STATUTORY INSTRUMENTS

2009 No. 3164

CUSTOMS

The Customs (Contravention of a Relevant Rule) (Amendment) Regulations 2009

Made - - - -	*2nd December 2009*
Laid before the House of Commons	*3rd December 2009*
Coming into force - -	*24th December 2009*

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(**a**), make the following Regulations:

Citation and Commencement

1. These Regulations may be cited as the Customs (Contravention of a Relevant Rule) (Amendment) Regulations 2009 and shall come into force on 24th December 2009.

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

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

3. In regulation 2—

(a) for the definition of "Customs" substitute—

> ""Customs" means Her Majesty's Revenue and Customs, the Secretary of State by whom customs functions are exercisable or the Director of Border Revenue;";

(b) after the definition of "Customs" insert—

> "functions exercised under these Regulations by the Secretary of State by whom customs functions are exercisable are general customs functions in accordance with the Borders, Citizenship and Immigration Act 2009(**c**) and those exercised by the Director of Border Revenue are customs revenue functions in accordance with the same Act;";

(c) delete the definition of "Customs authority of the United Kingdom" and delete the words—

> "for the purpose of the Code and the Implementing Regulation customs authority of the United Kingdom is one of the "customs authorities" defined in Article 4(3) with responsibility for inter alia applying customs rules within the territory of the United Kingdom;";

(**a**) 2003 c. 14.
(**b**) S.I. 2003/3113.
(**c**) 2009 c. 11.

(d) delete the definition of "the Transit Regulations".

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

"Column 1 *Description of Relevant Rule / Relevant Rule of a description*	*Column 2* *Person of a description*	*Column 3* *Penalty for contravention*
Authorised economic operators **Article 5a of the Code(a) and Article 14w of the Implementing Regulation(b)**		
To inform Customs of all factors arising after an authorised economic operator certificate has been granted which may influence its continuation or content.	The authorised economic operator.	£2,500."

5. In the Schedule, for the entries under the heading "**Transit**" substitute—

"*Column 1* *Description of a relevant Rule / Relevant Rule of a description*	*Column 2* *Person of a description*	*Column 3* *Penalty for contravention*
Customs status of goods and Community transit **Article 94(1) of the Code(c)**		
To provide a guarantee.	The principal to the transit operation.	£2,500.
Article 96(1) and (2) of the Code		
Obligation to:		
(a) produce the goods intact at the customs office of destination by the prescribed time limit and duly observe the measures adopted by Customs to ensure identification of the goods;	The principal to the transit operation.	£2,500.
	A carrier or recipient of goods who accepts the goods knowing they are moving under Community transit.	£2,500.
(b) observe the provisions relating to the Community transit procedure.	The principal to the transit operation.	£2,500.

(**a**) Article 5a of the Code was inserted by Article 1.2 of European Parliament and Council Regulation (EC) No 648/2005 OJ No L 117, 04.05.2005, p 13. "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.

(**b**) Article 14w of the Implementing Regulation was inserted by Article 1.3 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.

(**c**) Article 94(1) of the Code was substituted by Article 1.3 of European Parliament and Council Regulation (EC) No 955/1999 OJ No L 119, 07.05.1999, p 1.

Article 313b(5) of the Implementing Regulation(a)		
Where a regular shipping service has been authorised, obligation to use the authorisation and to communicate any withdrawal or change in the characteristics of the authorised service to the authorising authorities.	The shipping company.	£2,500.
Article 313b(7) of the Implementing Regulation(b)		
Where a vessel of an authorised shipping service is forced to tranship at sea or temporarily put into a third country port or free zone as described in the Article, to inform the customs authorities of the subsequent ports of call along the vessel's scheduled route.	The shipping company.	£2,500.
Article 324d of the Implementing Regulation(c)		
Obligation for T2L or other commercial documents to contain the endorsement "signature waived" in place of the authorised consignor's signature.	The authorised consignor.	£2,500.
Article 448(5) as it applies to Article 324e(5) of the Implementing Regulation(d)		
Obligation to notify all offences and irregularities to the customs authorities.	The shipping company.	£2,500.
Article 359(1) of the Implementing Regulation(e)		
To present the consignment and the transit accompanying document at each office of transit.	The carrier.	£2,500.
Article 360(1) of the Implementing Regulation(f)		
In the circumstances described	The carrier.	£2,500.

