N applies, and subject to paragraph (b), where a consignment has been delivered to a designated consignee in accordance with section 109J(1), that designated consignee shall, without delay and no later than 5 working days after the consignment has been received, submit a report of receipt to the Commissioners.

(b) Where a consignment has been delivered to an exempt consignee in accordance with section 109J(1)(c), the Commissioners shall, in accordance with such procedure as they may prescribe or otherwise require, prepare a report of receipt.

(2) The Commissioners shall, by reference to the requirements of the Commission Regulation, carry out a verification of the data in each report of receipt submitted to them.

- (3) (a) Where the data in the report of receipt are verified in accordance with subsection (2), the Commissioners shall, by means of the computerised system confirm the

registration of that report to the designated consignee, and forward it to the competent authority of the Member State of dispatch.

- (b) Where the data in the report of receipt cannot be verified in accordance with subsection (2), the Commissioners shall advise the designated consignee accordingly without delay.

Inserted by S.47(1) of FA2021

- (4) Where a consignment begins in the State, the Commissioners shall forward the report of receipt to the consignor.

Report of export

109M.—(1) Where, in the case of a consignment to a place of exportation, the export declaration is lodged at a customs office of export in the State, and where an electronic administrative document has been forwarded to the Commissioners from—

Amended by S.47(1) of FA2021

- (a) a consignor in the State and has been duly verified, or
- (b) the competent authority of a Member State of dispatch, in accordance with Article 21(1) of the Directive,

the Commissioners shall, on receipt of an electronic confirmation from the customs office of exit that the consignment has left the territory of the European Union, carry out an electronic verification of the data in that confirmation and, subject to such verification, complete a report of export.

- (2) The Commissioners shall forward the report of export—
 - (a) where paragraph (a) of subsection (1) applies, to the consignor,
 - (b) where paragraph (b) of subsection (1) applies, to the competent authority of the Member State of dispatch.

Confirmation of receipt and export by alternative means

109N.—(1) Where a report of receipt cannot be submitted in accordance with section 109L(1), either because—

- (a) the computerised system is unavailable to the designated consignee, or
- (b) the consignment remains, for the time being under cover of the paper document in accordance with section 109J(6)(b),

the designated consignee shall, between the 15th and 30th day after the consignment has ended, submit to the Commissioners a paper confirmation of receipt containing all the data required for a report of receipt, stating that the consignment has been received.

- (2) Where a paper confirmation of receipt has been submitted in accordance with subsection (1), and as soon as paragraph (a) or (b) (as the case may be) of subsection (1) no longer applies, the

designated consignee shall submit a report of receipt for the consignment by means of the computerised system in accordance with section 109L(1).

(3) Where—

- (a) a paper confirmation of receipt has been submitted to the Commissioners, and
- (b) within 30 days of the ending of the consignment, the consignee cannot submit a report of receipt by means of the computerised system,

Amended by S.47(1) of FA2021

then the Commissioners shall forward a copy of the paper confirmation of receipt to the competent authority of the Member State of dispatch.

(4) Where because—

- (a) the computerised system is unavailable, or
- (b) the consignment remains, for the time being under cover of the paper document in accordance with section 109J(6)(b),

a report of export cannot be forwarded in accordance with section 109M, the Commissioners shall, between the 15th day and 30th day after the consignment has ended, complete a paper confirmation of export containing all the data required for a report of export and forward it, as appropriate to the circumstances of section 109M(2), to the consignor in the State or the competent authority of the Member State of dispatch.

(5) Where, in respect of any consignment to another Member State, the Commissioners receive, otherwise than by means of a report of receipt or a report of export, confirmation from the competent authority of another Member State that a consignment has ended, they shall forward that confirmation to the consignor.

Exceptional procedures
Amended by S.56(c) of F(No.
2)A 2023

109O.—(1) Without prejudice to the generality of this Chapter, the provisions of this Chapter that relate to the computerised system shall not apply to consignments under a suspension arrangement of completely denatured alcohol, and such consignments shall, in accordance with the Commission Regulation, be under cover of the electronic simplified administrative document.

Amended by S.47(1) of FA2021

(2) Without prejudice to the generality of this Chapter, the provisions of this Chapter that relate to the computerised system shall not apply to consignments of wine produced and dispatched by a small wine producer, and any such consignment shall be in accordance with Commission Delegated Regulation (EU) 2018/273 of

11 December 2017¹, and such procedures as the Commissioners may prescribe.

(3) For any consignment of wine referred to in subsection (2), the designated consignee shall—

- (a) in advance of the dispatch of the consignment, inform an officer in writing of the intention to receive it,
- (b) provide such evidence as the officer may require that the consignment is from a small wine producer, and
- (c) on receipt of the consignment, advise the Commissioners in accordance with such procedures as they may specify.

109P.—[Deleted by section 71(d) of FA2012.]

¹ OJ No. L58, 28.2.2018, p.

CHAPTER 2B

Intra-European Union Movement of Duty-Paid Excisable Products

Interpretation (Chapter 2B)

Chapters 2A and 2B substituted for Chapter 2 by S.93(o) of FA2010.
Section substituted by S.47(1) of FA2021

109Q.— In this Chapter—

“consignment” means the single movement to a Member State of a specific quantity of excisable products that have been released for consumption in another Member State;

[Definition of “electronic simplified administrative document” **deleted** by S.56(d) of F(No.2)A2023.]

“simplified administrative reference code” means the unique simplified administrative reference code to be assigned to the draft electronic simplified administrative document, in accordance with Article 36(2) of the Directive.

Product scope (Chapter 2B)

Amended by S.47(1) of FA2021

109R.—(1) Subject to subsection (2), this Chapter applies to all excisable products.

(2) This Chapter applies only to those mineral oils specified in paragraph (1) of Article 20 of Council Directive No. 2003/96/EC of 27 October 2003 or which have, by a decision under paragraph (2) of that Article, been made subject to Chapters III, IV, and V of the Directive.

Movement of excisable products for commercial purposes

Section inserted by S.47(1) of FA2021

109RA.— (1)(a) A consignment may be dispatched from the State to another Member State for commercial purposes only where the person who dispatches it is a certified consignor and the consignment is to be delivered to a certified consignee.

(b) A consignment may be delivered to the State for commercial purposes only where the person who receives it is a certified consignee and the person who dispatches it is a certified consignor.

(2) Where a consignment is dispatched from the State to another Member State in accordance with subsection (1)(a)—

(a) the consignment begins when the excisable products leave the premises of a certified consignor or any other location in the State, and

(b) the certified consignor shall notify the Commissioners using the computerised system of the consignment before it begins.

(3) Where a consignment is delivered to the State in accordance with subsection (1)(b)—

(a) the certified consignee shall notify the Commissioners using the computerised system of the consignment before it begins, and

(b) the consignment shall end when the certified consignee has taken delivery of the excisable products at his or her premises, or at any other location in the State.

(4) (a) a certified consignor in the State and a certified consignee in the State shall be registered as such with the Commissioners for such periods and subject to such conditions as the Commissioners may think fit to impose in any particular case.

(b) the Commissioners may at any time for reasonable cause revoke any registration granted under paragraph (a), or vary its terms.

(c) where the Commissioners propose to revoke a registration under paragraph (b), they shall notify the holder of that registration in writing of that intention, and afford such holder an opportunity to make representations to them in relation to the matter.

(5) (a) Where a certified consignor or certified consignee sends or receives excisable products only occasionally, the Commissioners shall limit the registration of the certified consignor or certified consignee (as the case may be) to—

(i) a specified quantity of excisable products,

(ii) a single consignee, in the case of a certified consignor, or a single consignor, in the case of a certified consignee, and

(iii) a specified period of time,

(in this subsection referred to as a “temporary registration”) and the temporary registration may be limited to a single movement of excisable products.

(b) The Commissioners may grant a temporary registration to a person who is not a certified consignor or a certified consignee where excisable products are dispatched by or delivered to the person for commercial purposes.

- (a) the Principality of Monaco shall be treated as a consignment to or from France,
- (b) San Marino shall be treated as a consignment to or from Italy,
- (c) the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia shall be treated as a consignment to or from Cyprus,
- (d) **[Deleted by S.76(g) of The Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020.]**
- (e) Jungholz and Mittelberg (Kleines Walsertal) shall be treated as a consignment to or from Germany.

Consignment of excisable products, duty-paid in the State, to another Member State for commercial purposes

Section inserted by S.47(1) of FA2021

109SA.—(1) Except where section 109VA applies, where a certified consignor dispatches a consignment from the State to another Member State, the certified consignor shall submit a draft electronic simplified administrative document to the Commissioners using the computerised system.

(2) The Commissioners shall carry out an electronic verification of the data in the draft electronic simplified administrative document.

(3) Where the data in the draft electronic simplified administrative document are verified in accordance with subsection (2), the Commissioners shall assign to the document a simplified administrative reference code and forward it without delay to the certified consignor and to the competent authority of the destination Member State.

(4) Where the data in the draft electronic simplified administrative document cannot be verified in accordance with subsection (2), the Commissioners shall, without delay, advise the certified consignor accordingly by means of the computerised system.

(5) The certified consignor shall ensure that a consignment under cover of the electronic simplified administrative document is accompanied at all times by a simplified administrative reference code and that such code is made available on request to an officer.

(6) Where a consignment has been dispatched to a certified consignee, the certified consignor may, using the computerised system, subject to verification under subsection (2), amend the destination of the consignment to—

- (a) another place of delivery in the destination Member State operated by that certified consignee, or
- (b) the place of dispatch,

and, for that purpose, the certified consignor shall submit a draft electronic change of destination document to the Commissioners using the computerised system.

(7) An authorised warehousekeeper or registered consignor may act as a certified consignor for the purposes of this Chapter after having notified the Commissioners and complied with such conditions as the Commissioners may prescribe.

