

Isle of Man Customs and Excise

Compliance Checks – Penalties for Contraventions of the Alcohol Wholesaler Registration Scheme

This factsheet contains information about the penalties Isle of Man Customs & Excise (IOMCE) may charge where there has been a contravention of the Alcohol Wholesaler Registration Scheme (AWRS). What we mean by a contravention is explained later in this factsheet. It doesn't cover fixed civil penalties for failure to comply with regulatory requirements.

IOMCE may have given you this factsheet because we have opened a compliance check to check that you have complied with the requirements of the AWRS.

What is the Alcohol Wholesaler Registration Scheme?

AWRS has been introduced to tackle alcohol fraud. If you're an alcohol wholesaler, you need to be approved under the AWRS. Trade buyers are also affected by the scheme.

When IOMCE can charge you penalties

IOMCE can charge you a penalty if you don't comply with the requirements of the AWRS. These failures to comply are called contraventions.

AWRS contraventions are:

- carrying on a controlled activity without an AWRS approval from IOMCE
- buying a controlled liquor from a wholesaler who should have an AWRS approval.

Controlled activity means:

- selling controlled liquor wholesale
- offering or exposing controlled liquor for wholesale sale
- arranging in the course of a trade or business for controlled liquor to be sold wholesale

Controlled liquor means alcohol on which duty has been charged, at a rate greater than nil, and the duty point is at or before the time of the sale.

For example, a wholesaler sells alcohol to various retail customers. The wholesaler does not have an approval and his customers buy the alcohol without checking their supplier is approved. The wholesaler has committed a contravention. The customers have also committed a contravention.

When IOMCE may charge you a penalty for an AWRS contravention

IOMCE may charge you a penalty if you commit any of the contraventions shown above. If you ask someone else, such as an employee or adviser, to do something on your behalf you must do as much as you can to make sure that they don't commit a contravention. If you don't do this, you'll be liable to a penalty.

When IOMCE won't charge you a penalty for an AWRS contravention

IOMCE won't charge you a penalty for a non-deliberate AWRS contravention if you have a reasonable excuse for the contravention and you complied in full with the requirements of the AWRS without unreasonable delay after the reasonable excuse ended.

What we mean by non-deliberate is explained below.

A reasonable excuse is something that stopped you from meeting a tax obligation on time which you took reasonable care to meet. It might be due to circumstances outside your control or a combination of events. Once the reasonable excuse has ended,

you must put things right without any unnecessary delay.

Whether you have a reasonable excuse depends upon the particular circumstances in which the failure occurred and your particular circumstances and abilities. This may mean that what is a reasonable excuse for one person may not be a reasonable excuse for someone else. If you think you have a reasonable excuse, please tell us. If we accept that you have a reasonable excuse, we will not charge you a penalty.

If there was anything about your health or personal circumstances that made it difficult for you to comply with the requirements of the AWRS, please tell the officer that is carrying out the check. Telling them will mean that they can take this into account when considering whether you had a reasonable excuse.

Disclosing an AWRS contravention before IOMCE find it

If you tell IOMCE about a contravention before you had any reason to believe that we were about to find it, we call this an 'unprompted disclosure'.

If you tell us about a contravention at any other time, we call it a 'prompted disclosure'.

Once we have started a check, a disclosure can only be unprompted if, exceptionally:

- it is about something that is unrelated to what we are checking
- you had no reason to believe that we could have found it during our check.

The minimum penalty for an unprompted disclosure is lower than the minimum penalty for an unprompted one.

What you can do to reduce any penalties IOMCE may charge you

IOMCE can reduce the amount of any penalty we charge you depending on our view of how much assistance you gave us. We refer to this assistance as the 'quality of disclosure' or as 'telling, giving us help, and allowing us access to records and other documents'.

Examples of telling, giving help and allowing us access include:

- telling us about, or agreeing that there has been a contravention and how and why it happened
- telling us everything you can about the extent of a contravention as soon as you know about it
- telling and giving us help by answering our questions in full
- giving us help in understanding your records
- giving us help by replying to our letters quickly
- giving us help by attending any meetings, or visits
- giving us help by checking your own records to identify the extent of the contravention
- allowing us access to documents we have asked for without unnecessary delay
- allowing us access to documents we may not know about, as well as those that we ask to see.

We will reduce the penalty by the maximum amount possible if you:

- tell us everything you can about the contravention as soon as you know about it or you believe we are about to find it
- do everything you can to correct it

If you delay telling us, you may still be entitled to a reduction but it will be smaller. If we don't need any extra assistance from you, we will give you the full reduction that the law allows for telling, giving us help and allowing us access to your records.

