

CHAPTER 2

PROHIBITIONS, RESTRICTIONS AND PENALTIES

2.1 Introduction

In this chapter you will cover prohibited goods, restricted goods, and penalties.

2.2 Prohibited goods

First we will have a look at goods which are prohibited. Certain goods that arrive in the UK are **prohibited**. This means that the **importation of these goods is not allowed**. This could be for **security reasons**, in the interests of **public health**, or perhaps to **protect EU industry**.

To find out if the goods you are intending to import are prohibited, you can look in the **Tariff**, or consult various government departments, such as the **Home Office** or **Health & Safety Executive** as well as consulting **legislation**.

For example, the **Dealing in Cultural Objects (Offences) Act of 2003** has made it a criminal offence to import 'cultural objects', for example an archaeological piece.

[Dealing in Cultural Objects \(Offences\) Act 2003](#)

Illustration 1

Imagine that you produced heroin overseas and you wanted to import it into the UK. Heroin is a prohibited product, which means that you are not allowed to import it.

2.3 Penalties for importing prohibited goods

Customs have wide ranging powers. If you did try and import this drug Customs would use these powers and **seize the goods**. You can read this in **Sections 49 and 139** of **CEMA**.

[s. 49](#)
[s. 139](#)
[CEMA 1979](#)

You are also likely to be prosecuted under **section 50(1)(b)** of **CEMA**. Prosecution under this section would involve you being arrested.

[s. 50\(1\)\(b\)](#)
[CEMA 1979](#)

Section 50 says what penalties apply to the import of prohibited goods. If you are tried in the **Magistrates Court** then you are liable to a fine of the '**prescribed sum**', which is **£5,000** or **three times the value of the goods**, whichever is the **higher**. You could also face **six months in prison**. Offences that are heard in the **Crown Court** could result in an **unlimited fine** or **seven years in prison**. In both cases you may face a fine and prison!

However, as heroin is a **Class A drug**, stiffer penalties apply. You can find these in **Schedule 1 of CEMA**. For importing this drug you could get **life imprisonment**.

2.4 Restricted goods

What are restricted goods? '**Restricted**' means that the importation of these products **may be allowed** subject to satisfying certain conditions.

Illustration 2

For instance, if you want to import some textile products this might only be allowed if an **import licence** is obtained and presented with the goods at the time of import. In addition, there may be a **tariff quota** which prohibits imports of these products above certain limits. You will learn more about import licensing and tariff quotas in later chapters. These types of restrictions are detailed in the **Tariff**.

2.5 Types of restrictions

There are a number of other restrictions that can apply to imports.

Illustration 3

For example, the **import of endangered species** might be restricted. The regulatory body in the UK is **DEFRA**, which stands for the '**Department for Environment, Food and Rural Affairs**'. They can advise on any conditions that must be satisfied before you can import the endangered species.

Illustration 4

Restricted goods do not just apply to importations. For instance, imagine that you manufacture weapons. The export of these would need to be closely regulated. In this circumstance we might need to apply for an **export licence**.

These are just a few illustrations of the types of goods that are restricted. You will learn about further restrictions as we go through other chapters.

2.6 Penalties for importing restricted goods

What would happen to us if we import goods that are restricted, without the required authority? The same offences that we saw for importing prohibited goods, also apply here. Look at **Sections 49, 50 and 139 of CEMA**.

[s. 49](#)
[s. 50](#)
[s. 139](#)
[CEMA 1979](#)

2.7 Other penalties

We have taken a look at prohibitions and restrictions, but what other penalties could Customs impose on us if we don't comply with the law?

There are a number of **criminal penalties** detailed in *CEMA*. We will also look at the **civil penalty regime**, introduced in the **Finance Act 2003**.

2.8 Knowingly or recklessly making/signing an untrue document

The first one that we're going to look at is in **Section 167(1)**.

[s. 167\(1\)](#)
[CEMA 1979](#)

Illustration 5

Imagine you import your goods and complete your import entry/C88. However, you do it wrong and what's more you knew that you were filling it in incorrectly. You could be guilty of an offence under this section. This applies where someone **knowingly or recklessly makes or signs a document that is untrue in a material particular**.

For instance, you might have put the wrong commodity code down for the goods and therefore have paid too little duty. Or perhaps you've put the wrong CPC Code on the C88. Remember we mentioned the CPC code in the first chapter, it tells Customs the procedure that the goods are going to - for example free circulation, where you pay the duties and import VAT at the time of import.

