

MANUAL ON APPLICATION OF ADMINISTRATIVE PENALTIES FOR INFRINGEMENTS OF CUSTOMS RULES

This manual is suspended pending clarification of issues arising from the commencement of the Union Customs Code on 1 May 2016. Staff should not seek to apply administrative penalties for infringements of customs rules until further notice.

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1 Introduction

- 1.1 [Section 54 of the Finance Act 2011](#) provides for the application of administrative penalties for infringements of the EU Customs Code (Council Regulation 2913/92) and its Implementing Provisions (Commission Regulation 2454/93). These penalties bring Ireland into line with the practice in most other EU Member States.
- 1.2 The arrangements set out in this Manual have been agreed by the Customs Management Group (CMG) and will be kept under review in the light of practical experience with the penalty regime.

2 General approach

- 2.1 The charging of penalties is not intended as a means of collecting extra revenue but should be viewed primarily as a means of leveraging and encouraging compliance.
- 2.2 In general, penalties should not issue in cases of broad compliance or for a first offence. Before a decision is taken to proceed towards the charging of penalties, Districts should issue warnings, engage with traders to address problems and only go further in the event of non-cooperation or a failure to put adequate procedures in place to prevent a recurrence of the underlying infringement.
- 2.3 These penalties are designed to provide an appropriate tool to deal with cases involving infringements of a less serious nature or at the lower end of any non-compliance scale. Serious offences (e.g. smuggling) should continue to be referred to Investigations & Prosecution Division (IPD) in the normal way.

3 Infringements and penalties

- 3.1 The infringements and penalties covered in Section 54 of the Finance Act 2011 are outlined below, with more detailed references at Appendix 1:
 - failure to submit a declaration (penalty of €2,000);
 - late submission of a declaration (penalty of €250 for each month for which a declaration is outstanding, subject to a maximum of €2,000);
 - submission of an incorrect or incomplete declaration (penalty of €100);
 - not being in possession of documentation necessary to support an electronic declaration (penalty of €100);
 - failure to comply with Article 38 or Article 101 of the Community Customs Code (penalty of €500); and
 - failure to comply with any other provision of the Community Customs Code (penalty of €250).

- 3.2 While the range of infringements in the Section will cover most situations that may arise in practice, it is envisaged that, in the early stages, the most likely situations to involve penalties will be incorrect import/export declarations or cases of missing supporting documents. However, any other instance where infringements come to light can also be considered, with the arrangements set out in this Manual being followed.
- 3.3 Officers encountering an unusual situation or seeking guidance on the operation of these penalties should contact:

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4 Revenue official responsible

- 4.1 Generally speaking the actions outlined in this Manual should be taken by the Region/District that has identified the infringement. The detecting officer, or another officer within that Region/District with an appropriate knowledge of the trader and the customs issues involved, should be designated as the ‘owner’ of the case and is referred to as the Case Officer for the purposes of this Manual.

5 Recording details in Integrated Case Management (ICM)

- 5.1 Cases considered suitable for Administrative Penalties should be recorded in the Integrated Case Management (ICM) System as “Aspect Queries”. These cases can be assigned by the relevant line manager to the caseworker (Case Officer), who can then record the “activities” carried out in the case (including the recording of the appropriate SAD numbers examined, Articles of the Customs Code which have been contravened, responses received from the Agent/Trader, any additional duties obtained, penalty applicable, and the attaching of documentation such as the Penalty Warning letter, the Penalty Notice and if relevant, the Notice of Opinion). The line manager can approve the case within the ICM system and this intervention will then be retained and will be available as a record of the penalty process, in the event that the same case comes up again for intervention at a later date.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

6 Clearance agents

- 6.1 In most instances, customs declarations are made by agents acting on behalf of a client (importer/exporter/carrier). Based on legal advice, where a declaration gives rise to an infringement, it is the party who made the actual declaration (usually the agent) who is potentially liable for the penalty and should receive the warning letter, etc. However, officers should take a reasonable approach and not seek to charge a penalty on agents in scenarios where they were clearly acting in good faith and had exercised reasonable care but were given incorrect information by clients. In the latter case, depending on the seriousness of the matter, consideration can be given to the possibility of seeking a penalty from the client or, if necessary, more severe action.

