

## Powers to detain goods

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### Who is likely to be affected?

Individuals and businesses involved in smuggling goods into the United Kingdom and diverting them onto the UK market without payment of the correct amount of duty.

### General description of the measure

The new measure will make explicit provision for the detention of things on reasonable grounds to suspect that they may be liable to forfeiture.

### Policy objective

This measure will strengthen HM Revenue & Customs' (HMRC) powers to detain goods on reasonable grounds pending investigation of their duty status. It will also clarify the law in respect of our powers and put beyond doubt our ability to detain goods that officers suspect are liable to forfeiture.

This measure will also provide statutory safeguards and allow the goods to remain in place when detained, minimising disruption to businesses.

### Background to the measure

The proposal was originally announced in August 2011 when HMRC issued a consultative document entitled *Modernising Customs and Excise Law*. It was then announced, in more detail, at Budget 2012.

## Detailed proposal

### Operative date

The measure will take effect on and after the date that Finance Bill 2013 receives Royal Assent.

### Current law

The Customs & Excise Management Act (CEMA) 1979, s139 and Schedule 3 to that Act, sets out the provisions to allow goods to be seized and detained. It also sets out the circumstances where the power can be exercised by other, including police officers and the coastguard.

The Finance Act 1994, sections 9 and 10 allow for a penalty to be effected if goods, detained in situ, are removed. Section 10 allows for the tribunal to take any reasonable excuse into account. This would apply irrespective of whether the goods were in fact liable to forfeiture. The penalty will be 'duty geared' to the equivalent amount of 100 per cent of the duty. Those liable to a penalty will be able to appeal if they have a reasonable excuse.

### Proposed revisions

Legislation will be introduced in Finance Bill 2013 to amend section 139 of CEMA and insert a new Schedule to provide for the detention of things on reasonable grounds to suspect that they may be liable to forfeiture.

The legislation will also introduce statutory safeguards by way of time limits and an appeal mechanism. The proposed safeguards include an initial period of detention of 30 days. At the end of the 30 day period, the thing will be deemed to be seized as liable to forfeiture. The rights of appeal under Schedule 3 of CEMA will then be engaged.

This measure will also allow the things to be detained and, with the agreement of a person responsible, remain at the place where it is first detained rather than being removed and detained elsewhere. An amendment will be made to the Finance Act 1994, section 9 to legislate for a civil penalty, equivalent to 100 per cent of the duty value of the goods, for the removal of detained goods without authority. This would apply irrespective of whether the goods were in fact liable to forfeiture and will be an appealable decision.

### Summary of impacts

<b>Exchequer impact (£m)</b>	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
	-	nil	nil	nil	nil	nil
	This measure is not expected to have an Exchequer impact. This measure supports the Exchequer in its commitment to protect revenue.					
<b>Economic impact</b>	There will be no significant economic impact.					
<b>Impact on individuals and households</b>	There is no significant impact on compliant individuals and householders. Those who feel that the detention is not lawful can engage the appeal mechanism.  The civil penalties are also appealable.					
<b>Equalities impacts</b>	No equality impacts in relation to any protected characteristic have been identified in relation to these proposals.					
<b>Impact on business including civil society organisations</b>	There is no significant impact on compliant businesses, including civil society organisations. Those who feel that the detention is not lawful can engage the appeal mechanism.  The civil penalties are also appealable.					
<b>Operational impact (£m) (HMRC or other)</b>	Costs will be negligible with only minimal spend on communications to business and the general public.  This measure will support the Alcohol and Tobacco Strategies. The loss to the Revenue of non-payment of duty on beer and spirits was estimated to have an upper limit of £5 billion over a five year period.					
<b>Other impacts</b>	Other impacts have been considered and none have been identified.					

### Monitoring and evaluation

It is acknowledged that careful monitoring is needed to ensure broad equity of treatment. This will be done through well established appeal provisions, which will apply and will, by being brought within the Tribunal & Magistrates' domain, be fully subject to judicial oversight. The Magistrates Court will not condemn goods if they believe that the seizure is illegal. The Tribunal has power to quash or vary a penalty if they think HMRC has been unreasonable or if there was a reasonable excuse for the failure.

### Further advice

If you have any questions about this change, please contact Karen Rourke on 01702 361934 (email: karen.rourke@hmrc.gsi.gov.uk).