Imagine then that you pretended that your goods were going to a duty suspension regime - so you haven't paid duty when you should have done. In these circumstances you could face a penalty. (You'll see the types of duty suspension regimes in later chapters.)

The goods could be **seized** by Customs. You could also be **arrested** and if your case is heard in the **Magistrates Court** then you could be fined up to the '**prescribed sum**', go to **prison for six months**, or face a **fine and prison**. The **prescribed sum is £5,000**. Alternatively, if your case is heard in the **Crown Court**, you could face an **unlimited fine**, up to **two years in prison**, or **both**.

2.9 Making/signing an untrue document

The next penalty can be found in **s.167(3)**. This penalty applies where someone **makes or signs a document which is untrue in a material particular**, but **doesn't do it knowingly or recklessly**. This means, in essence, that the person has **innocently** made a mistake.

[s. 167\(3\)](#)
[CEMA 1979](#)

Illustration 6

For instance, perhaps we have been advised by someone of the commodity code to use for our goods, but it turns out to be wrong. We did not knowingly or recklessly complete our document with the incorrect classification code.

In this case the offence is not as serious as the last one, which means that the goods are **not liable to forfeiture**, our offence will only be heard in the **Magistrates Court** and we will **not be sent to prison**. We could however receive a **maximum fine of level 4 on the standard scale**. These levels are given in **section 17 of the Criminal Justice Act of 1991** and currently **level 4** is **£2,500**.

[s. 17](#)
[CJA 1991](#)

Example 1

An offence under Sec 167(1) of CEMA, could potentially result in...

- A £5,000 fine only
- B £5,000 fine or 6 months in prison
- C £5,000 fine and 6 months in prison; or
- D 6 months in prison only

Example 2

An offence under Section 167(3) of CEMA could result in a fine of...

- A £5,000
- B Level 4 on the standard scale
- C Level 5 on the standard scale; or
- D £1,000

2.10 Knowingly acquiring goods that are prohibited, restricted, or where duty hasn't been paid

The next penalty can be found in **Section 170 of CEMA**.

[s. 170
CEMA 1979](#)

Illustration 7

Our importer has imported goods which are prohibited. He then sells those goods on to his mate and his mate knows that the goods are prohibited. This offence applies where someone **knowingly acquires goods which are either prohibited or restricted or chargeable with duty that has not been paid and intends to defraud Customs, or intends to evade a prohibition or restriction**.

In this scenario Customs would have grounds to **arrest** the purchaser of the goods as well as the importer. The offence could be tried in the **Magistrates Court** and result in a **fine of the prescribed sum, £5,000, or if higher, three times the value of the goods**. In addition, someone guilty of this offence could go to **prison for six months**. If their case is heard in the **Crown Court** the **fine is unlimited** and they could go to **prison for seven years**.

This is provided that the goods are not subject to the **Misuse of Drugs Act 1971** or other acts such as the **Forgery & Counterfeiting Act 1981**. If they are, harsher sentences are imposed in those circumstances. The more severe the offence, then the harsher the potential penalty

[Misuse of
Drugs Act 1971](#)

[Forgery &
Counterfeiting
Act 1981](#)

2.11 Mitigation of penalties

Can we do anything to mitigate penalties?

This is covered in **Section 152 of CEMA**, but it is entirely at **Customs discretion**. This section tells us that Customs can compound an offence. Perhaps we'd rather pay a larger fine to Customs to avoid going to prison.

[s. 152](#)
[CEMA 1979](#)

Customs can also **restore our goods** to us.

2.12 Civil penalties

So far we have looked at criminal penalties. Before Finance Act 2003, all the penalties for breaching Customs legislation were criminal. **Finance Act 2003 introduced a civil penalty regime**. The penalties are contained in **Sections 25 and 26**.

[s. 25 & 26](#)
[FA 2003](#)

2.13 Dishonest evasion of duty

Section 25 covers conduct that involves the **dishonest evasion of duty**. The penalty that could be imposed by Customs is **100% of the duty evaded**. The penalty will be imposed by a '**demand notice**'.

If the person has also been convicted in a criminal court for the same offence, or penalised elsewhere, then the penalty under this section will not also apply. **Penalties can be reduced** - down to nil even - **by Customs or a tribunal**, by virtue of **Section 29**.

