



Modernising customs civil penalties

Who is likely to be affected?

Individuals and businesses, travelling from non-EU countries, who have failed to declare goods, including excise goods, in excess of their allowance when stopped before clearing customs controls.

General description of the measure

HM Revenue & Customs (HMRC) will provide for the issue of a customs civil penalty to travellers entering the UK from outside the EU who have failed to declare goods in excess of their allowance when stopped before clearing customs controls. This penalty will be used in cases where we find there is no dishonest conduct, as an alternative to existing customs civil evasion penalties and existing criminal penalties, for use in the case of less serious contraventions, and to allow us more flexibility in our treatment of customers. As with all customs civil penalties there will be strict liability subject to reasonable excuse.

Policy objective

The measure will provide for a customs civil penalty, in cases where there is no allegation of dishonest conduct, when goods are wrongfully imported from a non-EU country.

Background to the measure

The Case of C-230/08 Dansk Transport og Logistik v Skatteministeriet has led to an inability to issue a civil penalty, in cases of non-deliberate behaviour, to a person who enters the United Kingdom from a non-EU country with goods in excess of the duty free allowance. This has resulted in inequity of treatment between EU and third country travellers. There is a criminal penalty, under section 78 of the Customs & Excise Management Act (CEMA) 1979, for a failure to declare such goods and there is also the Customs Civil Evasion Penalty in cases where we find dishonest behaviour. However this measure will provide a method for penalising non-compliance, where dishonest behaviour is not found, with customs law in regulatory matters where criminal prosecution would not be appropriate.

Detailed proposal

Operative date

It is intended that the measure will have effect on a date in late summer 2014.

Current law

The Customs (Contravention of Relevant Rule) Regulations 2003 are made under sections 26(1), (2), (3), (4) and 41 of the Finance Act 2003. They cover a range of contraventions relating to importations and their associated procedures and regimes.

The Schedule to the Regulations provides details of the relevant rules which, if breached, may make a person liable to a civil penalty. It sets the maximum penalty for the contravention of a customs provision at either £1,000 or £2,500. There are no fixed penalties. All penalties are subject to reasonable excuse and mitigation consideration. In the majority of cases a Penalty Notice will not be issued without the trader first having had a warning letter. This penalty will be set at a maximum of £1000, which is equivalent to level 3 criminal penalty in CEMA 1979. Current policy states that the minimum penalty is £250, which will be the first penalty in all but the most serious cases.

Proposed revisions

Legislation will be introduced in Finance Bill 2014 to apply provisions of Finance Act 2003 to include excise duty as a relevant tax in respect of a failure to declare goods in excess of the allowance under section 78(1) of CEMA. The new penalty will then be introduced by secondary legislation.

Summary of impacts

Exchequer impact (£m)	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
	-	nil	nil	nil	nil	nil
	This measure is not expected to have an Exchequer impact.					
Economic impact	The measure is not expected to have any significant economic impacts.					
Impact on individuals and households	There is no impact on compliant individuals and stakeholders. The new measure introduces a minor change to already existing legislation and requirements. Detailed information is available to all individuals to ensure that they are aware of their duty free allowances when entering the UK from a non-EU country.					
Equalities impacts	No equality impacts in relation to any protected characteristic have been identified in relation to these proposals.					
Impact on business including civil society organisations	This measure is expected to have a negligible impact on businesses. The new measure introduces a minor change to already existing legislation and requirements, which businesses, in general, are aware of and understand that the customs civil penalty regime will be updated to reflect these changes.					
Operational impact (£m) (HMRC or other)	As this is intended to only introduce one penalty in specific circumstances, it is envisaged that the additional costs will be minimal for HMRC and Border Force.					
Other impacts	Other impacts have been considered and none have been identified.					

Monitoring and evaluation

This measure will be kept under review through communication with affected taxpayer groups.

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 Penalties under section 26 of FA 2003: extension to excise duty

(1) In this section –

“dutiable excise goods” means goods of a class or description subject to any duty of excise, whether or not those goods are in fact chargeable with that duty, and whether or not that duty has been paid on the goods;

“relevant excise rule” means any duty, obligation, requirement or condition imposed by section 78 of CEMA 1979 (customs and excise control of persons entering or leaving the United Kingdom), so far as that section relates to –

(a) dutiable excise goods a person has obtained outside the United Kingdom, or

(b) dutiable excise goods a person has obtained in the United Kingdom without payment of excise duty,

and in respect of which the person is not entitled to exemption from excise duty by virtue of any order under section 13 of the Customs and Excise Duties (General Reliefs) Act 1979 (personal reliefs).

(2) Sections 26 and 27 and 29 to 41 of FA 2003 (taxes and duties on importation and exportation: penalties) apply in relation to excise duty as they apply in relation to a relevant tax or duty (as defined by section 24(2) of that Act) except that, for this purpose, “relevant rule” in sections 26 and 33 means a relevant excise rule.

EXPLANATORY NOTE

PENALTIES UNDER SECTION 26 OF FA 2003: EXTENSION TO EXCISE DUTY

SUMMARY

1. Clause X will introduce legislation to apply provisions of the Finance Act 2003 to include excise duty as a relevant tax in respect of any duty, obligation, requirement or condition imposed by section 78 of Customs and Excise Management Act 1979 (CEMA). The new penalty will then be introduced by amendment to the secondary legislation to describe as a relevant rule a failure to declare goods in excess of the allowance under section 78(1).

DETAILS OF THE CLAUSE

2. Subsection 1 defines dutiable excise goods as goods subject to excise duty whether or not that duty is charged or paid

3. Subsection 1(a) defines a relevant excise rule to mean any duty, obligation or requirement imposed under s78 when it relates to dutiable excise goods that a person has obtained outside the United Kingdom where they are not entitled to be exempt from relief of the payment of duty.

4. Subsection 1(b) defines a relevant excise rule to mean any duty, obligation or requirement imposed under s78 when it relates to dutiable excise goods that a person has obtained in the United Kingdom without payment of duty, where they are not entitled to be exempt from relief of the payment of duty.

5. Subsection 2 provides for the application of the penalty provisions of the Finance Act 2003 to include excise duty as a relevant tax in respect of a contravention of a rule under section 78 of CEMA.

BACKGROUND NOTE

6. This measure has been introduced to provide for a customs civil penalty, in cases where there is no allegation of dishonest conduct, when goods are wrongfully imported from a non-EU country.

7. HM Revenue & Customs (HMRC) will provide for the issue of a customs civil penalty to travellers entering the UK from outside the EU who have failed to declare goods in excess of their allowance when stopped before clearing customs controls. This penalty will be used in cases where we find there is no dishonest conduct, as an alternative to existing

customs civil evasion penalties and existing criminal penalties, for use in the case of less serious contraventions, and to allow us more flexibility in our treatment of customers. As with all customs civil penalties there will be strict liability subject to reasonable excuse.

8. 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).