

Statutory Document No. 2019/0173



Customs and Excise Act 1993

CUSTOMS SAFETY AND SECURITY (PENALTY) REGULATIONS 2019 (APPLICATION) ORDER 2019

*Approved by Tynwald: 22nd May 2019
Coming into Operation: in accordance with Article 2*

The Treasury makes the following Order under sections 1 and 3 of the Customs and Excise Act 1993.

1 Title

This Order is the Customs Safety and Security (Penalty) Regulations 2019 (Application) Order 2019.

2 Commencement

- (1) This Order comes into operation when it is approved by Tynwald¹.
- (2) However, when it is approved this Order shall be deemed to have come into operation on 1 April 2019².

3 Interpretation

In this Order, “**the principal Order**” means the Customs and Excise Acts (Application) Order 1979³.

4 Application of the Customs Safety and Security (Penalty) Regulations 2019

- (1) The Customs Safety and Security (Penalty) Regulations 2019⁴ are applied to the Island with the following modifications.

¹ Tynwald procedure - affirmative under section 3(1) of the Customs and Excise Act 1993.

² By virtue of section 3(2) of the Customs and Excise Act 1993, an order made under section 1 of that Act may be made retrospective and be deemed to have come into operation from such day or days as may be specified in the order, not being earlier than the date on which the corresponding provision had effect in the United Kingdom. The UK provision came into operation on 20 February 2019.

³ GC 38/79.

⁴ SI 2019/121.

- (2) In regulation 1 —
 - (a) omit the words “and come” to the end; and
 - (b) omit (as a consequence of (a)), in the heading “and commencement”.
- (3) In regulation 2 —
 - (a) omit the definition of “HMRC”;
 - (b) for the definition of “the tribunal”, substitute “the tribunal” has the same meaning as in section 82 of the *Value Added Tax Act 1996*;
- (4) In regulation 4(1)(a), for “HMRC”, substitute “the Treasury”.
- (5) In regulation 5 —
 - (a) for “HMRC”, wherever occurring, substitute “the Treasury”; and
 - (b) in paragraph (1), for “they think”, substitute “it thinks”.
- (6) In regulations 6 and 7, for “HMRC”, wherever occurring, substitute “the Treasury”.
- (7) In regulation 9 —
 - (a) in paragraph (1), for “HMRC give”, substitute “the Treasury gives”;
 - (b) in paragraph (1)(a) and (b), for “HMRC’s”, substitute “the Treasury’s”; and
 - (c) in paragraph (3), for “HMRC”, substitute “the Treasury”.
- (8) In regulations 10 and 11, for “HMRC”, wherever occurring, substitute “the Treasury”.
- (9) In regulation 12 —
 - (a) in paragraph (1)(a) for “HMRC have”, substitute “the Treasury has”;
 - (b) in paragraphs (2) and (2)(a) for “HMRC”, substitute “the Treasury”; and
 - (c) in paragraphs (2)(b) and (c), for “HMRC are”, substitute “the Treasury is”.
- (10) In regulation 13 —
 - (a) in paragraph (1) and (8), for “HMRC are”, substitute “the Treasury is”;
 - (b) in paragraphs (2), (3), (4), (6), (7) and (9), for “HMRC”, substitute “the Treasury”; and
 - (c) in paragraph (6), for “their”, substitute “its”.
- (11) In regulation 14 —

- (a) in paragraphs (3) and (4), for “HMRC are”, substitute **“the Treasury is”**; and
 - (b) in paragraph (4), for “HMRC have”, substitute **“the Treasury has”**.
- (12) In regulation 15, for “Value Added Tax Act 1994”, substitute **“Value Added Tax Act 1996”**.
- (13) In regulation 17, after “Export (Penalty) Regulations 2003”, insert **“, as they have effect in the Island”**.
- (14) The text of the Regulations as applied to the Island is found in the Annex to this Order.

5 Amendment to the principal Order

- (1) As a consequence of Article 4, the principal Order is amended as follows.
- (2) In Schedule 31A⁵ (exceptions, adaptations and modifications subject to which the Export (Penalty) Regulations 2003 (S.I. 2003 No. 3102) shall have effect in the Island), in the entry relating to the Schedule to the Regulations, omit the entry headed “Articles 263, 267 and 271 of the Code and Article 337 of the Implementing Regulation”.

