



## Briefing Note 4—Customs and Excise Law

This Note sets out points of the law as it affects the Gay's The Word case. For a more general (though slightly dated) discussion of Customs legislation, see Geoffrey Robertson's book *Obscenity*, published by Weidenfeld and Nicholson, 1979.

### Prohibition of 'indecent or obscene' Articles

The prohibition, under which HM Customs and Excise raided Gay's The Word bookshop and the homes of three directors on 10 April 1984, is enshrined in the Customs Consolidation Act 1876. In a short list of prohibitions and restrictions it lists simply 'Indecent or obscene prints, paintings, photographs, books, cards, lithographic or other engravings, or any other indecent or obscene articles'. The terms 'indecent or obscene' are nowhere elaborated or given any statutory definition. Unlike the situation with the Obscene Publications Act there is, in the case of Customs law, no defence of literary or artistic merit. The sole test that may be applied by the courts is what the 'ordinary man in the street' would think to be indecent or obscene.

### Detention, Seizure, and Forfeiture

These procedures are set out in the Customs and Excise Management Act 1979. Section 49(1b) of that Act makes liable to forfeiture goods that contravene the 1876 Act list of prohibitions. The Customs initially 'detain' articles pending a decision to 'seize' them, at which time a Notice of Seizure is issued. Unless the recipient of this

Notice responds within 30 days claiming that the articles are not liable to forfeiture, the goods are condemned as forfeit 'by operation of law' without recourse to the courts (paragraph 5 of Schedule 3 of the 1979 Act). Otherwise the seizure is decided at 'condemnation proceedings' in court. HM Customs and Excise determine whether these proceedings are taken in a magistrate's court or the High Court. In the latter case, which generally applies only where the seized articles have a very high value, the court may determine a sum of money to be lodged by the owner of the articles as security for costs. If the Seizure Order is confirmed the articles are 'forfeited to the Crown'. Detention may occur at any time after importation, and there is no limit on the time that articles may be detained without the issue of a Seizure Notice.

### Criminal Proceedings

The 1979 Act also sets out, in Section 170, actions such as fraudulent evasion of the restrictions or dealing with or holding imported indecent or obscene articles, which are subject to criminal proceedings. When the Customs and Excise Commissioners bring a case before a magistrate's court, a convicted offender can be fined either £2,000 or three times the value of the goods detained, whichever is the greater, or be imprisoned for up to six months, or both. Where a case is brought by the Commissioners before a Crown Court the fine can be of any amount or the offender can be imprisoned for up to two years, or both. Criminal charges must be brought not later than three-years after the alleged commission of the crime.



Criminal proceedings are unlikely to be brought against individuals who imported 'indecent' material for their personal use, though legally this is possible. However, the material may be forfeit.

### **Relationship of Criminal and Condemnation Proceedings**

Where there are related criminal proceedings, these will normally be taken as a matter of practice before any condemnation proceedings which may be instituted. A finding of guilty by the criminal court will bind the court hearing the condemnation proceedings, i.e. the articles in question must be forfeit.

### **Setting of Precedents**

A decision on forfeiture by a magistrate's court is not binding on other courts, even on a magistrate sitting in the same court later the same day. In other words a particular book could be forfeit in the morning and released in another case in the afternoon. But a decision by the High Court, unless it is reversed on appeal, is binding on the High Court and all lower courts. Hence a book declared not indecent by a High Court could be imported thereafter unless the decision was reversed on appeal.

Decisions reached by the courts hearing cases brought under the different Obscene Publications Act have no bearing on cases under Customs law. In other words a book declared obscene under one law may be found not to be obscene under the other, and one finding does not bind the other.

### **Judgement of an Article as 'Indecent or Obscene'**

The initial judgement about the indecency or obscenity of an article subject to Customs jurisdiction is made by the individual Customs officer. He or she may have access to a list of articles it is intended to seize, but this is not known for certain and, if a list exists, it is not available for public inspection. Any decision to

detain allegedly indecent or obscene articles is passed up to headquarters for confirmation, probably at Principal level, unless the Customs officer knows it to have already been declared indecent by a court.

The law assumes that anyone knows what is 'indecent or obscene'. Although the 1876 Act carries no definition of these terms the principle that 'ignorance of the law is no excuse' still applies. The importer of a book has absolutely no way of knowing how the terms will be interpreted by Customs officers, magistrates, or judges. A book can be prohibited import under the Customs law, but lawfully on sale as a UK publication to which the different test of the Obscene Publications Act applies.

### **The Customs Action**

The raid by HM Customs and Excise on the bookshop and the homes of three Gay's The Word directors took place under the powers of a Writ of Assistance. This Writ is renewed at the beginning of each monarch's reign and gives Customs the right to enter and search any premises and to take away any articles they wish, in connection with any items subject to prohibition or duty. The use of this Writ is supposedly tightly controlled by HM Customs and Excise, which means in practice that its use is decided by the Collector for a particular area. In the case of Gay's The Word this was the Collector for London (City and South). The raid was carried out by the local Investigation Unit which is based a few yards from Gay's The Word bookshop.

The local police were forewarned of the raids but did not participate. They can, however, be asked to help enforce the Customs law.

### **Tapping Phones & Opening Mail**

HM Customs and Excise would need the consent of the Home Secretary in order to tap telephones. It is not known if they did tap telephones in this case. But they are free to open any mail coming into the country, as it is treated as 'imports'. It is not clear how they would have had access to outgoing mail as they appear to have done.

NOTE: HM Customs and Excise are the responsibility of the Chancellor of the Exchequer, the Rt. Hon. Nigel Lawson MP.