



**Customs (Contravention of a
Relevant Rule) (Amendment)
Regulations 2011
And
The Export (Penalty)
(Amendment) Regulations 2011**

Draft Legislation for comment

Closing date for comments: 31 August 2011

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Background

The Security Amendment to the Community Customs Code, Regulation 648/2005 and its Implementing Provisions (Regulation 1875/2006), introduced various legislative requirements from 1 July 2009, which require Member States to introduce new initiatives as a response to the increased focus on global security.

Existing civil penalties are no longer applicable as a result of these legislative changes. Therefore new, proportionate penalties are now required to provide a robust customs civil penalty regime to encourage compliance.

Therefore, it is proposed to amend the 2003 regulations and, where necessary, introduce new or amended civil penalties. As part of this process existing penalties have been reviewed and, where possible, simplified ones proposed. This document exposes the draft legislation for comment. Please note that the policy that this legislation is designed to achieve is not the subject of this consultation.

The Customs (Contravention of Relevant Rule) Regulations 2003 were 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. Exports are covered by 'The Export (Penalty) Regulations 2003', laid under powers conferred by section 2(2) of the European Communities Act 1972. Schedules to both sets of regulations provide details of the relevant rules which, if breached, may be liable to a civil penalty.

Full consultation took place on the introduction of the new Safety and Security requirements and the proposed penalties will underpin these new initiatives.

Any comments on the draft legislation should be sent by 31 **August 2011** by:-
e-mail to Karen.rourke@hmrc.gsi.gov.uk

Or by post to: Excise & Customs Law team
HM Revenue and Customs
Room LG/74
100 Parliament Street
London
SW1A 2BQ

Or by fax to 01702 361945

Telephone enquiries 01702 361934

Next Steps

Subject to comments on this Consultation it is intended that the Statutory Instruments will be made and laid before the House by Autumn 2011. The penalties will come into force 21 days after laying.

2011 No.

CUSTOMS

**The Customs (Contravention of a Relevant Rule) (Amendment)
Regulations 2011**

Made - - - - - ***
Laid before the House of Commons ***
Coming into force - - - - - ***

The Treasury, in exercise of the powers conferred by sections 24(3), 26(1) to (5), (8), (9) and 41(1) of the Finance Act 2003⁽¹⁾, make the following Regulations:

Citation and Commencement

1. These Regulations may be cited as the Customs (Contravention of a Relevant Rule) (Amendment) Regulations 2011 and come into force on ***.

Amendment of the Customs (Contravention of a Relevant Rule) Regulations 2003

2. The Customs (Contravention of a Relevant Rule) Regulations 2003⁽²⁾ are amended as follows.

3. In regulation 2, after the definition of “customs procedure with economic impact”, insert—

““customs territory” has the meaning assigned by Article 3 of the Code⁽³⁾ to “customs territory of the Community”;

4. After regulation 3(6), add—

“(7) Where a person is liable to a penalty under these Regulations and the conduct giving rise to the liability continues after the date specified in a notice in writing given to that person by the Commissioners, that continuation of the conduct—

- (a) shall constitute a further contravention of the same rule; and
- (b) shall make that person liable to a separate penalty accordingly.”

5. In the Schedule, for references to “customs territory of the Community” and “Community customs territory” in—

- (a) the heading Goods brought into the customs territory of the Community;
- (b) each of the entries in the section headed Goods brought into the customs territory of the Community;

(1) 2003 c. 14.

(2) S.I. 2003/3113.

(3) Article 3(1) of the Code was substituted by the 1994 Act of Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, Annex I(III)(B)(4) (OJ No C 241, 29.8.94) and amended by Article 1(1) of European Parliament and Council Regulation (EC) 82/97 (OJ No L 17, 21.1.97, p 1). Article 3(2) of the Code was substituted by Article 1(1) of European Parliament and Council Regulation (EC) 82/97 (OJ No L 17, 21.1.97, p 1). “The Code” is defined in regulation 2 of S.I. 2003/3113 to mean Council Regulation (EEC) No 2913/92 (OJ No L 302, 19.10.92, p 1).

- (c) the first (Article 40 of the Code(4)), sixth (Article 47 of the Code), seventh (Articles 48, 49 and 59 of the Code and Regulation 5 of the Importation Regulation) and eighth (Article 51 of the Code) entries in the section headed Presentation of Goods to Customs,

substitute “customs territory”.