MADE 28/03/2019

A L CANNAN
Minister for the Treasury

⁵ Schedule 31A to the principal Order was inserted by SD 882/03, and has been amended by SD 217/09, SD 0953/11, SD 2014/0216 and SD 2018/0200.

*EXPLANATORY NOTE**(This note is not part of the Order)*

This Order applies in Island law the Customs Safety and Security (Penalty) Regulations 2019⁶ and also makes a consequential amendment to the Customs and Excise Acts (Application) Order 1979⁷ (“the principal Order”).

The Customs Safety and Security (Penalty) Regulations 2019 (“the Regulations”) provide for civil penalties that apply for contravention of safety and security obligations contained in EU Regulations that have effect in the Island.

The Schedule to the Regulations set out the rules, penalties and persons liable to the civil penalties.

The Regulations set out the rules for exceptions from, and reductions to, penalties, the issuing of demand notices for penalties and for reviews and appeals of decisions made by the Treasury.

The Regulations also amend the Export (Penalty) Regulations 2003⁸ (“the 2003 Regulations”), as they have effect in the Island by means of Schedule 31A to the principal Order, to revoke an earlier penalty that applied for breach of safety and security rules, which is replaced by the Regulations.

⁶ SI 2019/121.

⁷ GC 38/79.

⁸ SI 2003/3102.

Annex

STATUTORY INSTRUMENTS

2019 No. 121

CUSTOMS

The Customs Safety and Security (Penalty) Regulations 2019

Made - - -	29 th January 2019
Laid before Parliament	30 th January 2019
Coming into force - -	20 th February 2019

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred upon them by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972⁹.

The Commissioners for Her Majesty's Revenue and Customs¹⁰ are a Department designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to customs matters of the European Communities¹¹.

Citation and commencement

1. These Regulations may be cited as the Customs Safety and Security (Penalty) Regulations 2019 ~~and come into force on 20th February 2019.~~

Interpretation

2. In these Regulations—

“carrier” has the same meaning as in Article 5(40) of the Code;

“the Code” means Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code¹² as it has effect from time to time;

“contravenes” includes fails to comply with;

“Delegated Regulation” means Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the that Act provides that insofar as it is appropriate in consequence of section 5, a

⁹ 1972 c.68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7); paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and was amended by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 and by S.I. 2007/1388.

¹⁰ The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c.11). Section 50(1) of that Act provides that insofar as it is appropriate in consequence of section 5, a reference to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.

¹¹ S.I. 1977/980.

¹² OJ No. L269, 10.10.2013, p.1.

reference to the Council as regards detailed rules concerning provisions of the Union Customs Code¹³, as it has effect from time to time;

“declarant” has the same meaning as in Article 5(15) of the Code;

“demand notice” means a demand notice within the meaning of regulation 6(1);

“entry summary declaration” has the same meaning as in Article 5(9) of the Code;

“exit summary declaration” has the same meaning as in Article 5(10) of the Code;

~~“HMRC” means Her Majesty’s Revenue and Customs;~~

“the Implementing Regulation” means Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code¹⁴, as it has effect from time to time;

“penalty” means the one mentioned in regulation 3(1);

“relevant safety and security rule” means any duty, obligation, requirement or condition in relation to customs safety and security requirements imposed by the legislation specified in Column 1 of the Schedule;

“representative”, in relation to any person, means any person acting in a representative capacity in relation to that person including—

- (a) the person’s personal representative;
- (b) the person’s trustee in bankruptcy or interim or permanent trustee;
- (c) the person’s receiver or liquidator appointed in relation to that person or any of that person’s property;

~~“the tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.~~

“the tribunal” has the same meaning as in section 82 of the *Value Added Tax Act 1996*.

Penalty for contravention of a relevant safety and security rule

3. (1) If a person engages in any conduct which contravenes a relevant safety and security rule, that person is liable to a penalty under this regulation.
 - (2) Column 1 of the Schedule specifies relevant safety and security rules.
 - (3) Column 2 of the Schedule specifies the person whose conduct in contravention of a relevant safety and security rule gives rise to liability under paragraph (1).
 - (4) Column 3 of the Schedule specifies the maximum penalty for contravention of a relevant safety and security rule to which a person is liable under paragraph (1).