## 1 Detention of excise goods

- (1) Section 139 of CEMA 1979 (provisions as to detention, seizure and condemnation of goods etc) is amended as follows.
- (2) After subsection (1) insert—
  - “(1A) A person mentioned in subsection (1) who reasonably suspects that any thing may be liable to forfeiture under the customs and excise Acts may detain that thing.
  - (1B) References in this section and Schedule 2A to a thing detained as liable to forfeiture under the customs and excise Acts include a thing detained under subsection (1A).”
- (3) In subsection (2), for the words from “either” to the end substitute “deliver that thing to an officer”.
- (4) In subsection (4), for “the Commissioners at the nearest office of customs and excise” substitute “an officer”.
- (5) In subsection (5), for “Schedule 3” substitute “Schedules 2A and 3”.
- (6) After that subsection insert—
  - “(5A) Schedule 2A contains supplementary provisions relating to the detention of things as liable to forfeiture under the customs and excise Acts.”
- (7) After Schedule 2 to that Act (composite goods: supplementary provisions as to excise duties and drawbacks) insert—

### “SCHEDULE 2A

Section 139(5A)

#### SUPPLEMENTARY PROVISIONS RELATING TO THE DETENTION OF THINGS AS LIABLE TO FORFEITURE

##### *Interpretation*

- 1 In this Schedule, references (however expressed) to a thing being detained are references to a thing being detained as liable to forfeiture under the customs and excise Acts.

##### *Period of detention*

- 2 (1) This paragraph applies where a thing is detained.
- (2) The thing may be detained for 30 days beginning with the day on which the thing is first detained.
- (3) The thing is deemed to be seized as liable to forfeiture under the customs and excise Acts if its detention ceases to be authorised under this paragraph.

##### *Notice of detention*

- 3 (1) The Commissioners must take reasonable steps to give written notice of the detention of any thing, and of the grounds for the detention, to any person who to their knowledge was, at the time of the detention, the owner or one of the owners of the thing.

- (2) But notice need not be given under sub-paragraph (1) if the detention occurred in the presence of—
  - (a) the person whose offence or suspected offence occasioned the detention,
  - (b) the owner or any of the owners of the thing detained or any servant or agent of such an owner, or
  - (c) in the case of any thing detained on a ship or aircraft, the master or commander

*Unauthorised removal or disposal: penalties etc*

- 4 (1) This paragraph applies where a thing is detained and, with the agreement of a person within sub-paragraph (2) (“the responsible person”), the thing remains at the place where it is first detained (rather than being removed and detained elsewhere).
  - (2) A person is within this sub-paragraph if the person is—
    - (a) the owner or any of the owners of the thing at the time it was detained or any servant or agent of such an owner, or
    - (b) a person whom the person who detains the thing reasonably believes to be a person within paragraph (a).
  - (3) If the responsible person fails to prevent the unauthorised removal or disposal of the thing from the place where it is detained, that failure attracts a penalty under section 9 of the Finance Act 1994 (civil penalties).
  - (4) The removal or disposal of the thing is unauthorised unless it is done with the permission of a proper officer of Revenue and Customs.
  - (5) Where any duty of excise is payable in respect of the thing—
    - (a) the penalty is to be calculated by reference to the amount of that duty (whether it has been paid or not), and
    - (b) section 9 of the Finance Act 1994 has effect as if in subsection (2)(a) the words “5 per cent of” were omitted.
  - (6) If no duty of excise is payable in respect of the thing, that section has effect as if the penalty provided for by subsection (2)(b) of that section where whichever is the greater of—
    - (a) the value of the thing at the time it was first detained, or
    - (b) £250.
- 5 (1) This paragraph applies where—
    - (a) a thing is detained at a revenue trader’s premises,
    - (b) the thing is liable to forfeiture under the customs and excise Acts, and
    - (c) without the permission of a proper officer of Revenue and Customs, the thing is removed from the trader’s premises, or otherwise disposed of, by any person.
  - (2) The Commissioners may seize, as liable to forfeiture under the customs and excise Acts, goods of equivalent value to the thing, from the revenue trader’s stock.
  - (3) For the purposes of this paragraph, a revenue trader’s premises include any premises used to hold or store anything for the purposes

of the revenue trader's trade, regardless of who owns or occupies the premises.”

- (8) The amendments made by this section have effect in relation to things detained on or after the day on which this Act is passed.

**EXPLANATORY NOTE**

**POWER TO DETAIN GOODS**

**SUMMARY**

1. This clause amends section 139 of the Customs and Excise Management Act 1979 (CEMA). It makes explicit provision for the detention of things on reasonable grounds to suspect that they may be liable to forfeiture. It also applies section 9 of the Finance Act 1994 to provide for a penalty to be imposed if goods are removed from the place they are detained where they are detained in situ. A person liable to a penalty will have a right of appeal if there is a reasonable excuse.