6. In the Schedule, above the first entry under the heading Goods brought into the customs territory of the Community (United Kingdom), insert the following—

<i>“Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Description of Relevant Rule / Relevant Rule of a description</i>	<i>Person of a description</i>	<i>Penalty for contravention</i>
Articles 36a and 36b of the Code(5) and Articles 183, 184a and 184c of the Implementing Regulation(6)		
Goods brought into the customs territory must be covered by a summary declaration.	The person who brings the goods into the customs territory.	£1,000.
The declaration must be lodged electronically;	The person on whom the obligation to lodge the declaration falls in accordance with Article 183(b) or 183(c) of the Implementing Regulation.	£1,000.
The declaration must be lodged at the customs office of entry unless otherwise permitted.		
The declaration must be lodged within the time-limits laid down in Articles 184a and 184c of the Implementing Regulation.	The person who submits the summary declaration.	£1,000.
The declaration must contain the particulars set out in Annex 30A of the Implementing Regulation and be completed in accordance with the explanatory notes to that Annex.		
Article 183d(1) of the Implementing Regulation(7) – first sentence		
The operator of an active means of transport entering the customs territory must (except in the circumstances identified in article 183a) submit a ‘diversion request’ message if that means of transport arrives first at a customs office in a member state not declared on	The operator of the active means of transport.	£2,500.

(4) Article 40 of the Code was substituted by Article 1(9) of European Parliament and Council Regulation (EC) No 648/2005 (OJ No L 117, 04.05.2005, p 13).

(5) Articles 36a and 36b of the Code were inserted by Article 1(6) of European Parliament and Council Regulation (EC) No 648/2005 (OJ No L 117, 04.05.2005, p 13).

(6) Articles 184a to 184f of the Implementing Regulation were inserted by Article 1(11) of Commission Regulation (EC) No 1875/2006 (OJ No L 360, 19.12.2006, p 64). “The Implementing Regulation” is defined in regulation 2 of S.I. 2003/3113 to mean Commission Regulation (EC) No 2454/93 (OJ No L 253, 11.10.93, p 1) as it implements the Code.

(7) Article 183d of the Implementing Regulation was substituted by Article 1(7) of Commission Regulation (EC) No 312/2009 (OJ L 98 17.4.2009, p 3).

the Entry Summary Declaration.

Article 183d(1) of the Implementing Regulation – second sentence

The diversion request message must contain the particulars set out in Annex 30 of the Implementing Regulation.

The operator of the active means of transport.

£1,000.

Article 184 of the Implementing Regulation(8)

Goods covered by a summary declaration which have not been unloaded and have not yet been assigned a customs-approved treatment or use must be re-presented intact whenever the Customs so require.

The person who has made the summary declaration.

£1,000.

Any person who holds the goods after they have been unloaded in order to move or store them.

£1,000.

Article 184g of the Implementing Regulation(9) – first sentence

The operator of an active means of transport entering the customs territory or his agent must notify Customs of its arrival at the office of entry.

The operator of the active means of transport.

£2,500.

Article 184g of the Implementing Regulation – second sentence

The notification must contain all the particulars necessary for the identification of the entry summary declarations lodged in respect of all goods carried on that means of transport.

The operator of the active means of transport.

£1,000.

Article 186 of the Implementing Regulation

Non-Community goods presented to Customs shall be covered by a summary declaration for temporary storage in the form prescribed by Customs.

The operator of the active means of transport.

£1,000.

The declaration must be lodged no later than at presentation.

7. In the Schedule, omit the first and fourth entries under the heading Presentation of Goods to Customs.

(8) Article 184(1) of the Implementing Regulation was amended by Article 1(10) of Commission Regulation (EC) No 1875/2006 (OJ No L 360, 19.12.2006, p 64).

(9) Article 184g of the Implementing Regulation was inserted by Article 1(12) of Commission Regulation (EC) No 312/2009 (OJ L 98 17.4.2009, p 3).

8. In the Schedule, after the sixth entry under the heading Presentation of Goods to Customs, insert the following—

<i>“Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Description of Relevant Rule / Relevant Rule of a description</i>	<i>Person of a description</i>	<i>Penalty for contravention</i>
Directions made under section 30 of the Act		
No goods to which section 30 applies to be moved except:	The declarant.	£1,000.
(a) on the instructions of a proper officer;	The person who moves the goods.	£1,000.
(b) in the manner and under the conditions specified by a proper officer.		