(**a**) Article 313b(5) of the Implementing Regulation was substituted by Article 1.5 of Commission Regulation (EC) 75/98 OJ No L 7, 13.01.98, p 3.

(**b**) Article 313b(7) of the Implementing Regulation was substituted by Article 1.13(b) of Commission Regulation (EC) 993/2001 OJ No L 141, 28.05.2001, p1.

(**c**) Article 324d of the Implementing Regulation was inserted by Article 1.21 of Commission Regulation (EC) 2787/2000 OJ No L 330, 27.12.00, p 1.

(**d**) Article 324e(5) of the Implementing Regulation was substituted by Article 1.21 and Article 448(5) by Article 1.51 of Commission Regulation (EC) 2787/2000.

(**e**) Article 359 of the Implementing Regulation was most recently substituted by Article 1.44 of Commission Regulation (EC) No 1192/2008 OJ No L 329, 06.12.2008, p 1.

(**f**) Article 360 of the Implementing Regulation was substituted by Article 1.25 of Commission Regulation (EC) No 2787/2000 and amended by Article 1.45 of Commission Regulation (EC) No 1192/2008.

in Article 360(1)(a) to (e) (prescribed itinerary changed, seals broken, goods transferred to another means of transport, goods unloaded, or in the event of some other incident or accident capable of affecting the ability of the principal or carrier to comply with his obligations), to make the necessary entries in the transit accompanying document and present it with the consignment to the customs authorities of the Member State in whose territory the means of transport is located.		
Article 361(1) of the Implementing Regulation(a)		
To present the goods and the required documents at the office of destination during the days and hours appointed for opening; or, where allowed by the office of destination and at the request and expense of the party concerned, outside the appointed days and hours or at any other place.	The principal.	£2,500.
	The carrier.	£2,500.
Articles 6 and 7 of the Code and Articles 372 to 376 of the Implementing Regulation		
To comply with a condition of authorisation (including the conditions for use of simplifications and operating and control methods) of an immediately enforceable binding decision of Customs to authorise simplifications of Community transit.	The principal. The consignee.	£2,500
Article 377(1) of the Implementing Regulation(b)		
To inform the customs authorities of any factor arising after the authorisation was granted which may influence its continuation or content.	The authorisation holder.	£2,500.
Article 408(1) of the Implementing Regulation(c)		

(**a**) Article 361 of the Implementing Regulation was most recently substituted by Article 1.46 of Commission Regulation (EC) No 1192/2008.
(**b**) Article 377 of the Implementing Regulation was substituted by Article 1.25 of Commission Regulation (EC) No 2787/2000.
(**c**) Article 408 of the Implementing Regulation was substituted by Article 1.73 of Commission Regulation (EC) No 1192/2008.

Obligation to:		
(a) immediately inform the office of destination responsible of the arrival of the goods by the "arrival notification" message including all incidents during transport;	The authorised consignee.	£2,500.
(b) wait for the "unloading message" before starting the unloading;	The authorised consignee.	£2,500.
(c) send the "unloading remarks" message in accordance with the time limit and procedure stipulated;	The authorised consignee.	£2,500.
(d) make available or send to the office of destination a copy of the transit accompanying document which accompanied the goods according to the arrangement provided in the authorisation.	The authorised consignee.	£2,500.
Article 353(3) of the Implementing Regulation(a)		
To obtain the approval of the customs authorities to use a written transit declaration in the fallback procedure under paragraph 2(b) when the principal's computer system and/ or network is/ are not functioning.	The principal.	£2,500.
Point 5 of Annex 37d to the Implementing Regulation(b)		
To inform the customs authorities when the principal's computer system and/ or network is/ are available again.	The principal.	£2,500.
Point 15 of Annex 37d to the Implementing Regulation		
Under the fallback procedure, to present a transit advice note in the required form to each office of transit.	The carrier.	£2,500.
Point 30.1 of Annex 37d to the Implementing Regulation		
Under the fallback procedure, to send to the office of destination without delay the Transit Accompanying	The authorised consignee.	£2,500."