Consignment to the State of excisable products released for consumption in another Member State for commercial purposes

Section inserted by S.47(1) of FA2021

109SB.—(1) Where a consignment is delivered to the State by a certified consignor to a certified consignee, the certified consignee shall, in advance of the dispatch of the consignment and subject to such conditions as the Commissioners may prescribe or otherwise require—

- (a) notify the Commissioners in such form as they may prescribe or otherwise require,
- (b) provide security, valid throughout the European Union, for the excise duty on such consignment,
- (c) pay the excise duty on the excisable products consigned.

(2) A consignment referred to in subsection (1) shall at all times be under cover of—

- (a) an electronic simplified administrative document, or
- (b) in any case where the computerised system was unavailable at the time of the consignment, and Article 38 of the Directive applied for the time being, a paper document containing all the data required for an electronic simplified administrative document,

and where the Commissioners receive the document referred to in paragraph (a) from the competent authority of the Member State of dispatch, the Commissioners shall forward it without delay to the certified consignee.

(3) An authorised warehousekeeper or registered consignee may act as a certified consignee for the purposes of this Chapter after having notified the Commissioners and complying with such conditions as the Commissioners may prescribe.

Report of receipt of duty-paid consignment

Section inserted by S.47(1) of FA2021

109SC.—(1) Except where section 109TA applies, where a consignment has been delivered to a certified consignee in accordance with section 109SB, the certified consignee shall, without delay and no later than five working days after the end of the movement, submit a report of receipt to the Commissioners, using the computerised system.

(2) The Commissioners shall carry out an electronic verification of the data in each report of receipt submitted to them under subsection (1).

(3)(a) Where the data in the report of receipt are verified in accordance with subsection (2), the Commissioners shall by means of the computerised system confirm the registration of that report to the certified consignee and forward it to the competent authority of the Member State of dispatch.

(b) Where the data in the report of receipt cannot be verified in accordance with subsection (2), the Commissioners shall advise the certified consignee accordingly without delay.

(4) Where a consignment is dispatched from the State in accordance with section 109SA, the Commissioners shall, on receipt of a report of receipt from the competent authority of the destination Member State, forward the report of receipt to the certified consignor.

(5) A report of receipt referred to in subsection (4) shall, unless and until there is evidence to the contrary, be evidence that a consignment has been delivered to the certified consignee and that any excise duty due on the consignment in the destination Member State has been paid.

**Consignment to the State
where computerised system is
unavailable**

Section inserted by S.47(1) of
FA2021

109T. [Repealed by Section 47 of Finance Act 2021]

109TA.—(1)(a) Where a report of receipt cannot be submitted in accordance with section 109SC, either because—

(i) the computerised system is unavailable to the certified consignee in the State, or

(ii) the consignment remains, for the time being, under cover of the paper document in accordance with section 109SB(2)(b),

the certified consignee shall submit to the Commissioners a paper confirmation of receipt containing all the data required for a report of receipt and stating that the movement has ended.

(b) Where a paper confirmation of receipt has been submitted in accordance with paragraph (a), the Commissioners shall forward a copy of the paper confirmation of receipt to the competent authority of the Member State of dispatch.

(c) Where a paper confirmation of receipt has been submitted in accordance with paragraph (a), and as soon as

subparagraph (i) or (ii) (as the case may be) of paragraph (a) no longer applies, the certified consignee shall submit a report of receipt for the consignment by means of the computerised system in accordance with section 109SC.

(2) (a) A paper confirmation of receipt, as referred to in subsection (1), shall, unless and until there is evidence to the contrary, be evidence that a consignment has been delivered to the certified consignee and that any excise duty due on the consignment in the destination Member State has been paid.

(b) Without prejudice to paragraph (a), the Commissioners may, in any case where evidence under that paragraph is unavailable, accept alternative evidence that a consignment has ended.

Distance selling from another
Member State

109U.—(1) Before the dispatch of a consignment to a private individual in the State, a non-State vendor shall appoint a person established in the State as a tax representative who, under section 99(6), is liable for the excise duty on that consignment.

(2) (a) A tax representative shall be approved as such by the Commissioners for such periods and subject to such conditions, including the level of security to be provided, as the Commissioners may think fit to impose in any particular case.

(b) The Commissioners may at any time for reasonable cause revoke any approval granted under paragraph (a), or vary its terms.

(c) Where the Commissioners propose to revoke an approval under paragraph (b), they shall notify the tax representative concerned in writing of their intention, and afford such tax representative a period of at least 15 working days from the date of that notification, to make representations to them in relation to the matter.

(3) A tax representative shall ensure that—

(a) prior to the dispatch of a consignment, a declaration, in such form as the Commissioners may prescribe, is made to an officer, describing the consignment and designating a premises or place to which it is to be delivered,

(b) prior to the dispatch of a consignment, security is provided for the excise duty on it,

(c) as soon as the consignment is delivered, any excise duty outstanding is paid,

- (d) such other requirements, including the keeping of records, as the Commissioners may prescribe, are complied with.

109V. [Repealed by Section 47 of Finance Act 2021]

Unavailability of the computerised system to a certified consignor in the State

Inserted by S.47(1) of FA2021

109VA.—(1) Where the computerised system is unavailable to a certified consignor, the consignor may dispatch a consignment where—

(a) before the consignment is dispatched—

(i) the consignor informs the Commissioners of the consignment in such form as they may prescribe or otherwise require, and

(ii) the consignment is under cover of the paper document containing all the data required for an electronic simplified administrative document,

and

(b) the consignor complies with such other requirements, including the keeping of records, as the Commissioners may prescribe or otherwise require.

(2) (a) A certified consignor who has consigned in accordance with subsection (1) shall, as soon as the computerised system is available to that consignor, submit a draft electronic simplified administrative document in accordance with section 109SA(1) for the consignment.

(b) From such time as a simplified administrative reference code is assigned to the draft electronic simplified administrative document submitted in accordance with paragraph (a), the consignment is under cover of that document, and subject to the provisions of this Chapter that relate to the computerised system.

(3) Where, in respect of a consignment to another Member State, the Commissioners receive a paper confirmation of receipt containing all the data required for a report of receipt from the competent authority of the destination Member State and this has been accepted by the Commissioners—

(a) it shall, unless and until there is evidence to the contrary, be evidence that the consignment has been delivered to the certified consignee and that any excise duty due on the consignment in the destination Member State has been paid, and

(b) the Commissioners shall forward the paper confirmation of receipt to the certified consignor.

(4) Where a consignment has been dispatched to a certified consignee under cover of a paper document, the certified consignor

may, in accordance with such procedures as the Commissioners may prescribe, change the destination of the consignment to—

- (a) another place of delivery in the destination Member State operated by that certified consignee, or
- (b) the place of dispatch,

and the certified consignor shall inform the Commissioners of the change of destination before the change is made.

Distance selling to another Member State

109W.—A State vendor shall, for any excisable products sold by such State vendor and dispatched to a private individual in another Member State—

- (a) before the dispatch—
 - (i) have registered his or her identity with the office designated by the competent authority of that other Member State for that purpose, and
 - (ii) guarantee payment of the excise duty due in that other Member State on the consignment,
- (b) pay any excise duty outstanding in respect of any such consignment, in that other Member State as soon as the consignment is delivered,
- (c) keep records, and provide such information as the Commissioners may require to determine that any such consignment has been in accordance with paragraphs (a) and (b), and to establish an entitlement to a repayment under section 104(5)(b).

Amended by Schedule 2 to FA 2018

Additional requirements

Amended by S.85 of FA2021 and by S.56(1)(e) of F(No. 2)A 2023

109X.—(1) In addition to any other requirement of this Chapter or Chapter 2A for use of the electronic simplified administrative document, any consignment, other than a consignment from a State vendor or a non-State vendor shall, at all times while within the territory of the State, be under cover of that document.

(2) The Commissioners may prescribe requirements for consignments—

- (a) between 2 places in another Member State, by way of the territory of the State,
- (b) between 2 places in the State, by way of another Member State.

Transitional arrangements

109Y.—(1) From 13 February 2023 until 31 December 2023, a consignment to the State for commercial purposes—

(a) may be under cover of the simplified accompanying document, and

(b) may be delivered to a person other than a certified consignee.

(2) The person referred to in subsection (1)(b) shall, in advance of the dispatch of a consignment in accordance with that subsection and subject to such conditions as the Commissioners may prescribe—

(a) notify the Commissioners in such form as they may prescribe,

(b) provide security, valid throughout the European Union, for the excise duty on such consignment, and

(c) pay the excise duty on the excisable products consigned.

(3) The Commissioners may prescribe the procedure for receiving a consignment under the simplified accompanying document in accordance with subsection (1).

110-117.—[*Chapter 2, which included sections 110-117, was substituted by new Chapters 2A and 2B by section 93(o) of FA2010, which came into operation on 1 April 2010.*]

CHAPTER 3

Offences, Penalties and Proceedings

Interpretation (Chapter 3).

118. [~~Deleted~~ by S.46(1)(a), FA 2011.]

Evasion of excise duty

119.—(1) It is an offence under this subsection for any person to take possession, custody or charge of, or to remove, transport, deposit or conceal, or to otherwise deal with, excisable products in respect of which any duty of excise is for the time being payable, with intent to defraud, either directly or indirectly, the State of such duty.

(2) It is an offence under this subsection for any person to be concerned in the evasion or attempted evasion of a duty of excise on excisable products with intent to defraud either directly or indirectly the State of such duty.

Amended by S.138 and Schedule 6 of FA2002.

(3) Without prejudice to any other penalty to which a person may be liable, a person convicted of an offence under this section is liable—

Amended by S.77 of FA2008.

(a) on summary conviction, to a fine of €5,000, or, at the discretion of the court, to imprisonment for a term not exceeding 12 months or to both,

Substituted by S.99(a) of FA2010.

(b) on conviction on indictment, to a fine not exceeding—

(i) €126,970, or

(ii) where the value of the excisable products concerned, including any duty or tax chargeable thereon, is greater than €250,000, three times the value of those products,

or, at the discretion of the court, to imprisonment for a term not exceeding 5 years or to both the fine and the imprisonment.

