

Customs penalties: fines on ships

Who is likely to be affected?

Responsible officers of ships (including masters and boatswains) and shipping lines.

General description of the measure

The measure increases the level of the financial penalties that can be imposed by HM Revenue & Customs (HMRC) under section 143 of the Customs and Excise Management Act 1979 (CEMA). Section 143 applies to ships of 250 tons register and over, where a responsible officer has been complicit or negligent in respect of customs or excise offences committed on board their ship.

Policy objective

This measure creates an effective deterrent to smuggling by ships' crews and thereby contributes to HMRC's strategic objectives to maximise revenue flows.

Background to the measure

The maximum level of the penalties has been the same since 1952 and their real value has been eroded by inflation.

This measure was included in the customs law modernisation consultation document published in August 2011 and attracted very little attention.

The measure was announced at Budget 2012.

Detailed proposal

Operative date

The measure will have effect from the date that Finance Bill 2013 receives Royal Assent and will apply to offences committed on and after Royal Assent of the Finance Bill.

Current law

Under section 141 CEMA, ships of less than 250 tons register, if used for smuggling, are liable to forfeiture.

Section 142 of CEMA provides that larger ships are liable to forfeiture only if the smuggling was substantially the object of the voyage or if the ship failed to bring to when properly summoned to do so by a vessel in Her Majesty's service.

Section 143 of CEMA provides for the imposition of financial penalties where vessels of 250 tons or more have been used in connection with customs or excise offences but, by virtue of section 142, may not be forfeited. To trigger such a penalty a responsible officer of the ship must have been involved in the offence, either by his own act or through neglect. This could include cases where:

- members of the crew have brought on board, concealed or landed excise goods in such quantities that the master or other responsible officer must have turned a blind eye to the activity or been negligent in his supervision of the crew; and,
- excise goods are issued to crew members from the duty-free ship's stores, in quantities exceeding what would be consistent with on-board use.

Section 143(1) of CEMA currently provides for a non-appealable penalty, not exceeding £50.

Section 143(3) provides for a penalty of up to £500, if £50 would be inadequate. The higher penalty can only be imposed by a magistrate and requires HMRC to bring 'condemnation' proceedings.

In practice, such cases do not go before the magistrates because they are always settled out of court.

Proposed revisions

Legislation will be introduced in Finance Bill 2013 to replace the two penalties with a single penalty of up to £10,000 (being the current equivalent of £500 in 1952). As with the former £500 maximum penalty, the process for imposing the penalty will be by way of condemnation proceedings before a magistrate. The legislation will also provide for future changes to the maximum penalty to be made by secondary legislation.

Amendments will also be made to the definition of responsible officer in section 143 to add bosuns, remove 'the serang' and ensure that persons 'acting as' any of the listed persons are included.

Summary of impacts

| Exchequer impact (£m) | 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. | | | | | |
| Economic impact | The measure is not expected to have any significant economic impacts. | | | | | |
| Impact on individuals and households | The measure will have no impact on the compliant. It will though provide a more effective deterrent to smugglers of revenue goods and encourage responsible officers and shipping lines to exercise more robust controls on their staff. | | | | | |
| Equalities impacts | There are no impacts on the protected characteristics in the Equality Act 2010. | | | | | |
| Impact on business including civil society organisations | This measure is expected to have a negligible impact on businesses. Businesses will face one-off costs in familiarising themselves with the new legislation. There are no changes in ongoing administrative burdens. This measure is expected to have no impact on civil society organisations. | | | | | |
| Operational impact (£m) (HMRC or other) | There will be no operational impact on HMRC. The current fines are issued by the UK Border Force. The larger fine should have a deterrent effect and may reduce their workload. | | | | | |
| Other impacts | <u>Small firms impact test</u> : Testing has been carried out and there is no impact on compliant small firms. Other impacts have been considered and none have been identified. | | | | | |

Monitoring and evaluation

The UK Border Force keep records of the penalties that are imposed under section 143 and will review these regularly to monitor the impact of this measure.

Further advice

If you have any questions about this change, please contact Anne Treadaway on 020 7147 0337 (email: anne.treadaway@hmrc.gsi.gov.uk).

1 Penalty instead of forfeiture of larger ships

- (1) Section 143 of CEMA 1979 (penalty in lieu of forfeiture of larger ship where responsible officer is implicated in offence) is amended as follows.
- (2) For subsection (1) (Commissioners' power to impose fine up to £50) substitute—
 - “(1) This section applies where—
 - (a) any ship of 250 or more tons register would, but for section 142, be liable to forfeiture for, or in connection with, any offence under the customs and excise Acts, and
 - (b) in the opinion of the Commissioners, a responsible officer of the ship is implicated either by the officer's own act, or by neglect, in that offence.”
- (3) In subsection (3) (Commissioners' power to bring condemnation proceedings)—
 - (a) for the words from the beginning to the first “they” substitute “The Commissioners”, and
 - (b) for “£500” substitute “£10,000”.
- (4) In subsection (4) (power to detain ship pending payment of deposit against fine or condemnation proceedings)—
 - (a) for the words from the beginning to “section, the” substitute “The”,
 - (b) for “£50 or, as the case may be, £500” substitute “£10,000”, and
 - (c) omit “their final decision or, as the case may be,”.
- (5) In paragraph (a) of subsection (6) (definition of “responsible officer”)—
 - (a) after “means” insert “a person who is, or is acting as,”,
 - (b) for “or an engineer” substitute “, an engineer or the bosun”, and
 - (c) omit the words from “and, in the case of a ship manned” to the end.
- (6) After that subsection insert—
 - “(7) If the Treasury consider that there has been a change in the value of money since the Finance Act 2013 was passed or, as the case may be, since the last occasion when the power conferred by this subsection was exercised, they may by order substitute for the sum for the time being specified in subsections (3) and (4) such other sum as appears to them to be justified by the change.
 - (8) An order under subsection (7) may not vary the penalty for any conduct occurring before the coming into force of the order.
 - (9) An order under subsection (7) must be made by statutory instrument.
 - (10) A statutory instrument containing an order under subsection (7) is subject to annulment in pursuance of a resolution of either House of Parliament.”

EXPLANATORY NOTE

PENALTY INSTEAD OF FORFEITURE OF LARGER SHIPS

SUMMARY

1. The measure increases the level of financial penalties that can be imposed by HM Revenue & Customs (HMRC) under section 143 of the Customs and Excise Management Act 1979 (CEMA). Section 143 applies to ships of 250 tons register and over, where a responsible officer has been complicit or negligent in respect of customs or excise offences committed on board their ship.

DETAILS OF THE CLAUSE

2. Subsection 1 provides that section 143 of CEMA (penalty in lieu of forfeiture of larger ships where responsible officer is implicated in offence) is amended.
3. Subsection 2 removes the Commissioner's power to impose a fine up to £50.
4. Subsection 3 increases the maximum penalty that a court can impose on ships involved in revenue offences from £500 to £10,000.
5. Subsection 4 increases the deposit the Commissioners may require whilst a ship is detained pending proceedings to a maximum of £10,000.
6. Subsection 5 amends the definition of responsible officer in section 143 to add bosuns, remove 'the serang' and ensure that persons 'acting as' any of the listed persons are included.
7. Subsection 6 enables the amount of the penalty (and deposit) to be altered, by statutory instrument, if there is a change in the value of money.

BACKGROUND NOTE

8. The maximum level of the penalties has been the same since 1952 and their value has been eroded by inflation.
9. If you have any questions about this change, or comments on the legislation, please contact Anne Treadaway on 020 7147 0337 (email: anne.treadaway@hmrc.gsi.gov.uk).