Manual on Application of Administrative Penalties for Infringements of Customs Rules

This manual should be read in conjunction with section 40 (as amended) of the Customs Act 2015 and Part 47, Chapter 3A of the Taxes Consolidation Act 1997

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The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

Table of Contents

1 Introduction 3
2 General approach 3
3 Infringements and penalties 4
4 Revenue official responsible 4
5 Recording details in Revenue Case Management (RCM) 5
6 Clearance agents 5
7 Issue of prior warnings (Warning Letter) 6
8 Issuing a Penalty (Penalty Notice) 6
9 Procedure where the penalty is not paid (Penalty Notice of Opinion) 6
10 Payment received – accounting instructions. 7
11 Court Determination 7
12 Collection enforcement 7
13 Publication 8
14 Outstanding duties or other import charges 8
15 Review of these instructions 9
16 Further information 9
Appendix 1 – Examples of Penalties 10
Appendix 2 – Warning Letter 12
Appendix 3 – Penalty Notice 13
Appendix 4 – Covering Letter re Penalty Notice of Opinion 14
Appendix 5 – Penalty Notice of Opinion 15
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 16

1 Introduction

1.1 Section 40 of the Customs Act 2015 (as amended) provides for the application of administrative penalties for infringements of the Customs Acts including the EU Union Customs Code (Council Regulation 952/2013) and its Delegated and Implementing Regulations (Commission Regulation 2015/2446, 2015/2447 and 2016/341). These penalties bring Ireland into line with the practice in most other EU Member States.

1.2 The arrangements set out in the original Manual were agreed by the then Customs Management Group (CMG) and will be kept under review in the light of practical experience with the penalty regime.

1.3 Section 54 of the Finance Act 2011 provided for the application of administrative penalties for certain customs offences committed prior to 1 May 2016. The administrative penalty regime under section 54 of the Finance Act 2011 (i.e. prior to the commencement of the Customs Act 2015) ceased operating on **1 May 2016** with the introduction of the Union Customs Code. The new regime under the Customs Act 2015 (as amended) commenced on **31 December 2016**. Please note, accordingly, that there is no legal basis for customs administrative penalties to be levied for offences committed **between 1 May 2016 and 30 December 2016**.

2 General approach

2.1 The charging of administrative penalties for contravention of the Customs Acts is not intended as a means of collecting extra revenue, but rather should be viewed primarily as a means of leveraging and encouraging voluntary compliance.

2.2 In general, such 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 Investigation, Prosecution & Frontier Management Division (IPFMD) in the normal way.

3 Infringements and penalties

3.1 The infringements and penalties covered in section 40 (as amended) of the Customs Act 2015 are outlined below, with some examples at Appendix 1:

- failure to make a declaration (penalty of €2,000);
- make a late declaration (penalty of €250 for each month or part thereof for which a declaration is outstanding, subject to a maximum of €2,000);
- make 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 135, Article 233(1), (2) or (3) or Article 242 of the Union Customs Code (penalty of €500); and
- failure to comply with any other provision of the Customs Acts (penalty of €250).

3.2 While the range of infringements in section 40 will cover most situations that may arise in practice, it is envisaged that the most likely situations to involve penalties will be incorrect import/export declarations or cases of missing supporting documentation. However, any other instance where infringements come to light can also be considered, with the arrangements set out in this manual being followed.

4 Revenue official responsible

4.1 Generally speaking, the actions outlined in this manual should be taken by the District that has identified the infringement. The detecting officer, or another officer within that 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 Revenue Case Management (RCM)

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). 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)

The recommended approach to be followed by staff should be to issue a warning in relation to an initial infringement and only proceed to impose a penalty if further infringements occur.

7.1 The warning letter template that should be followed (once updated with the specifics of the case) is at Appendix 2. The issuing 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 issuing of a written warning letter, similar 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 case 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 RCM 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 Part 47, Chapter 3A of the 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 officer as described in paragraph 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 or other customs 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. An Post 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 days period of the notice of opinion, the case should be referred to the Revenue Solicitor's Division (RSD) 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 RSD which 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 RCM.

11.4 If 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 6, together with details of the court determination and a copy of the order for recovery, for the attention of the HEO, Penalty Recovery Unit, Collector General's Office, Sarsfield House, Francis Street, Limerick.

13 Publication

13.1 Court-determined penalties are publishable under section 1086A 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 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 ownresourcesunit@revenue.ie

Appendix 1 – Examples of Penalties

Council Regulation (EU) 952/2013 as amended – Union Customs Code (UCC)
Commission Regulation (EU) 2015/2446 and 2015/2447 as amended – Union Customs Code Delegated and Implementing Regulations (UCC DA & IA)

Description of Relevant Customs Rule	**Reference in Legislation (Union Customs Code)**	**Reference in Legislation (Customs Act 2015 (as amended))**	**Penalty Amount**
Failure to lodge a declaration	Articles 127, 133, 139, 145, 158, 263, 269 and 270 of the UCC	Section 40(1)(b)(i)	€2,000
Lodge a late declaration	Articles 127(3), 149, 167(1) and 263(1) of the UCC	Section 40(1)(b)(ii)	€250 per month or part thereof up to a max. of €2,000
Failure to comply with general import requirements	Article 135 of the UCC Article 133 and 139 of the UCC	Section 40(1)(a) Section 40(1)(c)	€500 €250
Failure to comply with rules relating to Transit	Article 233(1) to (3) of the UCC	Section 40(1)(a)	€500
Failure to comply with warehousing requirements	Article 242 of the UCC	Section 40(1)(a)	€500
Failure to comply with requirements for placing goods under a customs procedure	Article 158(1) and (3) of the UCC	Section 40(1)(c)	€250
Failure to comply with simplified procedures formalities	Article 166 and 182 of the UCC	Section 40(1)(c)	€250
Incorrect or incomplete declaration	Data requirements, codes and formats must conform to the requirements set down in Annex 9 of Delegated Regulation 2016/341 until the	Section 40(1)(b)(iii)	€100

	relevant electronic systems necessary for lodging declarations, as referred to in Annex B of the UCC DA & IA are upgraded. Thereafter they must conform to the requirements set down in Annex B of the UCC DA & IA		
Not being in possession of documentation necessary to support an electronic declaration	Article 51 and 163 of the UCC	Section 40(1)(b)(iv)	€100
Other failures to comply with duty, obligation, requirement or condition imposed under the Customs Acts.		Section 40(1)(c)	€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 Union 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 40 (as amended) of the Customs Act 2015.

«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 Union 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 Union 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 40 (as amended) of the Customs Act 2015, 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 intend to pay it, the 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 of the 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 penalty 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 of the Taxes Consolidation Act 1997, I, **«Demand_Date»,** a Revenue officer, herby give notice in writing that I am of the opinion that you, **«Demand_Date»** are, pursuant to section 40 (as amended) of the Customs Act 2015, liable to a penalty of **«Demand_Date»** in respect of **«Penalty_Amount_Demanded», «Penalty_Amount_Demanded», «Penalty_Amount_Demanded», «Penalty_Amount_Demanded».**

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: **Declaration reference number:** **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 Office intervention in the case should normally result in recovery of the penalty due.

If the enforcement activity undertaken by the Collector-General's Office fails to progress collection of the penalty within a three-months timeframe, collectability of the penalty will be reviewed. This will involve, where appropriate, liaison with the case officer.