Inserted by S.99(b) of FA2010.

(4) Section 13 of the Criminal Procedure Act 1967 shall apply in relation to an offence under this section as if, in place of the penalties specified in subsection (3) of that section, there were specified in that subsection the penalties provided for by subsection (3)(a) of this section, and the reference in subsection (2)(a) of section 13 of the Criminal Procedure Act 1967 to the penalties provided for in subsection (3) of that section shall be construed and apply accordingly.

Amendment of Section 34 (amendments relative to penalties) of the Finance Act 1963

120.—Section 34 of the Finance Act 1963, is amended—

- (a) in subsection (4) by the insertion after “subsection (3) of this section” of “or section 119 of the Finance Act, 2001”,
- (b) in subsection (6) by the substitution of the following paragraph for paragraph (c):

[Paragraph (c) of section 34(6) of FA1963 **deleted** by section 94 of FA2010.]

Offences generally.

121.—It is an offence under this section for any person—

- (a) to contravene or fail to comply with—

Subparagraph (i) substituted by S.93(p) of FA2010.

- (i) any provision of section 108A, 109, or 109A, or any provision of Chapter 2A, or 2B, or,
- (ii) any regulation made under section 153 in relation to such provision,

Subsection (b) substituted by S.72(a) of FA2012.

- (b) to take possession or charge of any excisable products in the knowledge that an offence under paragraph (a) has been committed in relation to such excisable products.

Offences in relation to false returns, claims etc.

Section substituted by S.72(b) of FA2012.

122.—It is an offence under this section for any person to deliver any incorrect return, statement or accounts or to furnish any incorrect information—

- (a) in connection with –

- (i) any claim for relief or repayment under excise law,
- (ii) the granting of a licence under section 101 of the Finance Act 1999, or
- (iii) any application for—

(I) authorisation as an authorised warehousekeeper, or approval of a tax warehouse, under section 109,

(II) authorisation as a registered consignor under section 109A,

Clause substituted by S.33 of FA2016.
Amended by S.47(1) of FA2021

(III) authorisation as a registered consignee under section 109IA,

Amended by S.47(1) of FA2021

(IV) approval as a tax representative under section 109U, or

Inserted by S.47(1) of FA2021

(V) registration as a certified consignor or

certified consignee under section under section
109RA(4),

or

(b) for any other purposes in relation to any duty of excise.

**Resisting, obstructing, giving
false information**

123.—It is an offence under this section for any person to—

- (a) [**Deleted** by S.72(c) of FA2012.]
- (b) fail without lawful and sufficient excuse to comply with any requirement imposed on them under any provision of Chapter 4,
- (c) fail without lawful and sufficient excuse to give—
 - (i) his or her name, address and date of birth, or
 - (ii) any other information,

when required to do so under any provision of Chapter 4, or to give any such name, address or other information which is false or misleading.

Penalty

Amended by S.77 of FA2008.

124.—Without prejudice to any other penalty to which a person may be liable, a person convicted of an offence under sections 121, 122 or 123 is liable on summary conviction to a fine of €5,000.

**Administrative penalties for
breach of provisions or
regulations**

Section inserted by S.99 of
FA2003.

Subsection (1) substituted by
S.47 of FA2004 and amended by
S.128 of FA2007 and S.70(1)(b)
of FA2008.

124A.— (1) An authorised warehousekeeper who contravenes or fails to comply with—

- (a) any condition imposed on him or her under section 109, or
- (b) any requirement imposed on him or her under—
 - (i) this Part,
 - (ii) Chapter 3 of Part 2 of the Finance Act 2005,
 - (iii) Chapter 1 of Part 2 of the Finance Act 1999,
 - (iv) Chapter 1 of Part 2 of the Finance Act 2003, or
 - (v) any regulation made under the provisions referred to in subparagraphs (i) to (iv),

is liable to a penalty of €1,500 for each such contravention or failure.

(2) [**Deleted** by S. 97, and Part 2 of Schedule 4, of F(No. 2)A 2008.]

Forfeiture

125.—(1) Any excisable products in respect of which an offence has been committed under section 119 or 121 or any goods which are packed with or used in concealing such products, are liable to forfeiture and, where any such products are found in, on, or in any manner attached to, any vehicle or other conveyance, such vehicle or other conveyance is deemed to have been made use of in the conveyance of such products and shall also be liable to forfeiture.

(2) Where a duty of excise chargeable on any excisable products is not paid at the time at which payment of such duty becomes due or within such longer period as may be permitted for payment by or under any enactment, such products are liable to forfeiture.

(3) Where any goods or vehicles are liable to forfeiture under the law relating to excise, anything containing or that contained such goods or vehicle, and anything made use of in the conveyance of such goods or vehicle, is liable to forfeiture.

Forfeiture of alcohol products on unlicensed premises

Section inserted by S.48 of F(No. 2)A2013.
Amended by S.47(1) of FA2021

125A.—(1)Where

(a) any person who is required to hold a licence relating to the wholesale or retail sale of any alcohol products, in or on a premises or place, does not hold such a licence, and

(b) in respect of the granting of such a licence, a tax clearance certificate issued under section 1094 of the Taxes Consolidation Act 1997 is required,

and either—

(i) an application for such a licence has been refused, solely or partly on the grounds that the applicant does not hold such a tax clearance certificate, or

(ii) no application for such a licence has been made and the person or—

(I) any partnership referred to in subsection (2)(a) of that section,

(II) any partner referred to in subsection (2)(b) of that section,
or

(III) any person referred to in subsection (2)(c) of that section,

has not complied with the obligations referred to in the said subsection (2),

then, subject to subsections (2) and (3), any alcohol products held or stored for wholesale or retail sale in or on that premises or place shall be liable to forfeiture.

Amended by Sch. 3(5)(b)(i) of FA2014.

(2) Where paragraph (ii) of subsection (1) applies, the Commissioners shall notify the person concerned in writing of the requirement for a licence and for a tax clearance certificate in connection with that licence.

(3) The alcohol products concerned are liable to forfeiture under subsection (1) on the expiry of a period of 20 days from the date on which—

Amended by Sch. 3(5)(b)(ii) of FA2014.

(a) where paragraph (i) of subsection (1) applies, a communication of refusal of a tax clearance certificate under section 1094(6) of the Taxes Consolidation Act 1997, or

Substituted by Sch. 3(5)(b)(iii) of FA2014.

(b) where paragraph (ii) of subsection (1) applies, a notice under subsection (2),

has been sent.

Proceedings in relation to offences

126.—(1) This section is concerned with proceedings in relation to any offence under or by virtue of the statutes which relate to the duties of excise or to the management of such duties or under any instrument relating to the management of such duties made under statute.

(2) Where there is evidence that an offence has been committed by several persons jointly—

- (a) proceedings may be instituted against such persons, jointly or severally, for the recovery of a fine or penalty, and
- (b) on conviction, such persons shall jointly and severally incur every such fine or penalty.

(3) Where proceedings have been instituted or continued in the name of an officer who has ceased for any reason to be such an officer or being such officer is absent at any time during such proceedings, then such proceedings may be continued in the name of any other officer or of the officer so absent, as appropriate in the circumstances.

(4) Any summons, notice, order or other document relating to proceedings referred to in subsection (1), or relating to any appeal against a judgement pursuant to such proceedings, may be served by an officer.

- (5) (a) Notwithstanding the provisions of any other enactment but subject to paragraph (b), summary proceedings may be instituted within one year from the date of the offence.

- (b) Summary proceedings in respect of an offence under this Chapter may be so instituted within 3 years of the date of the offence.

(6) Section 1 of the Probation of Offenders Act, 1907, shall not apply to offences to which this section relates.

Inserted by S.51 of FA2022

(7) Subsection (5) shall not apply to summary proceedings instituted in respect of an offence that is triable, at the election of the prosecution either on indictment or summarily.

[Subsection (7) shall have effect as respects proceedings instituted after the coming into operation of section 51 of FA2022 (15th December 2022).]

Notice of Claim.

Substituted by S.46(1)(b) of FA2011.

127.—(1) Where anything has, under any provision of excise law, been seized as liable to forfeiture, a person (referred to in this section as “the claimant”) may—

- (a) within one month of the date of the notice of seizure under section 142(1), or
- (b) where no such notice has been given, within one month of the date of the seizure,

give notice in writing to the Commissioners of a claim (referred to in this section as a “notice of claim”) that the thing seized is not so liable.

(2) A notice of claim shall specify the full name and address of the claimant and the basis on which the claim is grounded and, where that address is outside the State, any documents relating to condemnation proceedings under section 128(1) may be served at that address by post.

(3) If, on the expiration of a period referred to in subsection (1), no notice of claim has been given, the thing seized shall be deemed to have been duly condemned as forfeited, and the forfeiture shall apply from the date when the liability to forfeiture arose.

(4) Where a notice of claim has been given, the Commissioners shall, subject to subsections (2) and (3) of section 144, take court proceedings under section 128 for the condemnation of the thing concerned.

Proceedings for condemnation by court

Substituted by S.46(1)(c) of FA2011.

128.—(1) Proceedings for condemnation by the court in accordance with section 127(4) (in this section referred to as “condemnation proceedings”) are civil proceedings, and such proceedings shall be commenced in the name of the Commissioners.

(2) Where in any condemnation proceedings the court finds that the thing seized was, at the time of seizure, liable to forfeiture, the court

shall condemn it as forfeited, and in any other case the court shall order its release.

Amended by S.14(c) and S.15(c) of Courts and Civil Law (Miscellaneous Provisions) Act 2013.

(3) Condemnation proceedings may be instituted in the High Court or, if in the opinion of the Commissioners the value of the thing seized (that is to be the subject of such proceedings) does not exceed—

(a) €75,000, the Circuit Court, or

(b) €15,000, the District Court.

(4) In any condemnation proceedings, the claimant or any solicitor acting on behalf of such claimant, shall state on oath that the thing seized was, or was to the best of their knowledge and belief, the property of the claimant at the time of the seizure.