[s. 29](#)
[FA 2003](#)

In deciding on the reduction, Customs or a tribunal are not allowed to take certain matters into account. These are;

- the inability of the person to pay the penalty;
- the fact there was not a significant loss of duty; and
- the fact that the person has acted in good faith.

Reductions generally up to 75% may be given where the person has **cooperated** and given **full disclosure** to Customs.

Penalties can not be imposed beyond 3 years or 20 years in the case of fraud and once a penalty has been demanded, the same offence cannot form the basis of a prosecution under criminal law. **Penalty demand notices can be appealed against** and the normal time limits apply. We cover the detailed rules on appealing in a later chapter.

2.14 Contravention of a 'prescribed relevant rule' or a 'relevant rule of a prescribed description'

The Finance Act of 2003 introduced a second new penalty in **section 26**. This penalty applies when the **person has not been dishonest or evaded any duty** but has nevertheless broken the law. One of the reasons that the penalty was introduced was to stop people getting criminal records for relatively 'minor' offences.

[s. 26
FA 2003](#)

For example, if an importer failed to send in a return on time for removals from Inward Processing Relief, he could be liable to criminal sanctions. The civil penalty regime stops this from happening for these types of offences, by allowing Customs to issue 'civil' fines instead.

[Customs
\(Contravention
of a Relevant
Rule\) Regs
2003](#)

The **Customs (Contravention of a Relevant Rule) Regulations of 2003** provide the details of offences and schedule of penalties that could apply.

The penalties under Section 26 of the Finance Act apply where a person has **contravened a 'prescribed relevant rule' or a 'relevant rule of a prescribed description'**.

These phrases are defined further down the legislation in subsection 8 and to paraphrase, they apply if an importer has not complied with any duties/ obligations/ conditions or requirements that he should have done!

For example, he might not have complied with duties imposed by CEMA or an obligation or condition imposed by the Code, for instance not keeping records relating to his imports.

Where a person is liable under this section, the **maximum penalty** for his act or omission is **£2,500**, where it is a **serious breach**, or, **£1,000** in **other cases**. The £2,500 limit is detailed in **s.26(5)**. The 2003 regulations detail when the £1,000 and £2,500 penalties will be imposed.

[s. 26\(5\) FA
2003](#)

These penalties **can be reduced by Customs** and the penalties won't apply if the person satisfies Customs that he has a **reasonable excuse**, or where he is also **liable to criminal penalties** or has **already received a demand notice** under **Section 25**.

2.15 Powers of Customs

We will summarise the powers Customs have in protecting the revenue. These powers are detailed in **Sections 157 to 166 of CEMA**.

[s. 157 - 166
CEMA 1979](#)

Customs have the **power to require any security (s.157)**, which may be by way of bond or guarantee, as they feel necessary. We've seen the use of guarantees with respect to duty deferment accounts.

Customs also have the **power to request that an importer provides them with such facilities as they need in order to carry out their duties**. If an importer fails to adhere to this request then they will be subject to a **penalty** not exceeding **level 3** on the standard scale.

Customs have the power to **examine and remove goods**.

[s. 159](#)

They have the power to **take samples**.

[s.160](#)

They have the power to **search premises** at any time of the day or night. If Customs are to search the premises at night they need a Constable with them.

[s.161 & s.161A](#)

Customs have the power to **search vehicles or vessels**. If someone fails to adhere with this request, they could be liable to a **penalty** not exceeding **level 3** on the standard scale.

[s.163](#)

They have the power to **search articles** and finally, they have the power to **search persons**.

[s.163A](#)
[s.164](#)

Note that these penalties and powers have not been aligned with those that apply to most other taxes. You will come across these other penalties when you reach the chapters on the other indirect taxes like IPT etc.

Example 3

Use your legislation to answer the following. In the left hand column of the table is a list of offences. In the right hand column is a list of legislative references. You need to match the offence to the correct place in the legislation where you will find it.

<u>Offences</u>	<u>Legislative references</u>
Forfeiture of goods improperly imported	s.25 FA 2003
Knowingly/recklessly making an untrue declaration	Schedule 1 CEMA 1979
Civil dishonest evasion	s.49 CEMA 1979
Criminal offences for exporting prohibited/restricted goods	s.167 CEMA 1979
Penalty for importing a controlled drug	s.68 CEMA 1979

Answer 1

The correct answer was C.

Answer 2

The correct answer was B

Answer 3