

2003 No. 3102

CUSTOMS AND EXCISE

The Export (Penalty) Regulations 2003

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Coming into force - - - *23rd December 2003*

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Schedule

The Commissioners of Customs and Excise, being a Department designated for the purposes of section 2(2) of the European Communities Act 1972^(a) in relation to customs matters of the European Communities^(b), in exercise of the powers conferred upon them by the said section 2(2) and of all other powers enabling them in that behalf, hereby make the following Regulations:

^(a) 1972 c.68
^(b) S.I.1977/980

Citation and Commencement

1. These regulations may be cited as the Export (Penalty) Regulations 2003 and shall come into force on 23 December 2003.

Interpretation

2. In these regulations—

”the Act” means the Customs and Excise Management Act 1979(a);

”appeal tribunal” means a VAT and duties tribunal;

”the Commissioners” means the Commissioners of Customs and Excise;

”the Code” means Council Regulation 2913/92/EEC(b);

”Community customs rules” means customs rules, as defined in Article 1 of the Code;

”Community export duty” means any of the duties, charges or levies which are export duties within the meaning of the Code (see the definition of ”export duties” in Article 4(11)(c) of that Code);

”contravene” includes fail to comply with;

”declaration” in relation to export has the meaning assigned by Article 4(17) of the Code;

”demand notice” means a demand notice within the meaning of regulation 6;

”export” means that ”customs procedure” within the meaning of Article 4(16)(h) of the Code;

”exporter” has the meaning assigned to it by Article 788 of the Implementing Regulation;

”the Implementing Regulation” means Commission Regulation 2454/93/EEC(d);

”notice” means notice in writing;

”person” means a person, of a description specified in Column 2 of the Schedule to these Regulations to whom that provision referred to in Column 1 applies;

”penalty” shall mean a penalty up to the maximum amount specified in Column 3 of the schedule to these Regulations;

”relevant export rule” shall mean any Community imposed duty, obligation, requirement, or condition in relation to export imposed or implemented by or under any of the following provisions or combination of provisions in any case where Community export duty is not chargeable or payable in application of the rule—

- (a) Community customs rules in relation to export;
- (b) the Act, as it applies in implementation of Community customs rules in relation to export from the Community;
- (c) any other Act, or statutory instrument, as it applies in implementation of Community customs rules in relation to export from the Community;
- (d) any directly applicable Community legislation as it applies in application of Community customs rules in relation to export;
- (e) any relevant international rules applying in relation to export; specified in Column 1 of the Schedule to these Regulations;

”relevant international rules” means international agreements so far as applying in relation to export from the Community and having effect as part of the law of the United Kingdom by virtue of—

- (a) any directly applicable Community legislation, or

(a) 1979c.2

(b) O.J.L302.19.10.92,p1

(c) Amended by Council Regulation (EC) 82/97, O.J. L017, 21.01.1997 p1 and Council Regulation (EC) 2700/2000 O.J. L311, 12.12.2000, p17.

(d) O.J.L253,11.10.93,p1.

(b) any Act or statutory instrument implementing such agreement.

“representative”, in relation to any person, means—

(a) his personal representative,

(b) his trustee in bankruptcy or interim or permanent trustee,

(c) any receiver or liquidator appointed in relation to that person or any of his property,

or any other person acting in a representative capacity in relation to that person.

Penalty for contravention of a relevant export rule

3.—(1) If a person engages in any conduct by which he contravenes a relevant export rule specified he shall be liable to a penalty under this regulation.

(2) The Schedule to these regulations shall have effect.

(3) Column 1 of the Schedule specifies a relevant export rule a contravention of which gives rise to a penalty under paragraph (1) above.

(4) Column 2 of the Schedule specifies the person whose conduct in contravening a relevant export rule gives rise to liability under paragraph (1) above.

(5) Column 3 of the Schedule specifies the maximum penalty for contravention of a relevant export rule for which a person is liable under paragraph (1) above.

Exceptions from regulation 3

4.—(1) A person is not liable to a penalty under regulation 3 if he satisfies—

(a) the Commissioners, or

(b) on appeal, an appeal tribunal,

that there is a reasonable excuse for his conduct.

(2) For the purposes of paragraph (1) above none of the following is a reasonable excuse—

(a) An insufficiency of funds available to any person for paying any penalty due;

(b) That reliance was placed by any person on another to perform any task;

(c) That the contravention is attributable, in whole or in part, to the conduct of a person on whom reliance to perform any task was so placed.

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

Reduction of penalty under regulation 3

5.—(1) Where a person is liable to a penalty under regulation 3—

(a) the Commissioners (whether originally or on review) or, on appeal, an appeal tribunal may reduce the penalty to such amount (including nil) as they think proper; and

(b) the Commissioners on a review, or an appeal tribunal on an appeal, relating to a penalty reduced by the Commissioners under this regulation may cancel the whole or any part of the reduction previously made by the Commissioners.