7 Issue of prior warnings (Warning Letter)

- 7.1 The general approach to be followed by staff should be to issue a warning in relation to an initial infringement and only seek to charge a penalty if further infringements occur.
- 7.2 The warning letter template that should be followed (once updated with the specifics of the case) is at Appendix 2. The issue of a warning letter should be authorised at Higher Executive Officer level or higher.

8 Issuing a Penalty (Penalty Notice)

- 8.1 Where, following the issue of a written warning letter, infringements continue to occur, consideration should be given to the issuing of a penalty notice.
- 8.2 In the operation of this penalty regime it is important that the cases selected for penalty notices are carefully chosen so as to ensure that they will stand up to scrutiny if the issue has to go to Court for a determination (see paragraph 11 below).
- 8.3 The formal decision to seek payment of a penalty should normally be approved by the relevant Principal Officer. A template for the Penalty Notice is contained at Appendix 3. Copies of all correspondence, including any response to the Notice should be retained and ICM should be updated with full details.

9 Procedure where the penalty is not paid (Penalty Notice of Opinion)

- 9.1 In practice, given the size of these penalties and the circumstances involved, it is considered likely that most penalties will be paid and it will not be necessary to pursue a determination by the Courts. Nevertheless, the procedure to be followed is outlined here so that staff will have an understanding of what is involved should this be necessary.

- 9.2 If payment is not received within 21 days of the Penalty Notice (paragraph 8), procedures in accordance with the relative provisions applying to these penalties (see Chapter 3A, Part 47 Taxes Consolidation Act, 1997) should be followed. This involves the issuing of a Penalty Notice of Opinion to the trader, and should only be done with the knowledge of the Principal Officer. The Officer responsible for the opinion outlined in the Penalty Notice of Opinion should sign the Penalty Notice of Opinion. It should not be signed by the Principal Officer (Unless the Principal Officer is the case owner as described in 4.1). A template for the cover letter to accompany the Penalty Notice of Opinion is contained at Appendix 4 with a template for the Penalty Notice of Opinion at Appendix 5.
- 9.3 This notice gives the trader a final 30 days to pay before the penalty is brought before the relevant Court for a determination. Care should be taken in preparing the Penalty Notice of Opinion, as this will be the main document used before the Court to illustrate that the penalty is due. It is important that the relevant breach of EU law is clearly outlined in this document. The Case Officer dealing with the case should sign the Penalty Notice of Opinion and a photocopy should be kept on file, as this will be needed if a Court Application is made. It is important to ensure that the original Penalty Notice of Opinion is signed before it is issued.
- 9.4 Proof of posting the Penalty Notice of Opinion and covering letter should be kept on file. There is no need to issue the letter by registered post. The Post Office will give a Certificate of Posting (C25) as proof of posting a letter – this is sufficient for proof of posting purposes.

10 Payment received – accounting instructions.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

11 Court Determination

- 11.1 If payment is not received within the 30 day period of the Notice of Opinion, the case should be referred to the Revenue Solicitors Office (RSO) to commence Court Application procedures. A report, outlining details of the case, should be prepared and referred, with the express written approval of the Principal Officer (along with copies of all relevant correspondence including warnings and a copy of the signed Notice of Opinion), to the RSO who will then arrange for an application to be made to the relevant Court.
- 11.2 The Case Officer will be required to attend Court and give oral evidence. When giving evidence the Case Officer should be in a position to explain the nature of the infringement, quote the specific legislation contravened and outline details of any previous warnings issued. Based on the evidence, it will be a matter for the Court to determine whether the trader has breached the legislation and is therefore liable to a penalty.
- 11.3 If the Court does not determine that a penalty is due no further action can be taken in relation to that specific penalty. Either way the outcome should be recorded in ICM.
- 11.4 Assuming the Court determines that the penalty is due, the Court may give the trader a specified period of time to pay the penalty. In this instance, following the Court determination, the Case Officer should write to the trader requesting payment of the penalty within the period specified by the Court. In the absence of a Court ruling on a specified period to pay, the Case Officer should write to the trader requesting payment within 14 days.