9. In the Schedule, after the last entry under the heading Customs Declarations, insert the following—

<i>“Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Description of Relevant Rule / Relevant Rule of a description</i>	<i>Person of a description</i>	<i>Penalty for contravention</i>
Article 201 of the Implementing Regulation(10)		
The customs declaration must be lodged at one of the following customs offices:	The declarant.	£1,000.
(a) the customs office responsible for the place of presentation;		
(b) the customs office responsible in the place where the exporter is established or from which the goods re exported.		

10. In the Schedule, for the first entry under the heading Simplified Procedures, substitute the following—

<i>“Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Description of Relevant Rule / Relevant Rule of a description</i>	<i>Person of a description</i>	<i>Penalty for contravention</i>
Articles 253(6) and 253(7) of the Implementing Regulation(11)		
A person authorised for the simplified or local clearance procedure must:	The authorised person.	£2,500.
(a) comply with the relevant conditions, meet the relevant criteria and comply with the		

(10) Article 201 of the Implementing Regulation was substituted by Article 1(17) of Commission Regulation (EC) No 1875/2006 (OJ No L 360, 19.12.2006, p 64); Article 201(3) was inserted by Article 1(4) of Commission Regulation (EC) No 1192/2008 (OJ No L 329 6.12.2008 p 1).

(11) Articles 253(4) to 253(8) of the Implementing Regulation were inserted by Article 1(5) of Commission Regulation (EC) No 1192/2008 (OJ No L 329 6.12.2008 p 1).

relevant obligations;

(b) inform Customs of all factors arising after authorisation has been granted which may influence its continuation or content.

11. For the second and third entries under the heading Simplified Procedures, substitute the following—

<i>Column 1</i> <i>Description of Relevant Rule /</i> <i>Relevant Rule of a description</i>	<i>Column 2</i> <i>Person of a description</i>	<i>Column 3</i> <i>Penalty for contravention</i>
Articles 76 of the Code and Article 260 of the Implementing Regulation The simplified declaration or the document or documents permitted in lieu of it must: (a) contain at least the particulars for a simplified declaration set out in Annex 30A; (b) be accompanied by all documents which may be required to secure the release of the goods to free circulation; (c) bear a reference to any general release authorisation; (d) where the goods are entered for the relevant procedure by means of an entry in the records, bear the date of such entry. A supplementary declaration must be furnished.	The declarant	£2,500.

12. In the Schedule, omit the last entry under the heading Simplified Procedures.

Date *Name*
Name
Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Customs (Contravention of a Relevant Rule) Regulations 2003 (S.I. 2003/3113). The latter Regulations provide that, where a person of a prescribed description contravenes a rule listed in the Schedule, that person is liable to a penalty in the prescribed amount.

Regulation 3 inserts into regulation 2 a definition of “customs territory” and regulation 5 substitutes that expression where appropriate throughout.

Regulation 4 provides that persistence in a contravention will constitute a separate contravention.

Regulation 6 inserts in the Schedule new entries reflecting the introduction in Council Regulation (EEC) 2913/92 (the Community Customs Code) and Commission Regulation (EC) 2454/93 (the Implementing Regulation) of new provisions concerned with entry summary declarations.

Regulation 7 revokes the first and fourth entries in the Schedule under the heading Presentation of Goods to Customs, the first because it is, in substance, duplicated by the entry which follows it (which refers to the

relevant domestic implementing provisions) and the fourth because the relevant provisions of the Community Customs Code have been revoked.

Regulation 8 adds to the Schedule a new entry to provide for directions made under section 30 of the Customs and Excise Management Act concerning the movement of uncleared goods.

Regulation 9 adds to the Schedule a new entry in order to provide for the introduction in the Community Customs Code of a new provision concerned with the place where a customs declaration is to be lodged and the relevant time-limits.

Regulation 10 substitutes a new first entry in the Schedule under the Simplified Procedures heading, to make more precise reference to the relevant provisions.

Regulation 11 substitutes for the second and third entries in the Schedule under the Simplified Procedures heading a single new entry, which refers more precisely to the relevant provisions.

Regulation 12 revokes the last entry in the Schedule under the Simplified Procedures heading, since it does not properly describe a rule.