(2) In exercising their powers under paragraph (1) above, neither the Commissioners nor an appeal tribunal are entitled to take into account any of the matters specified in paragraph (3) below.

(3) Those matters are—

(a) The insufficiency of the funds available to any person for paying the amount of the penalty,

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

Demands for penalties

6.—(1) Where a person is liable to a penalty under regulation 3, the Commissioners may give to that person or his 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 his representative in accordance with subsection (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.

This paragraph is subject to—

- (a) any appeal under regulation 12 (appeals to tribunal); and
 - (b) paragraph (3) below.
- (3) An amount so demanded is not recoverable if or to the extent that—
- (a) The demand has subsequently been withdrawn; or
 - (b) The amount has been reduced under regulation 5.

Time limits for demands for penalties

7.—(1) A demand notice may not be given in relation to a penalty under regulation 3 more than 3 years after the conduct giving rise to the penalty ceased.

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

(3) A demand notice may be given in respect of a penalty under regulation 3 to which a person was liable immediately before his death.

No prosecution after demand notice for penalty under regulation 3

8.—(1) Where a demand notice is given demanding payment of an amount due by way of penalty under regulation 3 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 review of certain decisions

- 9.—(1) If the Commissioners give a person or his representative a notice informing him—
- (a) that they have decided that the person has engaged in conduct by which he contravenes a relevant export rule, and
 - (b) that the person is, in consequence, liable to a penalty under regulation 3, but
 - (c) that they do not propose to give a demand notice in respect of the penalty,

the person or his representative may give a notice to the Commissioners requiring them to review the decision mentioned in sub-paragraph(a) above.

(2) Where the Commissioners give a demand notice to a person or his representative, the person or his representative may by notice require the Commissioners to review—

- (a) their decision that the person is liable to a penalty under regulation 3, or
- (b) their decision as to the amount of the liability.

(3) A person may not under this regulation require a review of a decision under regulation 11 (decision on review).

Time limit and right to further review

10.—(1) The Commissioners are not required under regulation 9 to review any decision unless the notice requiring the review is given before the end of the permitted period.

(2) For the purposes of this regulation the “permitted period” is the period of 45 days beginning with the day on which the relevant notice is given.

(3) For the purposes of paragraph (2) above the “relevant notice” is—

- (a) in the case of a review by virtue of paragraph (1) of regulation 9, the notice mentioned in that paragraph; or
- (b) in any other case, the demand notice in question.

(4) Nothing in paragraph (1) prevents the Commissioners from agreeing on request to review a decision in a case where the notice required by that paragraph is not given within the permitted period.

(5) A person may give notice under regulation 9 requiring a decision to be reviewed a second or subsequent time only if—

- (a) the grounds on which he requires the further review are that the Commissioners did not, on any previous review, have the opportunity to consider any particular facts or matters; and
- (b) he does not, on the further review, require the Commissioners to consider any facts or matters which were considered on a previous review of the decision, except insofar as they are relevant to any issue to which the facts or matters not previously considered relate.

Powers of the Commissioners on a review

11.—(1) Where the Commissioners—

- (a) are required in accordance with regulation 9 to review a decision, or
- (b) agree to do so on such a request as is mentioned in regulation 10(4)

the following provisions of this regulation apply.

(2) On any such review, the Commissioners may—

- (a) confirm the decision,
- (b) withdraw the decision, or
- (c) vary the decision.

(3) Where the Commissioners withdraw or vary the decision, they may also take such further steps (if any) in consequence of the withdrawal or variation as they consider appropriate.

(4) If the Commissioners do not within the permitted period give notice of their determination on the review to the person who required the review or his representative, they shall be taken to have confirmed the decision.

(5) For the purposes of paragraph(4), the “permitted period” is the period of 45 days beginning with the day on which the review—

- (a) is required by the person or his representative in accordance with regulation 9, or
- (b) is agreed to by the Commissioners as mentioned in regulation 10(4).

Appeals to a tribunal

12.—(1) Where the Commissioners—

- (a) are required in accordance with regulation 9 to review a decision, or
- (b) agree to do so on such a request as is mentioned in regulation 10(4),

an appeal lies to an appeal tribunal against any decision by the Commissioners on the review (including any confirmation under regulation 11(4)).

- (2) An appeal lies under this regulation only if the appellant is one of the following persons—
 - (a) the person who required the review in question,
 - (b) where the person who required the review in question did so as representative of another person, that other person, or
 - (c) a representative of a person falling within paragraph (a) or (b).
- (3) The powers of an appeal tribunal on an appeal under this section include—
 - (a) power to quash or vary a decision; and
 - (b) power to substitute the tribunal's own decision for any decision so quashed.
- (4) On an appeal under this regulation—
 - (a) the burden of proof as to the matters mentioned in regulation 3(1) lies on the Commissioners; but
 - (b) it is otherwise for the appellant to show that the grounds on which any such appeal is brought have been established.