(5) The Commissioners may in their discretion stay or compound any condemnation proceedings, and may restore anything seized which is the subject of such proceedings, and the Minister for Finance may order any such restoration.

(6) Where in any condemnation proceedings judgment is given for the claimant, no officer or other person who made or assisted in making the seizure is liable to any civil or criminal proceedings on account of the seizure or detention of the thing seized, where the court or judge certifies that there was probable cause for making such seizure or detention.

(7) Where, in any condemnation proceedings, anything is condemned as forfeited, the forfeiture shall apply from the date when the liability to forfeiture arose.

Damages

129.—Where, in any civil or criminal proceedings against any officer or person on account of the seizing or detention of any thing, judgement is given against the defendant, and where the court or justice certifies that there was probable cause for such seizure or detention, the plaintiff shall not be entitled to any damages, besides the goods seized or the value of such thing, nor to any costs, and the defendant shall not be liable for any punishment or penalty.

Mitigation

Amended by S. 78(2) of FA(no.2) 2013

130.—A trial judge may in his or her discretion mitigate any fine or penalty incurred for any offence under or by virtue of excise law, provided that the amount so mitigated is not greater than 50 per cent of the amount of the fine or penalty.

Presumptions

Amended by S.72(d) of FA2012.

131.—(1) Where in proceedings, any question of fact arises as to—

- (a) whether any excise duty has been paid in respect of any excisable products or other goods which are the subject of such proceedings,

- (b) whether any such excisable products or other goods are of such kind or sort as is alleged in evidence,
- (c) the place from where any excisable products were brought,

Amended by S.72(e) of FA2012. the burden of proof shall rest—

- (i) in the case of proceedings referred to in subsection (1) of section 126, with the defendant,
- (ii) in the case of proceedings referred to in subsection (2) of section 127, with the claimant,
- (iii) in the case of proceedings commenced by a person claiming any thing seized as liable to forfeiture under the law relating to excise, against the Commissioners, or any officer, or any member of the Garda Síochána involved in such seizure, with the plaintiff.

(2) In any proceedings referred to in section 126(1) involving tobacco products, it shall be presumed until the contrary is shown that a thing is a cigarette or other tobacco product where, in the opinion of an officer, it is contained in any form of packaging which, by virtue of any wording on it, its shape and other characteristics, is indicative of the contents consisting of one or more than one cigarette or other tobacco product and the officer so states that opinion.

Amended by S.47(1) of FA2021 (3) In proceedings under section 121—

- (a) any person who, otherwise than in a tax warehouse, produces, processes, holds or stores excisable products on which excise duty has not been paid, or who does not comply with any of the conditions imposed by section 109, is presumed, until the contrary is proved, to have contravened or failed to comply with (as the case may be) that section,

Substituted by S.93(q) of FA2010.

- (b) without prejudice to section 104(2), where excisable products which have been released for consumption in another Member State are found in the State and a requirement specified in subsection (1) of section 109SB has not been complied with in respect of such excisable products, any person in whose possession or charge such excisable products are found is presumed, until the contrary is proved, to have contravened or failed to comply with that subsection,

Substituted by S.93(q) of FA2010.

- (c) where excisable products to which subsection (3) of section 109U applies are found in the State, and a

requirement specified in that subsection has not been complied with in respect of such excisable products, any person in whose possession or charge such excisable products are found is presumed, until the contrary is proved, to have contravened or failed to comply with that subsection,

Substituted by S.93(q) of FA2010.

- (d) where excisable products to which section 109J applies are found in the State and a requirement or condition specified in that section or in regulations made under section 153 has not been complied with in respect of such excisable products, any person in whose possession or charge such excisable products are found is presumed, until the contrary is proved, to have contravened or failed to comply with (as the case may be) the requirement or condition concerned.

False evidence, punishment as for perjury

132.—[Deleted by S.72(f) of FA2012.]

CHAPTER 4

Powers of Officers

Interpretation (Chapter 4)

Section substituted by S.73(a) of FA2012.
Inserted by S.44(a) of FA2015.

133.—In this Chapter

“the Acts” has the meaning assigned to it by section 1078(1) of the Taxes Consolidation Act 1997;

Inserted by S.44(a) of FA2015.

“computer” means any electronic device used for information storage or retrieval and includes a mobile phone or any other electronic means of information storage or retrieval;

Inserted by S.44(a) of FA2015.

“computer at the premises or place which is being searched”, includes any other computer, whether at that premises or place, or at any other premises or place, which is lawfully accessible by means of the computer at the premises or place being searched;

“foreign packet” means any item, addressed in the final form in which it is to be carried from a place outside the State and delivered to an address in the State, and includes a postal packet within the meaning of the Communications Regulation (Postal Services) Act 2011;

Inserted by S.44(a) of FA2015.

“information in a non-legible form” has the meaning assigned to it by section 908C of the Taxes Consolidation Act 1997;

“postal services” has the same meaning as in the Communications Regulation (Postal Services) Act 2011;

“officer” means an officer of the Commissioners authorised by them in writing to exercise the powers conferred on officers by this Chapter;

Inserted by S.44(a) of FA2015.

“premises or place” means any building (or part of a building), dwelling, vehicle, any other vessel or place (or part of a place), whatsoever.

Power to stop vehicles

Subsection 1(a) substituted by S.59 of FA2005.

134.—(1) An officer in uniform may stop any vehicle in order—

- (a) that such officer, or any officer accompanying such officer, may exercise any power conferred on them by section 135 in relation to excisable products, any other products chargeable with a duty of excise, or any prohibited goods, where there are reasonable grounds to believe that such products or goods are being transported in or on such vehicle, or
- (b) to examine and take samples of mineral oil under section 135(2)(a).

(2) An officer in uniform or a member of the Garda Síochána may stop any vehicle for any purpose related to vehicle registration tax or the registration of vehicles in any of the registers established and maintained under Chapter IV of Part II of the Finance Act, 1992.

(3) Any person in charge of a moving vehicle shall, at the request of an officer in uniform or a member of the Garda Síochána, stop such vehicle.

(4) Any person in charge of a vehicle shall, whether such vehicle has been stopped by an officer or member of the Garda Síochána under this section, or is already stationary, at the request of an officer or member of the Garda Síochána—

- (a) keep such vehicle stationary for such period as is reasonably required to enable an officer or member to exercise any power conferred on such officer or member by section 135, or
- (b) where such vehicle is in the opinion of such officer or member situated in a place unsuitable for the exercise of any power conferred on such officer or member by section 135, take such vehicle or cause it to be taken to such place as such officer or member may consider suitable for the exercise of such power.

Power to examine and search vehicles and to take samples

135.—(1) An officer, on production of the authorisation of such officer if so requested by any person affected, or any officer accompanying such officer, may—

- (a) examine a vehicle,
- (b) carry out such searches of a vehicle as may appear to the officer to be necessary to establish whether—
 - (i) anything on or in the vehicle or in any manner attached to the vehicle is liable to forfeiture under the law relating to excise, or
 - (ii) any excisable products being transported in or on, or in any manner attached to, the vehicle, are transported in accordance with any provision of Chapter 2A or 2B to which they may be subject, and conform in every material respect with the description of such excisable products in any electronic administrative document, simplified accompanying document, electronic simplified administrative document, or other document that is required, under any such provision, for the consignment of the excisable products concerned, or

Substituted by S.73(b) of FA2012.
Amended by S.56(1)(f) of F(No. 2)A2023.

- (iii) the vehicle has been, or is required to be, registered in any of the registers established and maintained under Chapter IV of Part II of the Finance Act 1992,
- (c) take samples, without payment, of any excisable products in or on, or in any manner attached to the vehicle, and
- (d) question the person in charge of the vehicle in relation to the vehicle or anything on or in or in any manner attached to the vehicle, and require such person—
 - (i) to give, within such time and in such form and manner as may be specified by the officer or accompanying officer, all such information in relation to the vehicle as may reasonably be required by the officer or accompanying officer and is in the possession or procurement of such person,
 - (ii) within such time and in such manner as may be specified by the officer or accompanying officer, to produce and permit the inspection of and the taking of copies of, or of extracts from, all such records relating to the vehicle and any excisable products in or on, or in any manner attached to, the vehicle, as are reasonably required by the officer or accompanying officer and are in the possession or procurement of the person, and
 - (iii) to produce to the officer or accompanying officer any document referred to in paragraph (b)(ii).

Amended by S.54(a) of FA2013

Substituted by S.73(c) of FA2012.

Subsection inserted by S.44(b) of FA2015.

(1A) Where an officer carrying out a search under subsection (1) reasonably suspects that any excisable products in the vehicle are liable to forfeiture under excise law, then that officer, or any officer accompanying that officer, may—

- (a) search the vehicle for any record or thing that the officer reasonably believes is likely to be of value (whether by itself or together with other information) to the investigation of excisable products liable to forfeiture, or for any legal proceedings under excise law,
- (b) inspect and take copies of, or extracts from, any such record (including, in the case of any information in a non-legible form, a copy of, or of an extract from, such information in a permanent legible form),
- (c) remove, retain and operate any computer found in the vehicle, or in the possession of a person in the vehicle, for the purpose of accessing, reproducing or copying records that an officer reasonably believes to contain information likely to be of value in the investigation of excisable

products liable to forfeiture or for any legal proceedings under excise law and to retain such computer for so long as it is reasonably required for this purpose, and

- (d) require a person who appears to an officer to be in a position to facilitate access to the records and information held on, or which can be accessed by the use of, a computer retained under paragraph (c), to give to the officer any password or guidance necessary to operate the computer for the purpose of accessing the records and information held on, or accessible, by the computer, in a form in which the information is visible and legible.