2011 No.

CUSTOMS

The Export (Penalty) (Amendment) Regulations 2011

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	***

The Commissioners of Her Majesty’s Revenue and Customs, being a Department designated for the purposes of section 2(2) of the European Communities Act 1972(12) in relation to customs matters of the European Communities(13), in exercise of the powers conferred by that section, make the following Regulations.

Citation and Commencement

13. These Regulations may be cited as the Export (Penalty) (Amendment) Regulations 2011 and come into force on ***.

Amendment of the Export (Penalty) Regulations 2003

14. The Export (Penalty) Regulations 2003(14) are amended as follows.

15. In regulation 2, omit the definition of “the Commissioners”.

16. In regulations 4, 5, 6 and 7, for “the Commissioners”, substitute “HMRC”.

17. For the Schedule, substitute the following—

<i>“Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Relevant Export Rule</i>	<i>Description of Person liable</i>	<i>Maximum Penalty</i>
Article 161(2) of the Code(15)		
With the exception of goods placed under the outward processing or transit procedure, all Community goods intended for export to be placed under the export procedure.	The exporter.	£1,000.
Article 59(1) of the Code		
All goods intended to be	The exporter.	£1,000.

(12) c. 68.

(13) S.I. 1977/980.

(14) S.I. 2003/3102, to which there are amendments not relevant to these Regulations.

(15) “The Code” is defined in regulation 2 of S.I. 2003/3113 to mean Council Regulation (EEC) No 2913/92 (OJ No L 302, 19.10.92, p 1).

placed under a customs procedure to be covered by a declaration for that procedure.

Article 62 of the Code

Declarations to: The declarant. £2,500.

(a) be made on a form corresponding to the official specimen;

(b) be signed and contain all the necessary particulars;

(c) be accompanied by all the requisite documents.

Article 161(5) of the Code and Articles 789 and 790 of the Implementing Regulation(16)

Export declaration to be lodged at the customs office responsible for supervising: The declarant. £1,000.

(a) the place where the exporter is established: or

(b) the place where the sub-contractor is established (when so permitted by article 789);

(c) when permitted by article 790, any competent office.

Article 182b of the Code(17) and Articles 592b and 592f of the Implementing Regulation(18)

Customs declaration to: The declarant. £1,000.

(a) contain at least the particulars necessary for the summary declaration referred to in Article 182d(1);

(b) be lodged within the time-limits laid down in articles 592b and 592f of the Implementing Regulation.

Article 795 of the Implementing Regulation(19)

Where goods requiring an export declaration leave the customs territory of the Community without an export declaration, declaration to be The exporter. £1,000.

(16) "The Implementing Regulation" is defined in regulation 2 of S.I. 2003/3113 to mean Commission Regulation (EC) No 2454/93 (OJ No L 253, 11.10.93, p 1).

(17) Articles 182b to 182d of the Code were inserted by Article 1.16 of European Parliament and Council Regulation (EC) No 648/2005 OJ No L 117, 04.05.2005, p 13.

(18) Articles 592b to 592g were inserted by Article 1.47 of Commission Regulation (EC) No 1875/2006 OJ No L 360, 19.12.2006, p 64.

(19) Article 795 was inserted by Article 1.55 of Commission Regulation (EC) No 1875/2006 OJ No L 360, 19.12.2006, p 64.

lodged retrospectively at the customs office competent for the place where the exporter is established.

Article 182c of the Code

Where customs declaration not required for goods leaving the customs territory, summary declaration to be lodged at the customs office of exit before goods are brought out of the customs territory.

The person who brings the goods out of the customs territory or who assumes responsibility for the carriage of the goods out of the customs territory.

Articles 253(6) and 253(7) of the Implementing Regulation(20)

A person authorised for the simplified or local clearance procedure must:

The authorised person. £2,500.

(a) comply with the relevant conditions, meet the relevant criteria and comply with the relevant obligations;

(b) inform the authorising authorities of all factors arising after authorisation has been granted which may influence its continuation or content.

Article 793 of the Implementing Regulation(21), the Customs (Presentation of Goods for Export) Regulations 2003(22) and Article 183 of the Code

Goods released for export to: (a) be presented to customs at the customs office of exit.

The declarant. £2,500.

(b) leave the customs territory using the route prescribed by the customs authorities (if any) and in accordance with the procedures laid down by those authorities.

The person who brings the goods out of the customs territory or who assumes responsibility for the carriage of the goods out of the customs territory. £2,500.