**DETAILS OF THE CLAUSE**

2. Subsection (1) introduces the amendments to section 139 of CEMA.
3. Subsection (2) inserts new subsections (1A) and (1B) after section 1 of s139 of CEMA.
4. New subsection (1A) provides for an officer to detain anything if they have reasonable grounds to suspect that it is liable to forfeiture.
5. New subsection (1B) explains that a thing detained as liable to forfeiture has the same meaning as that in subsection 1A.
6. Subsection (3) removes references to an ‘office of customs and excise’, as these premises no longer exist following the merger of HM Revenue & Customs (HMRC). It replaces that expression with the expression ‘officer’ which will include HMRC officers and those who work for the UK Border Force.
7. Subsection (4) removes references to the ‘Commissioners’ and ‘office of customs and excise’. It replaces those references with the expression ‘officer’, which will include HMRC officers and those who work for the UK Border Force.
8. Subsection (5) provides for goods that are detained to be dealt with under section 139(5) of CEMA. This allows the goods to be disposed of in a suitable manner.
9. Subsection (6) explains that a new Schedule 2A provides for supplementary provisions.
10. Subsection (7) inserts the new Schedule 2A to CEMA.

11. New schedule 2A provides for supplementary provisions relating to the detention of things as liable to forfeiture.
12. New paragraph 1 explains that a reference to a ‘thing’ being detained is the same as any other references in the Customs & Excise Acts.
13. New paragraph 2 provides for the period of detention.
14. New paragraph 2(1) applies the period of detention where a thing is detained under the new provisions.
15. New paragraph 2(2) provides for a period of detention of 30 days, beginning on the day that the thing is first detained.
16. New paragraph 2(3) provides that, at the end of the 30 day period, the thing will be deemed to be seized as liable to forfeiture unless it is released.
17. New paragraph 3(1) provides that the Commissioners must take reasonable steps to provide a notice of detention to the owner of any thing detained.
18. New paragraph 3(2) (a), (b) and (c), detail the circumstances in which the Commissioners do not need to provide a notice of detention.
19. New paragraph 3(2)(a) states that notice need not be given if the person suspected of the offence, leading to the seizure, is present when the goods are detained.
20. New paragraph 3(2)(b) states that notice need not be given if the owner, or the owners’ agent or servant is present.
21. New paragraph 3(2)(c) states that notice need not be given if the goods are detained on board a ship or aircraft and the master or commander are present.
22. New paragraph 4(1) provides for the circumstances under which goods can be detained and left at the place of detention with the agreement of a person defined as “the responsible person”.
23. New paragraph 4(2) defines “the responsible person”.
24. New paragraph 4(2)(a) defines the responsible person as the owner at the time the goods were detained, or that person’s agent or servant.
25. New paragraph 4(2)(b) defines a responsible person alternatively as the person that an officer believes to be the responsible person.
26. New paragraph 4(3) provides for penalties if the responsible person fails to prevent the detained goods from being removed from the place

where they are detained. It makes provisions for a civil penalty under the Finance Act 1994.

27. New paragraph 4(4) provides that the disposal of any goods, detained at the place where first discovered, is unauthorised if not with the permission of an officer.
28. New paragraph 4(5)(a) provides for the penalty to be calculated on the duty value of the goods, whether that duty is due or not.
29. New paragraph 4(5)(b) applies section 9 of the Finance Act 1994 with modification to take account of this.
30. New paragraph 4(6)(a) and (b) provide that where things, which do not attract duty, are detained, the penalty will be based on the value of the thing at the time when it was first detained or £250, whichever is the greater.
31. New paragraph 5(1)(a) to (c) sets out the circumstances in which the paragraph applies.
32. New paragraph 5(1)(a) details that the paragraph applies when goods are detained at a revenue trader's premises.
33. New paragraph 5(1)(b) details that the paragraph applies when the thing is liable to forfeiture.
34. New paragraph 5(1)(c) details that the paragraph applies when the goods are removed traders premises or disposed of.
35. New paragraph 5(2) provides for the Commissioners to seize from revenue traders' premises, goods of an equivalent value to the thing, where paragraph 5(1) applies.
36. New paragraph 5(3) provides that revenue traders' premises include any premises that are used to hold or store anything for the purpose of revenue traders' trade. It does not matter who owns or occupies the premises.
37. Subsection (8) provides for the measure to take effect, in relation to things detained, on and after the date that Finance Bill 2013 receives Royal Assent.

## **BACKGROUND**

38. This measure will strengthen our powers to detain goods on reasonable grounds pending investigation of their duty status. It will also clarify the law in respect of our powers and put beyond doubt our ability to detain goods that officers suspect are liable to forfeiture.



## **FINANCE BILL**

39. This measure will also provide statutory safeguards and allow the goods to remain in place when detained, minimising disruption to businesses.
40. If you have any questions about this change, or comments on the legislation, please contact Karen Rourke on 01702 361934 (email: [karen.rourke@hmrc.gsi.gov.uk](mailto:karen.rourke@hmrc.gsi.gov.uk)).