(**a**) Article 353 of the Implementing Regulation was most recently substituted by Article 1.40 of Council Regulation (EC) No 1192/2008.

(**b**) Annex 37d to the Implementing Regulation was inserted by Article 1.97 of and Annex I to Commission Regulation (EC) No 1192/2008.

Document or Copies No 4 and No 5 of the transit declaration which accompanied the goods, indicating the date of arrival, the condition of any seals affixed and any irregularity.		

6. In the Schedule, after the entries inserted by regulation 5 of these Regulations, insert—

"*Column 1*	*Column 2*	*Column 3*
Description of a relevant Rule / Relevant Rule of a description	*Person of a description*	*Penalty for contravention*
Provisions concerning bananas		
Articles 6 and 7 of the Code and Articles 290a and 290b of the Implementing Regulation(a)		
To comply with a condition (including special conditions governing the procedure in question) of an immediately enforceable binding decision of the customs authorities in respect of an authorisation referred to in Article 290b.	Authorised weigher.	£2,500.
Article 290c and Annexes 38b and 38c of the Implementing Regulation(b)		
To draw up a banana weighing certificate in accordance with the required procedure and in the required form.	Authorised weigher.	£2,500."

7. In the Schedule, for the entry relating to Preference beginning "Article 199 of the Implementing Regulation Section 167(3) of the Act Community international agreements according to preferential rates of duty", substitute the following—

"*Column 1*	*Column 2*	*Column 3*
Description of a relevant Rule / Relevant Rule of a description	*Person of a description*	*Penalty for contravention*
Articles 27 and 20(3)(d) of the Code and the agreements therein referred to, which the Community has concluded with certain countries or groups of countries and which provide for the granting of		

(**a**) Article 290a was amended and Article 290b was inserted into the Implementing Regulation by Articles 1.2 and 1.3 respectively of Commission Regulation (EC) No 402/2006 OJ No L 70, 09.03.2006, p 35.

(**b**) Article 290c and Annex 38c were inserted into the Implementing Regulation by Articles 1.4 and 1.8 and Annex 38b was amended by Article 1.7 of Commission Regulation (EC) No 402/2006.

preferential tariff treatment and which require that penalties shall be imposed on any person who draws up or causes to be drawn up a document which contains incorrect information for the purpose of obtaining preferential treatment for products		
Not to draw up, or cause to be drawn up, a document which contains incorrect information for the purpose of obtaining a preferential treatment for products.	Any person drawing up or causing to be drawn up such a document.	£2,500.
Articles 5 and 62 of the Code and Articles 84 and 199 of the Implementing Regulation		
Submission of an accurate, authentic proof of origin or equivalent declaration with attached documents in compliance with any obligation under a particular international agreement entered into by the Community applying as part of the law of the United Kingdom in relation to a relevant tax or duty by virtue of directly applicable Community legislation.	The declarant or representative lodging the proof of origin or equivalent declaration with Customs.	£2, 500.”

Dave Watts
Tony Cunningham
2nd December 2009 Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend regulation 2 and the Schedule to the Customs (Contravention of a Relevant Rule) Regulations 2003 (“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 of the prescribed amount.

In the Schedule, the entries relating to Community transit are clarified and also updated to reflect recent amendments to Council Regulation (EEC) 2913/92 (the Community Customs Code) and Commission Regulation (EC) 2454/93 (the Implementing Regulation).

The entries relating to preference are amended to clarify that any person drawing up or causing to be drawn up or lodging an incorrect proof of origin or equivalent document may be penalised. Penalties may be applied to the declarant or representative lodging the incorrect proof of origin or equivalent declaration, or any person drawing up or causing to be drawn up such a document.

New entries are added in relation to authorised economic operators and authorised weighers of bananas, to reflect changes to the Community Customs Code and the Implementing Regulation since 2003.

The Regulations also amend the definition of "Customs" in the 2003 Regulations to reflect the fact that the UK Border Agency may now exercise customs functions in accordance with the Borders, Citizenship and Immigration Act 2009.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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£5.50

E5397 12/2009 195397T 19585