Appeal Tribunals

13.—(1) Sections 85 and 87 of the Value Added Tax Act 1994 (c.23) (settling of appeals by agreement and enforcement of decisions of tribunals) have effect as if—

- (a) any reference to section 83 of that Act included a reference to regulation 12, and
- (b) any reference to VAT included a reference to any relevant export rule.

(2) The provision that may be made by rules under paragraph 9 of Schedule 12 to the Value Added Tax Act 1984 (rules of procedure for tribunals) includes provision for costs awarded against an appellant on an appeal by virtue of these Regulations to be recoverable as if the amount awarded were an amount of customs duty which the appellant is required to pay.

Service of notices

14. Any notice to be given to any person for the purposes of these Regulations may be given by sending it by post in a letter addressed to that person or his representative at the last or usual residence or place of business of that person or representative.

Ray McAfee
Commissioner of Customs and Excise

2nd December 2003

SCHEDULE

Column 1 Relevant Export Rule	Column 2 Description of Person liable	Column 3 Maximum Penalty
<p>Article 161(2) of the Code</p> <p>All Community goods intended for export to be placed under the export procedure, except goods to be placed under the outward processing procedure or transit procedure.</p>	<p>Any person intending to send goods outside the Community.</p>	<p>£1000</p>
<p>Article 183 of the Code And Articles 793(a), 794 and 795 of the Implementing Regulation</p> <p>Goods leaving the customs territory of the Community subject to customs supervision shall:</p> <p>(a) be presented to customs authorities in accordance with the provisions in force in order that checks may be carried out; and</p> <p>(b) leave the territory of the Community using, where appropriate, the route determined by the customs authorities.</p>	<p>The exporter.</p> <p>Approved exporter.</p> <p>Any person.</p>	<p>£2500</p> <p>£2500</p> <p>£2500</p>
<p>Articles 59(1) of the Code</p> <p>Goods shall be covered by a declaration for the customs procedure of export.</p>	<p>A person who is able to present the goods in question or to have them presented to the competent customs authority together with all the documents required to be produced.</p> <p>A specific person (where acceptance of a declaration imposes particular obligations on that person).</p> <p>By an agent on his behalf.</p> <p>By a direct agent in the case of a specific person.</p>	<p>£1000</p> <p>£1000</p> <p>£1000</p> <p>£1000</p>

(a) Paragraph 3 was amended by Commission Regulation (EC) 3254/94, O.J. L346, 31.12.1994 p1.

Column 1 Relevant Export Rule	Column 2 Description of Person liable	Column 3 Maximum Penalty
<p>Article 59(2) of the Code</p> <p>Community goods declared for export subject to customs supervision from acceptance of the declaration until they leave the customs territory of the Community.</p>	<p>The declarant.</p> <p>The exporter.</p>	<p>£1000</p> <p>£1000</p>
<p>Article 62 of the Code and Article 199 of the Implementing Regulation (a) and Sections 167(3) 168(1) of the Act</p> <p>Declarations shall be:</p> <p>(a) made on a form corresponding to the official specimen prescribed for the purpose;</p> <p>(b) signed and contain all the particulars necessary for implementation of the provisions of the customs procedure for export; and</p> <p>(c) be accompanied by all the documents required for implementation of the customs procedure of export.</p>	<p>Any person who is able to present the goods in question together with the documents required for the application of the rules governing the procedure.</p> <p>A specific person (where acceptance of a declaration imposes particular obligations on that specific person).</p> <p>By an agent on his behalf.</p> <p>By a direct agent in the case of a specific person.</p>	<p>£2500</p> <p>£2500</p> <p>£2500</p> <p>£2500</p>
<p>Article 161(5) of the Code and Articles 789 and 790 of the Implementing Regulation</p> <p>Export declaration to be lodged at:</p> <p>The customs office responsible for supervising:</p> <p>(a) the place where the exporter is established; or</p> <p>(b) the place where the goods are packed or loaded for export shipment; or</p>	<p>Any person who is able to present the goods in question together with the documents required for the application of the rules governing the procedure.</p> <p>A specific person (where acceptance of the declaration imposes particular obligations on that specific person).</p>	<p>£1000</p> <p>£1000</p>

(a) Amended by Commission Regulation (EC) 3665/93, O.J. L335, 31.12.1993 p1.