Article 796d(1) of the Implementing Regulation(23)

A carrier may not load goods for carriage out of the customs territory unless the information referred to under

The carrier.

(20) Articles 253(4)-253(8) of the Implementing Regulation were inserted by Article 1.5 of Commission Regulation (EC) No 1192/2008 OJ No L 329 6.12.2008 p 1.

(21) Article 793 was inserted by Article 1.53 of Commission Regulation (EC) No 1875/2006 OJ No L 360, 19.12.2006, p 64. It was amended by Article 1.20 of Commission Regulation (EU) No 430/2010 OJ No L 125, 21.5.2010, p10.

(22) S.I. 2003/467, to which there are amendments not relevant to these Regulations.

(23) Article 796d was inserted by Article 1.57 of Commission Regulation (EC) No 1875/2006 OJ No L 360, 19.12.2006, p 64. It was amended by Article 1.24 of Commission Regulation (EU) No 430/2010 OJ No L 125, 21.5.2010, p10.

point (a) has been provided to the carrier.

The carrier shall notify the exit of the goods to the customs office of exit by providing the information referred to under point (a) unless that information is available to the customs authorities through existing commercial, port or transport systems or processes.

Article 796d(4) of the Implementing Regulation

Where goods declared for export are no longer destined to be brought out of the customs territory, the person who removes the goods from the customs office of exit for carriage to a place within that territory shall provide to the customs office of exit the information required under point (a) of Article 796d(1).

The person who removes the goods from the customs office of exit for carriage to a place within the customs territory.

Article 798 of the Implementing Regulation

Where goods which left the customs territory under cover of an ATA carnet are no longer intended to be reimported, an export declaration containing the particulars referred to in Annex 37 shall be presented to the customs office of export.

The exporter.

£1,000.

Article 841a of the Implementing Regulation(24)

When re-exportation is not subject to a customs declaration, an exit summary declaration shall be lodged in accordance with Articles 842a to 842e(25).

The person who brings the goods out of the customs territory or who assumes responsibility for the carriage of the goods out of the customs territory.

£1,000.

Article 14 of the Code and section 23 of the Finance Act 1994(26)

To provide to the customs authorities, upon request and within the prescribed time-limits, such documents, information and assistance as

The person of whom the request is made.

£1,000.

(24) Article 841a was inserted by Article 1.63 of Commission Regulation (EC) No 1875/2006 OJ No L 360, 19.12.2006, p 64. It was substituted by Article 1.27 of Commission Regulation (EU) No 430/2010 OJ No L 125, 21.5.2010, p10.

(25) Articles 842a to 842e were inserted by Article 1.65 of Commission Regulation (EC) No 1875/2006 OJ No L 360, 19.12.2006, p 64. Article 842a was substituted by Article 1.28 of Commission Regulation (EU) No 430/2010 OJ No L 125, 21.5.2010, p10.

(26) 1994 c. 9.

are needed for the purposes of applying customs legislation or which, in the case of a customs trader, relate to that person's business.

Article 16 of the Code and Regulations 3 to 5 and 9 of the Customs Traders (Accounts and Records Regulations) 1995(27)

To keep the prescribed documents and records in the prescribed manner for the prescribed period.

In a case falling within article 16 of the Code, any person involved in the operation concerned.

£1,000.

In the case of a customs trader, that customs trader.

£1,000.

Date

Two of the Lords Commissioners of Her Majesty's Treasury

Name

Name

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Export (Penalty) Regulations 2003 (S.I. 2003/3102, "the 2003 Regulations"). Where a person of a prescribed description contravenes one of the relevant rules listed in the Schedule he is liable to a penalty in the prescribed amount.

Regulation 3 removes the definition of "the Commissioners" from regulation 2 of the 2003 Regulations.

Regulation 4 substitutes "HMRC" for "the Commissioners" wherever that expression occurs in the 2003 Regulations, in order to produce consistency with the balance of the 2003 Regulations.

Regulation 5 substitutes the Schedule to the 2003 Regulations, disposing of those items which are redundant and amending the remainder so that they make more accurate reference to the relevant provisions. It also adds items concerning the requirements to provide and preserve relevant documents, together with such items as are rendered necessary by amendments to Council Regulation 2913/92/EEC (OJ No L 302, 19.10.92, p1) and Commission Regulation 2454/93/EEC (OJ No L 253, 11.10.93, p1).