¹³ OJ No. L343, 29.12.2015, p.1.

¹⁴ OJ No. L343, 29.12.2015, p.558.

Exceptions from liability to a penalty

4. (1) A person is not liable to a penalty if the person or that person's representative satisfies—

(a) ~~HMRC~~ **the Treasury**; or

(b) on appeal, the tribunal;

that there is a reasonable excuse for the conduct that contravened a relevant safety and security rule.

(2) For the purposes of paragraph (1) it is not a reasonable excuse that the contravention is attributed, in whole or in part, to the conduct of a person on whom reliance to perform any task was placed.

(3) Where, by reason of conduct falling within regulation 3(1), a person is prosecuted for an offence that conduct does not give rise to liability to a penalty.

Reduction of penalty

5. (1) Where a person is liable to a penalty, ~~HMRC~~ **the Treasury** on review or the tribunal on appeal may reduce or increase the penalty to such amount (including nil or up to the maximum provided for under these Regulations) as ~~they think~~ **it thinks** proper.

(2) In exercising their powers under paragraph (1), neither ~~HMRC~~ **the Treasury** nor the tribunal are entitled to take into account—

(a) the insufficiency of the funds available to any person for paying the penalty; or

(b) the fact that the person liable to the penalty, or a person acting on that person's behalf, has acted in good faith.

Demands for penalties

6. (1) Where a person is liable to a penalty, ~~HMRC~~ **the Treasury** may give to that person or that person's representative a notice in writing (a "demand notice") demanding payment of the amount due by way of penalty.

(2) An amount demanded as due from a person or that person's representative in accordance with paragraph (1) is recoverable as if it were an amount due from the person or, as the case may be, the representative as an amount of customs duty.

(3) Paragraph (2) is subject to—

(a) paragraph (4);

(b) any appeal under regulation 9; and

(c) any review by ~~HMRC~~ **the Treasury** under regulation 11.

(4) An amount so demanded is not recoverable if the demand has been subsequently withdrawn.

Time limits for demands for penalties

7. (1) A demand notice may not be given in relation to a penalty more than three years after the conduct giving rise to the penalty ceased.

(2) A demand notice may not be given more than two years after there has come to the knowledge of ~~HMRC~~ **the Treasury** evidence of facts sufficient in the opinion of ~~HMRC~~ **the Treasury** to justify the giving of the demand notice.

No prosecution after demand notice for penalty

8. Where a demand notice is given for an amount due by way of a penalty in respect of any conduct of a person, no proceedings may be brought against that person for any offence constituted by that conduct (whether or not the demand notice is subsequently withdrawn).

Right to appeal

9. (1) Where ~~HMRC give~~ **the Treasury gives** a demand notice to a person or that person's representative, the person or that person's representative may appeal to the tribunal in respect of—

(a) ~~HMRC's~~ **the Treasury's** decision that the person is liable to a penalty; or

(b) ~~HMRC's~~ **the Treasury's** decision as to the amount of the liability.

(2) Subject to regulation 5, the powers of the tribunal on an appeal under this regulation include—

(a) the power to quash or vary a decision; and

(b) the power to substitute the tribunal's own decision for any decision so quashed.

(3) On an appeal under this regulation—

(a) the burden of proof as to the matters mentioned in regulation 3(1) lies on ~~HMRC~~ **the Treasury**; but

(b) it is otherwise for the appellant to show that the grounds on which any such appeal is brought have been established.

Offer of review

10. (1) Where an appeal lies under regulation 9(1) in respect of a decision made by ~~HMRC~~ **the Treasury**, ~~HMRC~~ **the Treasury** must offer a person a review of their decision.

(2) The offer of the review must be made by notice given to the person or that person's representative at the same time as the demand notice is given to that person or that person's representative.

Review by ~~HMRC~~ the Treasury

11. ~~HMRC~~ **The Treasury** must review a decision if—

(a) they have offered a review of the decision under regulation 10;

- (b) the person or that person's representative notifies ~~HMRC~~ **the Treasury** accepting the offer within the period of 30 days beginning with the date of the document containing the notification of the offer; and
- (c) the person or that person's representative has not appealed to the tribunal under regulation 9 before notifying ~~HMRC~~ **the Treasury** of acceptance of the offer.