Column 1 Relevant Export Rule	Column 2 Description of Person liable	Column 3 Maximum Penalty
(c) the place where the sub-contractor is established (as permitted pursuant to Article 789); and, any customs office competent for the operation in question (permitted pursuant to Article 790).	By an agent on his behalf.	£1000
	By a direct agent in the case of a specific person.	£1000
Article 793(a) of the Implementing Regulation Goods released for export to be presented at the customs office of exit together with copy three of the Single Administrative Document.	The exporter.	£1000
	Any person who is able to present the goods in question together with the documents required for the application of the rules governing the procedure.	£1000
	A specific person (where acceptance of the declaration imposes particular obligations on that specific person).	£1000
	By an agent on his behalf.	£1000
	By a direct agent in the case of a specific person.	£1000
Article 795 of the Implementing Regulation Declaration for export to be lodged retrospectively by the exporter at the competent customs office where goods leave the customs territory of the Community without an export declaration.	The exporter.	£1000
	Any person who is able to present the goods in question together with the documents required for the application of the rules governing the procedure.	£1000
	A specific person (where acceptance of the declaration imposes particular obligations on that specific person).	£1000
	By an agent on his behalf.	£1000

(a) Paragraph 3 was amended by Commission Regulation (EC) 3214/98, O.J.L. 346, 31.12. p1.

Column 1 Relevant Export Rule	Column 2 Description of Person liable	Column 3 Maximum Penalty
	By a direct agent in the case of a specific person	
<p>Article 796 of the Implementing Regulation</p> <p>The exporter to immediately inform the customs office of Export and return copy 3 of the export declaration where goods released for export do not leave the customs territory of the Community.</p>	<p>The exporter.</p> <p>Any person who is able to present the goods in question together with the documents required for the application of the rules governing the procedure.</p> <p>A specific person (where acceptance of the declaration imposes particular obligations on that specific person).</p> <p>By an agent on his behalf.</p> <p>By a direct agent in the case of a specific person.</p>	<p>£1000</p> <p>£1000</p> <p>£1000</p> <p>£1000</p> <p>£1000</p>
<p>Article 798 of the Implementing Regulation</p> <p>Export declaration in the specified form to be presented to the customs office of export where goods which left the customs territory of the Community under cover of an ATA carnet are no longer intended to be re-imported.</p>	<p>The exporter.</p> <p>Any person who is able to present the goods in question together with the documents required for the application of the rules governing the procedure.</p> <p>A specific person (where acceptance of the declaration imposes particular obligations on that specific person).</p> <p>By an agent on his behalf.</p> <p>By a direct agent in the case of a specific person.</p>	<p>£1000</p> <p>£1000</p> <p>£1000</p> <p>£1000</p> <p>£1000</p>

Column 1 Relevant Export Rule	Column 2 Description of Person liable	Column 3 Maximum Penalty
Article 162 of the Code Condition that goods granted release for export leave the customs territory of the Community in the same condition as when the export declaration was accepted.	The exporter.	£1000
Simplified Procedure		
Articles 6 and 7 and 76 of the Code and Articles 282 and 261 and 262 of the Implementing Regulation To comply with a condition of an immediately enforceable binding decision of the customs authorities, in respect of an authorisation to make the declaration for export in a simplified form.	The exporter. The person authorised.	£2500 £2500
Local Clearance		
Articles 283, 284 and 264 of the Implementing Regulation Maintain records sufficient to enable the customs authority to carry out effective checks, in particular, retrospective checks.	Approved exporter.	£2500
Articles 6 and 7 of the Code and Articles 283, 286 and 287 of the Implementing Regulation To comply with a condition of an immediately enforceable binding decision of the customs authorities, in respect of an authorisation referred to in Article 283 of the Implementing Regulation.	Approved exporter.	£2500

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into effect on 23rd December 2003, are made under section 2(2) of the European Communities Act 1972. They enable Customs to charge civil penalties for contraventions of customs rules relating to exports.

Regulation 3 gives effect to the schedule. In that schedule;

Column 1 specifies the customs rules where contravention incurs liability to a penalty,

Column 2 specifies for each specified customs rule the person or persons who may be liable to a penalty,

Column 3 specifies the maximum penalty that may be incurred for the contravention of each specified rule.

Regulation 4 provides that there is no liability to penalty where a person has a reasonable excuse.

Regulation 5 gives power to the Commissioners, or on appeal an appeal tribunal, to reduce a penalty.

Regulation 6 provides for the issue of a demand notice and that the amount of penalty so demanded may be recovered as customs duty.

Regulation 7 imposes a time bar of 3 years on the issue of a demand notice, or 2 years from the time when sufficient evidence came to the knowledge of the Commissioners.

Regulation 8 provides that where a demand notice has been given, that person may not also be prosecuted in respect of the same conduct.

Regulations 9 to 13 set out the arrangements for reviewing decisions and for appeals to tribunals.

Regulation 14 sets out the arrangements for the service of notice.

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