(2) An officer, on production of the authorisation of such officer if so requested by any person affected, or a member of the Garda Síochána, may—

- (a) examine and take samples of any mineral oil in any fuel tank or otherwise present on or in any vehicle, or anything attached to any vehicle, for use or capable of being used for combustion in the engine of the vehicle, whether or not the vehicle is attended,
- (b) examine or inspect any vehicle or anything attached to any vehicle for the purposes of paragraph (a),
- (c) question—
 - (i) the owner of any vehicle,
 - (ii) any person who for the time being stands registered as the owner of any vehicle in any of the registers established and maintained under Chapter IV of Part II of the Finance Act, 1992,
 - (iii) any director, manager or principal officer of such owner where the registered owner is not one or more individuals, or
 - (iv) the person in charge of any vehicle,

in relation to such mineral oil, and require such owner, person, director, manager or principal officer to give to him or her any information in relation to such mineral oil as may reasonably be required and which is in the possession or procurement of such owner, person, director, manager or principal officer, as the case may be.

Entry and search of premises

Subsection (1) amended by S.70 of FA2008 and by S.44(c)(i) of FA2015.

136.—(1) An officer may, at all reasonable times, on production of the authorisation of such officer if so requested by any person

affected, enter a premises or place (other than a dwelling) in, or from, which—

Amended by Sch. 3(5)(c) of FA2014.

(a) the production, processing, holding, storage, keeping, importation, purchase, packaging, offering for sale, sale or disposal of any product referred to in section 97, or the supply of electricity, is being or is reasonably believed by the officer to be carried on,

Amended by S.73(d) of FA2012

(b) the manufacture, distribution, storage, repair, modification, importation, dealing, delivery or disposal of mechanically propelled vehicles is being, or is reasonably believed by the officer to be carried on,

Paragraph (c) substituted by S.53 of FA2014.

(c) bets liable to betting duty are reasonably believed to be accepted or facilities, the use of which is subject to commission charges (within the meaning of section 67B of the Finance Act 2002) liable to betting intermediary duty, are reasonably believed to be provided,

Paragraphs (d) to (f) substituted by S.73(e) of FA2012.

(d) any activity for the provision of postal services, or any other service for the delivery of foreign packets, is being, or is reasonably believed by the officer to be, carried on,

(e) any activity for the supply of electricity or natural gas is being, or is reasonably believed by the officer to be, carried on, or

(f) any records relating to, or reasonably believed by the officer to relate to, the products or activities referred to in paragraph (a), (b), (c) or (e) are kept, or are reasonably believed by such officer to be kept.

Amended by S.44(c)(i) of FA2015.

(2) An officer, on production of the authorisation of such officer if so requested by any person affected, or a member of the Garda Síochána, may—

(a) enter and inspect any premises or place (other than a dwelling) for the purposes of section 135(2) and bring onto those premises any vehicle being used in the course of his or her duties,

(b) make such search and investigation of such premises or place as he or she may consider to be proper.

(3) An officer in or on any premises or place pursuant to subsection (1) may there—

Substituted by S.73(f) of FA2012.

(a) carry out such search and investigation as such officer may consider to be proper, including the examination and the carrying out of searches, under section 135, of any vehicle on such premises or in such place,

Amended by Sch. 3(5)(c) of
FA2014

(b) take account of, and without payment, take samples of any product referred to in section 97 and of any materials, ingredients and substances used or to be used in the manufacture of such product,

Substituted by S.44(c)(ii) of
FA2015.

(c) in relation to any records referred to in subsection (1)(f)—

(i) search for, inspect and take copies of or extracts from any such records (including, in the case of any information in a non-legible form, a copy of, or of an extract from, such information in a permanent legible form),

(ii) require any person present to produce any such records which are in that person's possession, custody or procurement and in the case of information in a non-legible form, to produce it in a legible form or to reproduce it in a permanent legible form,

(iii) remove and, for as long as necessary, retain (or cause to be removed and retained) any record found there, or in the possession of a person present there at the time of the search, where an officer reasonably believes the record is likely to be of value (whether by itself or together with other information)—

(I) to the investigation of an offence under excise law, or for the purpose of any legal proceedings under excise law, or

(II) as evidence of, or relating to, the commission of an offence under excise law, or

(III) in the assessment of any duty payable under excise law or any other tax payable under the Acts,

and

(iv) take any other steps which may appear to the officer to be necessary for preserving any such record and preventing interference with it,

(d) question any person present in relation to—

(i) any product referred to in subsection (1)(a) or any materials, ingredients or other substances used or intended to be used in the manufacture of such product,

(ii) any vehicle,

Amended by S.73(h) of FA2012.

(iii) any records referred to in subsection (1)(f),

Amended by S.81, Schedule 3,
5.(c) of FA2011.

produced or found in or on such premises or place, and such person shall give to such officer all information required of such person which is in his or her possession, custody or procurement, and

Substituted by S.73(i) of
FA2012.

(e) exercise the powers of detention under section 140 and of seizure under section 141.

Inserted by S.73(j) of FA2012.

(3A) Where an authorised officer in or on any premises or place, referred to in subsection (1)(d) or pursuant to a warrant issued under subsection (5), has reason to believe that a foreign packet contains excisable products, and that any requirement—

(a) under excise law, for payment of the excise duty on such products, or

Substituted by S.47(1) of
FA2021

(b) for any declaration under the Council Regulation, Commission Delegated Regulation (EU) 2015/2446, Commission Delegated Regulation (EU) 2016/341 of 17 December 2015, Commission Implementing Regulation (EU) 2015/2447¹ or the Customs Act 2015 in relation to such foreign packet,

has not been complied with, then such officer may open such foreign packet and examine its contents.

(4) An officer in or on any premises or place pursuant to this section, or any person accompanying an officer pursuant to subsection (5), may require any person present to give to such officer or such other person his or her name and address.

Subsection (4A) inserted by S.90
of FA2003.

(4A) (a) Where an officer in or on any premises or place pursuant to this section has reason to believe that any concealed pipe, conveyance, utensil or other equipment is being kept or made use of in or on such premises or place with intent to evade alcohol products tax, then such officer or any person assisting such officer may break open any floor or wall of such premises or place, or any ground in or adjoining it, to search for such concealed pipe, conveyance, utensil or equipment.

(b) Where no concealed pipe, conveyance, utensil or other equipment, to which paragraph (a) relates, is found as a result of the breaking open of any floor or wall of any premises or place, then nothing in that paragraph shall be used as a defence in any civil proceedings to a claim arising out of any damage caused by that breaking open.

¹ OJ No. L69, 15.3.2016, p.1

(5) Without prejudice to any power conferred by subsections (1) to (4), a judge of the District Court may, if satisfied on the sworn information of an officer that there are reasonable grounds for suspecting that—

- (a) anything liable to forfeiture under the law relating to excise, or
- (b) any records relating to transactions in contravention of the laws relating to excise,

are kept or concealed on or at any premises or place, issue a search warrant.

Subsection substituted by S.44(c)(iii) of FA2015.

(6) A search warrant issued under this section shall be expressed and shall operate to authorise a named officer accompanied by such other officers and such other persons as the officer considers necessary—

- (a) to enter, at any time or times within one month of the date of issuing of the warrant, (if necessary by the use of reasonable force) the premises or place named or specified in the warrant,
- (b) to search, or cause to be searched, such premises or place and to inspect any thing or record found there,

(c) to require any person present to produce for inspection any record or thing in that person's possession, custody, or procurement,

Paragraph inserted by S.35(a) of FA2016.

(ca) to take account of and, without payment, take samples of any product referred to in section 97 and of any materials, ingredients and substances used or to be used in the manufacture of such product,

(d) to seize any thing found there, or in the possession of a person there, if there are reasonable grounds for suspecting that the thing is liable to forfeiture under the law relating to excise, or exercise, in relation to any thing so found or in the possession of such a person, the power of detention under section 140,

(e) to remove, or cause to be removed, from there any thing or record that the officer has reason to believe may be of value to the investigation of an excise offence, or as evidence in proceedings under excise law, or for the purpose of assessing any duty payable under excise law or any other tax payable under the Acts, and to retain such thing or record for so long as it is reasonably required for these purposes,

(f) to take any other steps which may appear to the officer to be necessary for preserving any such thing or record and preventing

interference with it.

Subsection inserted by
S.44(c)(iv) of FA2015.

(7) The authority conferred by a search warrant issued under this section to retain (or to cause to be retained) any record or thing includes—

- (a) in the case of books, documents or records, authority to make and retain a copy of the books, documents or records, and
- (b) authority to remove and, for as long as necessary, retain, any computer or other storage medium in which records are kept and to inspect, copy, or cause to be copied, such records.

Subsection inserted by
S.44(c)(iv) of FA2015.

(8) An officer acting pursuant to a search warrant under this section may—

- (a) operate any computer at the premises or place being searched, or cause any such computer to be operated by a person accompanying the officer,
- (b) operate any computer removed from a premises or place searched under this section or cause any such computer to be operated by a person accompanying the officer, and
- (c) require any person at that premises or place who appears to the officer to be in a position to facilitate access to the records and information held in a computer, or to records and information that can be accessed by the use of that computer—

(i) to give to the officer any password or guidance necessary to operate it,

(ii) to enable the officer to examine the information accessible by the computer in a form in which the information is visible and legible, or

(iii) to produce the information in a form in which it can be removed and in which it is, or can be made, visible and legible.

Subsection inserted by
S.44(c)(iv) of FA2015.

(9) Any record or thing retained by an officer under this section which is required for the purposes of any legal proceedings, whether criminal proceedings or otherwise, may be retained for so long as it is reasonably required for those purposes.

Power to stop, question and search for intra-Community baggage

136A.— Where an officer has reason to believe that a person entering the State may, in relation to excisable products in the baggage of the person or otherwise transported by that person, be committing an offence under section 119 or 121, the officer, on

Section inserted by S.73(k) of FA2012, substituted by S.54(b) of FA2013.

production of the authorisation of that officer if so required by that person, may—

- (a) require that person to stop, and to give to that officer—
 - (i) the name, address and date of birth of that person,
 - (ii) any information in relation to such excisable products or baggage, and
 - (iii) such excisable products for examination,
- and
- (b) examine any such baggage and excisable products.

General provision concerning samples

137.—[Deleted by S.73(l) of FA2012.]