12 Collection enforcement

- 12.1 If payment is not received following the Court specified period or 14 days (whichever is applicable), the Case Officer should send a report in accordance with the template at Appendix 5, together with details of the Court determination and a copy of the Order for Recovery, for the attention of HEO, Penalty Recovery Unit, Collector Generals Office, Sarsfield House, Francis Street, Limerick.

13 Publication

- 13.1 Court determined penalties are publishable under Section 1086 of the Taxes Consolidation Act 1997

14 Outstanding duties or other import charges

- 14.1 The arrangements in relation to penalties are without prejudice to any liability to customs duty or other import charges. Where an infringement gives rise to an outstanding liability the liability should be pursued in the normal way and is not affected in any way by decisions to issue warnings or impose penalties.

15 Review of these Instructions

- 15.1 As previously indicated, the arrangements set out in this Manual will be kept under review by the CMG and will be modified as necessary in the light of practical experience.

16 Further information

- 16.1 Any enquiries regarding this Manual should be referred to Eoghan Ryan VPN 63262 or Annette Miney VPN 63344.

A more recent version of this manual is available.

Appendix 1 – Examples of Penalties

Council Regulation (EEC) 2913/92 as amended – [Customs Code \(CC\)](#)
 Commission Regulation (EEC) 2454/93 as amended – [Customs Code Implementing Provisions \(IP\)](#)

Description of Relevant Customs Rule	Reference in Legislation	Penalty Amount
Failure to submit a declaration	Failure to submit a Customs Declaration - Article 59 of the CC	€2,000
Late submission of a declaration	Late submission of a Customs Declaration – Article 49 of the CC	€250 per month up to a max. of €2,000
Incorrect or incomplete declaration	Customs Declaration - Article 62-77 of the CC, Article 199 of the IP in accordance with the format of Annex 31 and the explanatory text in Annex 37 of the IP. Entry Summary Declaration – Article 183 of the IP in accordance with the details and explanatory notes in Annex 30A.	€100
Not being in possession of documentation necessary to support an electronic declaration	Article 77 of the CC and Articles 218 – 221 of the IP	€100
Failure to comply with general import requirements	Article 38 of the CC	€500
Failure to comply with warehousing requirements	Article 101 of the CC	€500
Failure to comply with rules of valuation	Article 29 and 30 of the CC	€250
Failure to comply with requirements for temporary storage	Article 51 of the CC	€250
Failure to comply with requirements for placing goods under a customs procedure	Article 59 of the CC	€250
Failure to comply with simplified procedures formalities	Article 76 of the CC	€250
Failure to comply with rules relating to Transit	Article 96 of the CC	€250

Appendix 2 – Warning Letter

«Demand_Date»

Our Ref: «Registration_Number»

«Offenders_Name»

«Address1»

«Address2»

«Address3»

«Address4»

WARNING NOTICE

Dear Sir/Madam,

I am of the opinion that you have contravened the Community Customs Code in the manner outlined below. Please be aware that your action in this instance could give rise to a penalty in accordance with Section 54 of the Finance Act, 2011.

«Penalty_Amount_Demanded»

«Penalty_Amount_Demanded»

«Penalty_Amount_Demanded»

«Penalty_Amount_Demanded»

On this occasion I have decided not to pursue a penalty. However, further infringements of this nature or any other infringements of the Community Customs Code will result in the pursuit of a penalty (or penalties) from you.