Review out of time

12. (1) This regulation applies if—
- (a) ~~HMRC have~~ **the Treasury** offered a person a review of a decision under regulation 10; and
 - (b) the person or that person's representative does not accept the offer within the time allowed under regulation 11(b).
- (2) ~~HMRC~~ **The Treasury** must review the decision under regulation 11 if—
- (a) after the time allowed, the person or that person's representative makes a request to ~~HMRC~~ **the Treasury** in writing for a review out of time;
 - (b) ~~HMRC are~~ **the Treasury** is satisfied that the person or that person's representative had a reasonable excuse for not accepting the offer within the time allowed;
 - (c) ~~HMRC are~~ **the Treasury** is satisfied that the person or that person's representative made the request without unreasonable delay after the excuse had ceased to apply; and
 - (d) the person or that person's representative has not appealed to the tribunal under regulation 9 before making the request for a review out of time.

Nature of review

13. (1) This regulation applies if ~~HMRC are~~ **the Treasury** is required to undertake a review under regulation 11 or 12.

(2) The nature and extent of the review are to be such as appear appropriate to ~~HMRC~~ **the Treasury** in the circumstances.

(3) For the purpose of paragraph (2), ~~HMRC~~ **the Treasury** must, in particular, have regard to steps taken before the beginning of the review—

- (a) by ~~HMRC~~ **the Treasury** in reaching the decision; and
- (b) by any person in seeking to resolve disagreement about the decision.

(4) The review must take account of any representations made by the person liable to the penalty or that person's representative at a stage which gives ~~HMRC~~ **the Treasury** a reasonable opportunity to consider them.

(5) Subject to regulation 5, the review may conclude that the decision is to be—

- (a) upheld;
- (b) varied; or
- (c) cancelled.

(6) ~~HMRC~~ **The Treasury** must give the person or that person's representative notice of the conclusions of the review and ~~their~~ **its** reasoning within—

- (a) a period of 45 days beginning with the relevant date; or
- (b) such other period as ~~HMRC~~ **the Treasury** and the person or that person's representative may agree.

(7) In paragraph (6) "relevant date" means—

- (a) the date ~~HMRC~~ **the Treasury** received the notification accepting the offer of a review (in a case falling within regulation 11); or
- (b) the date on which ~~HMRC~~ **the Treasury** decided that the obligation to undertake a review applied (in a case falling within regulation 12).

(8) Where ~~HMRC~~ **the Treasury** is required to undertake a review but do not give notice of the conclusions within the time period specified in paragraph (6), the review is to be treated as having concluded that the decision is upheld.

(9) If paragraph (8) applies ~~HMRC~~ **the Treasury** must notify the person or that person's representative of the conclusion which the review is treated as having reached.

Bringing of appeals

14. (1) This regulation applies to an appeal to the tribunal under regulation 9.

(2) In a case where regulation 13(8) applies, an appeal may be made at any time from the end of the period specified in regulation 13(6) to the end of the period of 30 days beginning with the conclusion date.

(3) In a case where ~~HMRC~~ **the Treasury** is required to undertake a review under regulation 11 and paragraph (2) does not apply—

- (a) an appeal may not be made before the conclusion date; and
- (b) any appeal is to be made within the period of 30 days beginning with the conclusion date.

(4) In a case where ~~HMRC~~ **the Treasury** is requested to undertake a review in accordance with regulation 12 and ~~HMRC~~ **the Treasury** has notified the person or that person's representative that a review will be undertaken and paragraph (2) does not apply—

- (a) an appeal may not be made before the conclusion date; and
- (b) any appeal is to be made within the period of 30 days beginning with the conclusion date.

(5) In all other cases an appeal is to be made before the end of the period of 30 days beginning with the date of the demand notice.

(6) An appeal may be made after the end of the period specified in paragraph (2), (3)(b), (4)(b) or (5) if the tribunal gives permission to do so.

(7) In this regulation “conclusion date” means the date of the document notifying the conclusions of the review, including a document notifying the conclusions of a review under regulation 13(9).