Substitute fuels

137A. — (1) In this section—

Section inserted by S.35(b) of FA2016.

“business” means any employment, trade, profession or vocation;

“relevant person” means any person who has procured or has or had possession, custody or control of a relevant product;

“relevant product” means any product in liquid form.

(2) A word or expression used in this section and which is also used in Chapter 1 of Part 2 of the Finance Act 1999 has, unless a meaning is assigned to it in this section or the contrary intention otherwise appears, the same meaning in this section as it has in that Chapter.

(3) An officer may make such enquiries of any person as the officer deems appropriate to establish the use or intended use of a relevant product and such person shall give to such officer all information required of such person which is in his or her possession, custody or procurement.

(4) (a) Subject to paragraph (b), where an officer forms an opinion that a relevant product is a substitute fuel or an additive, the powers set out in sections 134 to 136 and section 140 shall apply in respect of that relevant product.

Amended by S.51 of FA2017.

(b) An officer may form an opinion that a relevant product is a substitute fuel or an additive having regard to the following:

- (i) the relevant person’s business;
- (ii) the relevant person’s stated reasons for procuring or having possession, custody or control of the relevant

product;

(iii) the nature of the relevant product, including the nature of any package or container;

(iv) the relevant person's conduct, including his or her use, or stated intended use, of the relevant product or any refusal to disclose his or her use, or intended use, of the relevant product;

(v) the quantity procured or purchased of the relevant product;

(vi) the frequency of deliveries of relevant products to the relevant person;

(vii) any document or other information whatsoever about the relevant product;

(viii) any other circumstances that appear to be relevant.

(5) Where the officer forms the opinion that the relevant product is a substitute fuel or additive that relevant product shall, in accordance with the provisions of Chapter 1 of Part 2 of the Finance Act 1999, be liable to mineral oil tax.

Powers of officers in respect of certain tobacco products

Section substituted by S.49 of F(No. 2)A2013.

138.— (1) Where an officer or a member of the Garda Síochána has reasonable grounds for believing that a person is committing or has committed an offence under section 78 of the Finance Act 2005, then the officer or member may—

(a) require the person to give to that officer or member—

(i) the name, address and date of birth of that person,

(ii) all such information in relation to the tobacco products concerned as may reasonably be required by that officer or member and which is in the possession or procurement of that person, and

(iii) any tobacco products concerned for examination,

(b) examine any tobacco products concerned,

(c) where the officer or member has reasonable grounds to believe that any tobacco products concerned are contained in any receptacle, carry out such search and examination of that receptacle as may be required to establish that such an offence is being, or has been, committed in respect of those tobacco products,

(d) require any person who has possession, custody or control of a receptacle referred to in paragraph (c)—

(i) to give the receptacle to the officer or member, and

(ii) to provide access to the receptacle, as may be required by the officer or member for the purposes of that paragraph,

and

(e) detain the person for as long as is reasonably required for the purposes of this section.

Subsection substituted by S.48
FA 2017.

(2) For the purposes of paragraphs (c) and (d) of subsection (1), a receptacle includes, but is not limited to, a bag, parcel, carton, item of luggage, container or other thing that may be used in the storage or transport of a good but does not include any article of clothing worn by the person concerned.

**Power of arrest and detention
of persons**

Subsection (1) substituted by
S.60 of FA2005.

139.—(1) Where an officer or a member of the Garda Síochána has reasonable grounds to suspect that a person is committing or has committed an offence under—

(a) section 119,

(b) section 102(3) of the Finance Act 1999, or

(c) section 79(5) (inserted by the Finance Act 2005) of the Finance Act 2003,

then such officer or member may arrest such person without warrant.

Amended by S.93(b) of FA2005.

(2) (a) Where an officer has reasonable grounds to believe that a person is committing or has committed an offence under section 78 of the Finance Act 2005, then such officer may detain the person and, as soon as practicable thereafter—

(i) present the person, or

(ii) bring and present the person,

to a member of the Garda Síochána.

(b) Where a member of the Garda Síochána has reasonable grounds to believe—

Amended by S.93(b) of FA2005.

(i) that a person is committing or has committed an offence under section 78 of the Finance Act 2005, or

Amended by S.93(c) of FA2005.

- (ii) in case of a person presented or brought and presented to such member by an officer, that an offence under the said section 78 was or had been committed by the person and the person was duly detained by an officer under paragraph (a) for the offence and was either presented or brought and presented to such member in accordance with that paragraph,

then, such member may arrest the person without warrant.

Designation of secure premises for keeping of detained or seized goods

Inserted by S.74 of FA2007.

139A.—Any thing detained or seized under the law relating to excise may, in addition to being duly kept by an officer, also be kept in any secure premises or place designated by the Commissioners for such purpose, and the Commissioners may designate a premises or place under the control of a person contracted to them for such purpose.

Detention of goods and vehicles

140.—(1) Where an officer reasonably suspects that any excisable products, or any other goods, are liable to forfeiture under the law relating to excise then—

- (a) all such excisable products or other goods,
- (b) any other thing being made use of in the conveyance of such products or goods, and
- (c) any vehicle in or on which or attached to which in any manner any such excisable products or goods are found,

may be detained by such officer until such examination, enquiries or investigations as may be deemed necessary by such officer or another officer, have been made for the purposes of determining whether or not such products, goods, thing or vehicle are liable to forfeiture.

Amended by S.93(b) of FA2005.

(2) Where a member of the Garda Síochána reasonably suspects that any excisable products, other goods or other thing or any vehicle is liable to forfeiture under section 78 of the Finance Act 2005, such products, goods, other thing or vehicle may be detained by such member until such examination, enquiries or investigations as may be deemed necessary by such member or another member, or by an officer, have been made for the purposes of determining whether or not such products, goods, other thing or vehicle are liable to forfeiture.

(3) Where an officer or a member of the Garda Síochána reasonably suspects—

- (a) that a vehicle has not been registered in any of the registers established and maintained under Chapter IV of Part II of the Finance Act, 1992,

- (b) that a vehicle has been converted (within the meaning of that Chapter) and a declaration in relation to such conversion has not been made under section 131 of the Finance Act, 1992, or
- (c) that vehicle registration tax has not been paid in respect of a vehicle,

then such officer or member may detain such vehicle for such period as is required to carry out such examination, enquiries or investigations as may be deemed necessary by such officer or member to determine to his or her satisfaction whether or not—

- (i) such vehicle has been registered,
- (ii) such declaration has been made, or
- (iii) such vehicle registration tax has been paid.

(4) When a determination referred to in subsection (1), (2) or (3) has been made in respect of any excisable products, other goods, other thing or a vehicle or on the expiry of a period of one month from the date on which such products, goods, other thing or vehicle were or was detained under that subsection, whichever is the earlier, such products, goods, other thing or vehicle are to be either seized as liable to forfeiture under the Customs Acts or under section 141, or released.

Seizure of goods and vehicles

141.—(1) Any goods or vehicles that are liable to forfeiture under the law relating to excise may be seized by an officer.

Amended by S.93(a) of FA2005.

(2) Anything liable to forfeiture under section 78 of the Finance Act 2005, may be seized by a member of the Garda Síochána and shall be delivered to an officer.

Notice of seizure

142.—(1) Subject to subsection (2), an officer shall give notice of the seizure of anything as liable to forfeiture and of the grounds for seizure to any person who to the officer's knowledge was at the time of the seizure the owner or one of the owners of the thing seized.

(2) Notice under subsection (1) need not be given under this section to a person if the seizure was made in the presence of the person, the person whose offence or suspected offence occasioned the seizure or in the case of anything seized in any ship or aircraft, in the presence of the master or commander of such ship or aircraft.

Amended by S.47(a) of FA2011.

(3) Notice under subsection (1) shall be given in writing and the notice shall include a statement of section 127 and be deemed to have been duly given to the person concerned—

- (a) if it is delivered to the person personally, or

- (b) if it is addressed to the person and left or forwarded by post to the person at the usual or last known place of abode or business of the person or, in the case of a body corporate, at its registered or principal office, or
- (c) if the person has no known address in the State, by publication of notice of the seizure concerned in Iris Oifigiúil.

143.— [~~Deleted~~ by section 47(b) of FA 2011.]

Power to deal with seizures, before and after condemnation

144.—(1) In this section “claimant” has the same meaning as it has in section 127.

S.144(1) amended by S.47(c)(i) of FA2011.

(2) The Commissioners may, in their discretion, restore anything seized as liable to forfeiture under the law relating to excise, and the Minister for Finance may order such restoration.

Substituted by S.47(c)(ii) of FA2011.

(3) Without prejudice to subsection (2), the Commissioners may as they think fit, and notwithstanding that the thing seized has not yet been condemned, or deemed to have been condemned, as forfeited—

- (a) if a notice of claim in relation to such thing has been duly given under section 127, deliver it up to the claimant on payment to them of such sum as they deem proper, being a sum not exceeding that which represents the value of the thing, including any tax or duty on it that has not been paid, or
- (b) if the thing seized is, in the opinion of the Commissioners, of a perishable or hazardous nature, or is tobacco products, sell or destroy it.

Substituted by S.47(c)(ii) of FA2011.

(4) If, where anything is delivered up, sold or destroyed under subsection (3), it is held by the court in condemnation proceedings under section 128 that such thing was not liable to forfeiture at the time of its seizure, the Commissioners shall, subject to any deduction allowed under subsection (5), on demand tender to such claimant—

- (a) where a sum has been paid by such claimant under subsection (3)(a), an amount equal to that sum,
- (b) if the thing has been sold under subsection (3)(b), an amount equal to the proceeds of sale,
- (c) if the thing has been destroyed under subsection (3)(b), an amount equal to the market value of the thing at the time of its seizure.

(5) Where the amount to be tendered under subsection (4) includes any sum on account of any duty or tax chargeable on the thing which

has not been paid before its seizure, the Commissioners may deduct from the amount so much of it as represents the duty or tax.