Yours faithfully,

«Address1»

Appendix 3 – Penalty Notice

«Demand_Date»

Our Ref: «Registration_Number»

«Offenders_Name»

«Address1»

«Address2»

«Address3»

PENALTY NOTICE

Dear Sir/Madam,

I wish to inform you that you have contravened the Community Customs Code as follows:

«Penalty_Amount_Demanded»

«Penalty_Amount_Demanded»

«Penalty_Amount_Demanded»

«Penalty_Amount_Demanded»

As a consequence of this infringement, I am of the view that, pursuant to Section 54 of the Finance Act 2011, you are liable to a penalty of «Penalty_Amount_Demanded» .

If you agree that you are liable to this penalty of «Penalty_Amount_Demanded» , it is appreciated if you would, within 21 days, make payment of that amount in the name of the Revenue Commissioners, together with a copy of this letter, to: «Demand_Date», Office of the Revenue Commissioners, «Demand_Date».

However, if you do not agree that you are liable to that penalty, or if you agree that you are liable to that penalty but do not want to pay it, this next step is –

- a) the issue of a formal Notice of Opinion that you are liable to that penalty; and
- b) the making by a Revenue officer of an application to a relevant court for that court to determine whether you are liable to the penalty outlined in that Notice of Opinion.

In the event of the Court determining that you are liable to the penalty, Revenue may seek the costs of, and incidental to, such application against you.

Yours faithfully,

«Address1»

Appendix 4 – Covering Letter re Penalty Notice of Opinion

«Demand_Date»

Our Ref: «Registration_Number»

«Offenders_Name»

«Address1»

«Address2»

«Address3»

«Address4»

PENALTY NOTICE OF OPINION

I refer to recent correspondence arising from which you indicate that you are not liable to a penalty _____ in _____ respect of «Penalty_Amount_Demanded», «Penalty_Amount_Demanded», «Penalty_Amount_Demanded», «Penalty_Amount_Demanded».

I am now enclosing, pursuant to Section 1077B Taxes Consolidation Act 1997, a formal Notice in writing that I am of the opinion that you are liable to the penalty set out in that Notice. You may within 30 days of the date of that Notice:

- a) agree in writing with the opinion in that Notice; and
- b) make a payment to the Revenue Commissioners of the amount of the penalty specified in that Notice

If you do not, within 30 days of the date of that Notice,

- a) agree in writing with the opinion in that Notice; and
- b) make a payment to the Revenue Commissioners of the amount of the penalties specified in that Notice,

then a Revenue officer may make an application to a relevant court for that court to determine whether you are liable to that penalty.

This letter and the attached penalty Notice of Opinion shall form part of any such application by Revenue to a relevant court and a copy of such application will be issued to you.

Yours faithfully,

«Address1»

Appendix 5 – Penalty Notice of Opinion

Penalty Notice of Opinion

Pursuant to Section 1077B Taxes Consolidation Act 1997, I, «Demand_Date», a Revenue officer, hereby give notice in writing that I am of the opinion that you, «Demand_Date» are, pursuant to Section 54 Finance Act 2011, liable to a penalty of «Demand_Date» in respect of «Penalty_Amount_Demanded»,«Penalty_Amount_Demanded»,«Penalty_Amount_Demanded»,«Penalty_Amount_Demanded».

A more recent version of this manual is available.

Appendix 6 - Template for completion by Case Officer prior to the transfer to the Collector-General's Division for the collection of a Court determined Customs Administrative Penalty

Name / Address of trader:
Tax Ref. No:

Details of Infringement

Date of infringement: SAD No.: Infringement description: Penalty Amount:

NB: A COPY OF THE COURT ORDER TOGETHER WITH THE ORDER OF RECOVERY MUST ACCOMPANY THIS DOCUMENT

Signed:	Case Officer:
Revenue District:	
Date:	
Contact Details:	

Timelines:

The Collector-General's intervention in the case should normally result in recovery of the penalty due.

If the enforcement activity undertaken by the Collector-General's fails to progress collection of the penalty within a three-month timeframe, collectibility of the penalty will be reviewed. This will involve, where appropriate, liaison with the Case Officer.