Settling appeals by agreement

15. Section 85 of the ~~Value Added Tax Act 1994~~ **Value Added Tax Act 1996** (settling appeals by agreement) has effect as if the reference to section 83 of that Act included a reference to regulation 9 above.

Service of notices

16. Any notice to be given to any person for the purposes of these Regulations may be given—

- (a) by sending it by post to that person at that person’s last or usual residence or place of business; or
- (b) if the person consents in writing to the use of a certain means of electronic communication, by that means of electronic communication.

Amendment of the Export (Penalty) Regulations 2003

17. In the Export (Penalty) Regulations 2003¹⁵, **as they have effect in the Island**, in the Schedule omit the entry headed “Articles 263, 267 and 271 of the Code and Article 337 of the Implementing Regulation”.

Jim Harra
Melissa Tatton

29th January 2019

Two of the Commissioners for Her Majesty’s Revenue and Customs

¹⁵ S.I. 2003/3102; relevant amending instruments are S.I. 2011/2512, 2018/507.

SCHEDULE

Regulation 3

<i>Column 1</i> <i>Description of Relevant Safety and Security Rule</i>	<i>Column 2</i> <i>Description of Person Liable</i>	<i>Column 3</i> <i>Maximum Penalty for contravention</i>
Authorised Economic Operators.		
<p>Articles 23(2) and 38(2)(b) of the Code. The holder of a decision granting an authorisation of an authorised economic operator for security and safety must inform the customs authorities without delay of any factor arising after the decision was taken, which may influence its continuation or content.</p>	Holder of the decision.	£2,500
Entry Summary Declarations.		
<p>Article 127 of the Code, Articles 104 to 111 of the Delegated Regulation and Articles 182 and 183 of the Implementing Regulation. Goods brought into the customs territory of the Union must be covered by an entry summary declaration. The entry summary declaration must be lodged electronically at the customs office of first entry within a specified time limit.</p>	The carrier.	£1,000
<p>Article 127(5) of the Code and Annex B of the Delegated Regulation. The entry summary declaration must contain the particulars necessary for risk analysis for safety and security purposes.</p>	The declarant.	£1,000

Article 189 of the Implementing Regulation.

Where a sea-going vessel or an aircraft entering the customs territory of the Union is diverted and is expected to arrive first at a customs office in a Member State not indicated in the entry summary declaration, the operator of that means of transport must inform the customs office indicated in the entry summary declaration as the customs office of first entry of that diversion.

The operator of the active means of transport.

£1,000

Exit Summary Declarations.

Articles 263 and 271 of the Code and Articles 244 and 245 of the Delegated Regulation.

Goods to be taken out of the customs territory of the Union, where a customs declaration or a re-export declaration is not lodged, must be covered by an exit summary declaration to be lodged at the appropriate customs office within a specific time limit before the goods are taken out of the customs territory of the Union.

The carrier.

£1,000

Articles 263(3), 263(4) and 271(3) of the Code and Annex B of the Delegated Regulation.

The exit summary declaration must contain the particulars necessary for risk analysis for safety and security purposes.

The declarant.

£1,000

EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations are made under section 2(2) of the European Communities Act 1972 (c. 68). They provide civil penalties that apply for contravention of safety and security obligations contained in EU regulations. Some of these penalties replace defective penalties under the Customs (Contravention of a Relevant Rule) Regulations 2003 (S.I. 2003/3113). Consequently these Regulations are issued free of charge to all known recipients of those Regulations.

Regulation 3 sets out that if a person contravenes a relevant safety and security rule they are liable to a penalty. The details of the rules, penalties and persons liable are set out in the Schedule.

In the Schedule: Column 1 sets out the relevant safety and security rules, Column 2 specifies the person who would be liable and Column 3 specifies the maximum penalty that the person would be liable to for contravening the rule.

Regulations 4 to 16 set out the rules for exceptions from and reductions to penalties, the issuing of demand notices for penalties and for reviews and appeals of decisions made by HMRC.

Regulation 17 revokes an earlier penalty that is replaced in these Regulations.

This instrument will be covered by an overarching HMRC impact assessment (second edition) which will be published and available on the website at:
<https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal>.