(6) If the claimant accepts any amount tendered under subsection (4), such claimant shall not be entitled to maintain proceedings in any court on account of the seizure, detention, sale or destruction of the thing concerned.

(7) All goods seized by an officer or by a member of the Garda Síochána as liable to forfeiture shall after condemnation of such goods be either—

- (a) sold or destroyed, or
- (b) otherwise disposed of in accordance with regulations made under section 153.

(8) Notwithstanding any other provision of this Chapter relating to goods seized as liable to forfeiture, an officer who seizes as liable to forfeiture any spirits or any stills, vessels, utensils, wort or other material for manufacturing, distilling or preparing spirits may at the discretion of such officer forthwith spill, break up or destroy any of those goods.

CHAPTER 5

Miscellaneous

Delegation of powers, functions and duties of Commissioners

Section inserted by S.100 of FA2003, substituted by S.55 of FA2013.

144A.—(1) Subject to subsections (2) and (3), any power, function or duty conferred or imposed on the Commissioners by any provision of excise law may, subject to the direction and control of the Commissioners, be exercised or performed on their behalf by an officer.

(2) Any power, function or duty conferred or imposed on the Commissioners in relation to—

- (a) tax warehousing under section 108A,
- (b) the authorisation of a warehousekeeper and the approval of a tax warehouse under section 109,
- (c) the authorisation of a registered consignor under section 109A,
- (d) the authorisation of a registered consignee under section 109IA,
- (da) the registration of a certified consignor or a certified consignee under section 109RA(4),
- (e) the approval of a tax representative under section 109U(2), and
- (f) vehicle registration tax and the registration of vehicles under—
 - (i) paragraph (c) of section 131(1),
 - (ii) paragraphs (c) and (d) of section 133(2) or
 - (iii) subsections (2) and (3) of section 136,

Paragraph substituted by S.34(a) of FA2016.

Inserted by S.47(1) of FA2021

Amended by S.50(a)(i) of F(No. 2)A2013.

of the Finance Act 1992, may be exercised or performed on their behalf, and subject to their direction and control, by an officer authorised by them in writing for that purpose.

Inserted by S.50(a)(ii) of F(No. 2)A2013.

(3) Subsections (1) and (2) shall not apply to any power of the Commissioners to make regulations under any provision of excise law.

(4)(a) Any power, function or duty that may be exercised or performed by an officer under subsection (1) or (2) may be

exercised or performed by an officer who is a bureau officer.

(b) In this subsection ‘bureau officer’ means an officer appointed as a bureau officer under section 8(1)(a)(ii) of the Criminal Assets Bureau Act 1996.

Appeals to Commissioners

145.—[Subsections (1), (1A) and (2) **deleted** by S.50(b)(i) of F(No. 2)A 2013]

Subsections (3) to (5) substituted by S.50(b)(ii) of F(No. 2)A2013.

(3) Any person who is the subject of a decision of the Commissioners in relation to any of the following matters and who is aggrieved by the decision may appeal to the Commissioners against that decision:

Subsection (3) amended by Schedule 2 of F(Tax Appeals)A2015.

(a) the registration of a vehicle, or the amendment of an entry in the register referred to in section 131 of the Finance Act 1992;

Amended by Schedule 2 of F(Tax Appeals)A2015.

(b) the determination of the open market selling price of a vehicle under section 133 of the Finance Act 1992;

Amended by Schedule 2 of F(Tax Appeals)A2015.

(c) the granting, refusal or revocation by the Commissioners of an authorisation under section 136 of the Finance Act 1992, or the arrangements for payment of vehicle registration tax under that section;

Inserted by Schedule 2 of F(Tax Appeals)A2015.

(d) the liability to vehicle registration tax or the repayment of vehicle registration tax.

(4) An appeal under this section shall be made in writing and shall set out in detail the grounds of the appeal.

(5) An appeal under this section shall be lodged by the person concerned with the Commissioners within 2 months from the date of the notification by the Commissioners of the decision concerned, or within such longer period as they may, in exceptional cases, allow.

(6) An appeal shall, subject to subsection (12), be determined by the Commissioners within a period of 30 days from its lodgement with the Commissioners.

(7) The Commissioners may appoint one or more of their officers for the purposes of carrying out their functions under this section but no such officer shall determine an appeal under this section in respect of a decision he or she has made.

(8) The Commissioners shall notify in writing an appellant concerned of their determination of an appeal and the reasons for their determination.

(9) Where the Commissioners determine on appeal that the amount due is less than the amount paid, they shall repay the amount overpaid to the appellant concerned.

(10) Where the Commissioners determine on appeal that the amount due is greater than the amount paid, the appellant concerned shall pay the amount underpaid.

(11) For the purpose of determination of an appeal any goods or vehicles to which the appeal relates are to be produced to the Commissioners for inspection, if so required.

(12) Where an appeal has been lodged but not determined in accordance with subsection (6) there shall be deemed to have been a determination by the Commissioners on the last day of the period of 30 days from the date the appeal was lodged that the appeal was not upheld but such deeming shall cease to have effect if a determination is subsequently made by the Commissioners before a determination is made by the Appeal Commissioners under section 146 in respect of the matter concerned.

Inserted by Schedule 2 of F(Tax Appeals)A2015.

(12A) Where a person is required to furnish a return or to pay an amount of vehicle registration tax for the purpose of any requirement of excise law, no appeal lies under this section until such time as the person furnishes the return and, as the case may be, pays or has paid the amount of vehicle registration tax.

(13) [**Deleted** by S.74(c) of FA2012]

Appeals to Appeal Commissioners

Subsections (1), (1A) and (2) substituted by S.50(c) of F(No. 2)A2013.

146. —(1) Except where section 145(3) applies, any person who—

- (a) has paid an amount of excise duty,
- (b) has received a notice of assessment under section 99A, or is otherwise called upon by the Commissioners to pay an amount of excise duty that, in their opinion, that person is liable to pay, or
- (c) has received a repayment of excise duty or has made a claim for such repayment that has been refused,

Substituted by Schedule 2 of F(Tax Appeals)A2015.

and is aggrieved by any of the matters referred to in paragraphs (a) to (c), may, subject to subsection (3), in respect of the liability to excise duty concerned or the amount of that liability, or the amount of the repayment or the refusal to repay, appeal to the Appeal Commissioners in accordance with section 949I of the Taxes Consolidation Act 1997 within the period specified in subsection (2).

Amended by Schedule 2 of F(Tax Appeals)A2015.

(1A) Any person aggrieved by any of the following matters may appeal the matter to the Appeal Commissioners in accordance with section 949I of the Taxes Consolidation Act 1997 within the period specified in subsection (2):

- (a) a determination of the Commissioners under section 145;
- (b) a refusal to authorise a person as an authorised warehousekeeper, or to approve a premises as a tax warehouse, under section 109, or a revocation under that section of any such authorisation or approval;
- (c) a refusal to authorise a person as a registered consignee under section 109IA or a revocation under that section of any such authorisation;
- (d) a refusal to authorise a person as a registered consignor under section 109A or a revocation under that section of any such authorisation;

Substituted by S.34(b) of FA2016.

Inserted by S.47(1) of FA2021

- (da) a refusal to register a person as a certified consignor or a certified consignee under section 109RA(4) or a revocation under that section of any such registration;
- (e) a refusal to approve a person as a tax representative under section 109U(2) or a revocation under that section of any such approval;
- (f) a refusal to grant a licence under section 101 of the Finance Act 1999 or a revocation under that section of any such licence that has been granted.

Substituted by Schedule 2 of F(Tax Appeals)A2015.

(2) The period specified for the purpose of making an appeal under this section is the period of 30 days after the date of—

- (a) the payment of excise duty in the case of an appeal under subsection (1)(a),
- (b) the notice of assessment or other notice calling for payment of the amount concerned in the case of an appeal under subsection (1)(b),
- (c) the repayment or the notice of the refusal to repay in the case of an appeal under subsection (1)(c), or
- (d) the notice of the determination, refusal or revocation concerned in the case of an appeal under subsection (1A).

Substituted by Schedule 2 F(Tax Appeals)A2015.

(3) Where a person is required to furnish a return or to pay an amount of excise duty for the purpose of any requirement of excise law, no appeal lies under this section until such time as the person furnishes the return and, as the case may be, pays or has paid the amount of excise duty.

(4) — [**Deleted** by Schedule 2 of F(Tax Appeals)A 2015]

(5) — [**Deleted** by Schedule 2 of F(Tax Appeals)A 2015]

Payment of duty pending appeal

147.— [Deleted by Schedule 2 of F(Tax Appeals)A 2015]

Exclusion of criminal matters

148.—Where liability for a duty of excise is the subject of criminal proceedings or a decision is pending on whether to initiate criminal proceedings in respect of such liability, then such liability or the amount of such liability or repayment connected with or sought in respect of such liability may not be appealed under section 145 or 146 until the determination of such criminal proceedings or a decision is duly taken not to initiate criminal proceedings.

Repeals and revocations (Part 2)

149.—The enactments set out in Part 1 and Part 2 of Schedule 3 are repealed in the case of those set out in Part 1, and revoked in the case of those set out in Part 2, to the extent mentioned in the third column of those Parts opposite the reference to the enactment concerned.

Saver

150.—(1) In this section and section 151 “repealed enactments” means the enactments repealed or revoked under section 149.

(2) If, and in so far as a provision of this Part operates, as and from the day appointed under section 152, in substitution for a provision of the repealed enactments, any order or regulation made or having effect as if made, and anything done or having effect as if done, under the substituted provision before that day is to be treated on and from that day as if it were an order or regulation made or a thing done under the provision of this Part which so operates.

Continuity

151.—(1) The provisions of this Part shall apply subject to so much of any Act which contains provisions relating to or affecting excise duties as—

- (a) is not repealed by this Part, and
- (b) would have operated in relation to these duties if this Part had not been substituted for the repealed enactments.

(2) The continuity of the operation of the law relating to excise duties shall not be affected by the substitution of this Part for the repealed enactments.

(3) Any reference, whether express or implied, in any enactment or document (including this Part)—

- (a) to any provision of this Part, or
- (b) to things done or to be done under or for the purposes of any provision of this Part,

shall, if and in so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding

provision in the repealed enactments applied or had applied, a reference to, or, as the case may be, to things done or to be done under or for the purposes of, that corresponding provision.

(4) Any reference, whether express or implied, in any enactment or document (including the repealed enactments and enactments passed and documents made)—

- (a) to any provision of the repealed enactments, or
- (b) to things done or to be done under or for the purposes of any provision of the repealed enactments,

shall, if and in so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision of this Part applies, a reference to, or as the case may be, to things done or deemed to be done or to be done under or for the purposes of, that corresponding provision.

(5) All officers who stood authorised or nominated for the purposes of any provision of the repealed enactments are deemed to be authorised or nominated, as the case may be for the purposes of the corresponding provision of this Part.

(6) All instruments, documents, authorisations and letters or notices of appointment made or issued under the repealed enactments and in force immediately before the commencement of this provision shall continue in force as if made or issued under this Part.

Commencement

152.—This Part shall come into operation on such day as the Minister may appoint by order, and different days may be so appointed for different provisions or for different purposes.

[Commenced 1 October 2001 – S.I. No. 430 of 2001 refers.]

Regulations

153.—(1) The Commissioners, for the purposes of giving effect to this Part and of managing, securing and collecting excise duties or for the protection of the revenues derived from such duties may make regulations.

Subsection (1A) inserted by S.83 of FA2006.

(1A) Without prejudice to the generality of subsection (1), regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Commissioners to be necessary for the purposes of giving full effect to the Directive.

Amended by S.74(d) of FA2012.

(2) In particular, but without prejudice to the generality of subsection (1), regulations under this section may, in respect of the excisable products referred to in section 97, make provision—

(a) governing the securing, paying, collecting, remitting and repaying of excise duty,

Amended by S.47(1) of FA2021.

(b) governing the production, processing, holding and storing of such products under a suspension arrangement,

(c) governing the approval and the conditions to be attached to the approval of an authorised warehousekeeper and of a tax warehouse,

(d) governing the conditions to be complied with by a non-State vendor in relation to excisable products being dispatched by or on behalf of such vendor to the State,

Amended by S.74(e) of FA2012.
Amended by S.34(c) of FA2016.
Amended by S.47(1) of FA2021.

(e) governing the authorisation, and the conditions to be attached to such authorisation, of a registered consignee and a registered consignor, including the provision of security, the accounts and records to be kept and the control requirements to be complied with,

(f) **[Deleted by S.74(f) of FA2012.]**

(g) governing the approval and the conditions to be attached to the approval of a tax representative, including the provision of security, the keeping of accounts and records and notification of the place of delivery of excisable products,

Substituted by S.74(g) of FA2012.

(h) specifying in relation to the electronic administrative document (within the meaning of Chapter 2A) and movements of excisable products between Member States under a suspension arrangement—

(i) the correct completion of that document and the person responsible for that completion,

(ii) the submission of that document and the cancellation or amendment of that document after it is submitted,

(iii) the submission of a report of receipt or report of export (both within the meaning of Chapter 2A),

(iv) the confirmation of receipt or export where the computerised system is unavailable,

Inserted by S.47(1) of FA2021.

(ha) specifying in relation to the electronic simplified administrative document (within the meaning of Chapter 2B) and movements of excisable products which have been released for consumption between Member States—

(i) the correct completion of that document and the person responsible for that completion,

- (ii) the submission of that document and the cancellation or amendment of that document after it is submitted,
- (iii) the submission of a report of receipt (within the meaning of Chapter 2B), and
- (iv) the confirmation of receipt where the computerised system is unavailable,

(h) **[Deleted by S(74)(h) of FA2012.]**

Amended by S.74(i) of FA2012
and S.56(g) of F(No. 2)A2023.

(j) specifying in relation to the electronic simplified administrative document, the obligations, requirements and procedures to be complied with by persons—

- (i) receiving or intending to receive from another Member State excisable products released for consumption in that Member State, or
- (ii) dispatching or intending to dispatch to another Member State excisable products released for consumption in the State,

(k) **[Deleted by S.74(j) of FA2012.]**

Amended by S.74(k) of FA2012.
Amended by S.47(1) of FA2021.

(l) specifying, in relation to the exemption certificate referred to in section 109B, the form of that certificate and any necessary control requirements relating to its authentication,

(m) governing the conditions to be complied with by a person who acquires excisable products released for consumption in another Member State for importation into the State,

(n) establishing rules and criteria in relation to excisable products released for consumption in another Member State and imported into the State by a private individual whereby such products may be regarded as being imported for commercial purposes,

(o) providing for the conditions to be attached to, and the procedures to be complied with, in any case where repayment of excise duty is claimed on the delivery for commercial purposes of excisable products on which excise duty has been paid in the State to another Member State or on the purchase of such products from a State vendor by a person in another Member State,

Amended by S.47(1) of FA2021.

(p) governing any conditions to be complied with in relation to the remission of excise duty on losses of excisable products incurred during the production, processing,

holding, storing or transportation of such products under a suspension arrangement, or on losses incurred in the course of transportation of such products to the State under a suspension arrangement,

(q) requiring that excisable products be packaged, marked, or put up in sealed containers in order to facilitate identification of products being moved under suspension,

(r) requiring that excisable products released for consumption in the State be marked, stamped or made otherwise identifiable as being duty paid,

Amended by S.47(1) of FA2021.

(s) specifying the obligations, requirements and procedures to be complied with by a person in the State receiving wine under a suspension arrangement from a small wine producer,

Amended by S.74(l) of FA2012.

(t) prescribing the conditions to be fulfilled and the procedures to be followed by any person claiming repayment of excise duty under section 104(5), and, in particular—

(i) the form, manner and time of making an application for repayment of the duty,

(ii) the nature of the evidence of payment of duty in the State to be provided with such application,

(iii) the requirement of evidence of payment or securing of the excise duty in the Member State to which the excisable products are to be delivered,

Amended by S.74(m) of FA2012.

(iv) the requirement of the use of an accompanying document,

(v) the nature of the evidence of delivery of the excisable products where delivered from the State to be provided with such application, and

Amended by S.47(1) of FA2021.

(vi) any other such conditions and requirements as appear to the Commissioners to be necessary, and

Inserted by S.47(1) of FA2021

(u) governing the registration and the conditions to be attached to such registration of a certified consignor and of a certified consignee.

SCHEDULE 3

Repeals and Revocations relating to Excise Law

PART 1

Repeals

Session and Chapter or Number and Year (1)	Short title (2)	Extent of repeal (3)
7 & 8 Geo. 4, c.53.	Excise Management Act, 1827.	Sections 3, 11, 19, 20, 21, 22, 23, 29, 30, 31, 33, 35, 37, 38, 39, 40, 41, 42, 43, 65, 67, 68, 69 (in so far as it relates to excise duties), 70, 71, 73, 74, 76, 77, 78, 79, 81, 82, 83, 84,85, 107, 108, 109, 110 and 111.
9 Geo. 4, c. 44.	Excise Act, 1828.	Sections 1 and 2.
4 & 5 Will. 4, c. 51.	Excise Management Act, 1834.	Sections 5, 6, 7, 8, 9, 11, 12 (in so far as it relates to excise duties), 16, 19, 20, 22, 23, 25, 28 and 30.
4 & 5 Vict., c.20.	Excise Management Act, 1841.	Sections 2, 5, 7 and 31.
28 & 29 Vict., c.96.	Revenue (No. 2) Act, 1865.	Section 26.
30 & 31 Vict., c.90.	Revenue Act, 1867.	Sections 12 and 15.
51 & 52 Vict., c.8.	Customs & Inland Revenue Act, 1888.	Sections 5 and 8.
53 & 54 Vict., c.21.	Inland Revenue Regulations Act, 1890.	Sections 7 and 15, Sections 25, 26, 29, 30, 31 and 35, in so far as they relate to excise duties.
61 & 62 Vict., c.46.	Revenue Act, 1898.	Section 15, in so far as it relates to excise duties.
63 & 64 Vict., c.7.	Finance Act, 1900.	Section 9, in so far as it relates to excise duties.
1 & 2 Geo. 5, c.48.	Finance Act, 1911.	Section 3, in so far as it relates to excise duties.

Session and Chapter or Number and Year (1)	Short title (2)	Extent of repeal (3)
11 & 12 Geo. 5, c.32.	Finance Act, 1921.	Section 18, in so far as it relates to excise duties.
No. 31 of 1929.	Finance Act, 1929.	Section 29. Section 31, in so far as it relates to excise duties.
No. 15 of 1933.	Finance Act, 1933.	Section 33, in so far as it relates to excise duties.
No. 28 of 1935.	Finance Act, 1935.	Section 29.
No. 15 of 1946.	Finance Act, 1946.	Sections 18 and 23.
No. 10 of 1985	Finance Act, 1985	Section 39.
No. 10 of 1988.	Customs & Excise (Miscellaneous Provisions) Act, 1988.	Section 5, in so far as it relates to excise duties.
No. 9 of 1992.	Finance Act, 1992.	Chapter 2 of Part II.
No. 28 of 1992.	Finance (No. 2) Act, 1992.	Sections 24, 25, 26 and 27.
No. 13 of 1993.	Finance Act, 1993.	Section 76.
No. 8 of 1995.	Finance Act, 1995.	Sections 85, 86, 86A, 87, 87A, 87B, 88, 89, 90, 91, 92, 93, 94, 103, 104, 105, 106 and 107.

PART 2

Revocations

Number and Year (1)	Citation (2)	Extent of revocation (3)
S.I. No. 307 of 1975.	Imposition of Duties (No. 221) (Excise Duties) Order, 1975.	Regulations 17 and 18.
S.I. No. 394 of 1992.	European Communities (Customs & Excise) Regulations, 1992.	Regulations 5, 6, 7, 9, 10, 11 and 12.