Letting IOMCE know about any special circumstances

If there are any special circumstances that you believe the officer dealing with the check should take into consideration when

working out the penalty, you should let them know straightaway.

Your rights when IOMCE are considering penalties

Article 6 of the European Convention on Human Rights (ECHR) gives you certain rights when IOMCE are considering penalties for AWRS contraventions that are based on 70% or more of the maximum penalty. Although not all AWRS penalties are covered by Article 6, we will administer all AWRS penalties in the same way.

We always welcome your co-operation with our compliance check and establishing whether any penalties may be due. The extent to which you co-operate with us and provide us with information is entirely your choice. When considering penalties you have the right under Article 6 not to answer our questions. This is sometimes referred to as the right not to self-incriminate or the right to silence. This right does not cover information or documents that already exist. This means that you must provide us with such information or documents that already exist, if we have a legal right to ask for them.

In making a decision about how much you are going to co-operate with us, you have the right to get help from a professional adviser. If you don't already have an adviser, you may want to consider consulting one.

You have the right to have matters of penalties dealt with without unreasonable delay. If we consider that you're liable to a penalty, we will explain how it has been calculated and send you an assessment of the penalty.

If we charge you a penalty, you have the right to ask for a review or to appeal.

You may have the right to apply for publically funded legal assistance and help to bring certain appeals before the tribunal. If you intend to appeal against a penalty assessment, you may want to check whether your case qualifies and the type of help that may be available. We have no involvement in decisions about whether or not your case will qualify. You can get more details from an advocate or the General Registry (www.gov.im/registries).

If there is anything you don't understand about these rights or what they mean for you, please tell the officer who is dealing with the compliance check straightaway.

How IOMCE work out the amount of a penalty

The maximum penalty for each AWRS contravention is £10,000. The amount of each penalty IOMCE charge depends on the behaviour, which is explained below, whether your disclosure was prompted or unprompted, and the quality of your disclosure.

If you are liable to a penalty we start with the maximum penalty and then there are 7 stages in working out the amount of the penalty we are going to charge. The 7 stages are

1. Determining IOMCE's view of the 'behaviour'

When there is an AWRS contravention, IOMCE will work with you to find out what caused it. We refer to this as the 'behaviour'. The type of behaviour will affect the amount of the penalty. The 3 different types of behaviour are described below.

Non-deliberate

This is where you contravened the AWRS, but the contravention was not deliberate or deliberate and concealed.

Deliberate but not concealed

This is where you knew that you had contravened the AWRS.

Deliberate and concealed

This is where you knew that you had contravened the AWRS and you also took active steps to hide the contravention from us.

2. Deciding whether the disclosure was unprompted or prompted

This determines the minimum penalty percentage that IOMCE can charge you. The section titled 'Disclosing an AWRS contravention before we find it' above explains this in more detail.

3. The penalty ranges

The penalty percentage will fall within a range. This range will depend on IOMCE's view of the type of behaviour and whether the disclosure was unprompted or prompted. The following table shows the penalty ranges.

Behaviour	Penalty range for unprompted disclosure	Penalty range for prompted disclosure
Deliberate and concealed	30% - 100%	50% - 100%
Deliberate	20% - 70%	35% - 70%
Non-deliberate	10% - 30%	20% - 30%

If you have a reasonable excuse for a non-deliberate contravention, we will not charge you with a penalty.

4. Working out the reductions for the quality of disclosure (telling, helping us and allowing us access)

The quality of disclosure (or telling, helping us and allowing us access), determines where the penalty will fall within the penalty range. The reduction we give depends on how much assistance you give IOMCE. For:

- telling – we give up to 30%
- helping us – we give up to 40%
- allowing us access to records – we give up to 30%

5. The penalty percentage rate

The penalty percentage rate is determined by the penalty range and the reduction for the quality of disclosure.

Example

During a compliance check, IOMCE found a non-deliberate AWRS contravention that the customer did not know about before we started our check. When we told them about the contravention, they agreed with us that they had committed it. This was therefore a prompted disclosure.

The penalty range for a non-deliberate contravention with a prompted disclosure is 20% to 30% of the maximum amount.

The total reduction for quality of disclosure (telling, helping us, and allowing us access) was 70%.

Calculation example

To work out the penalty percentage rate, IOMCE first calculate the difference between the minimum and maximum penalty percentages.

$$30\% \text{ minus } 20\% = 10$$

We then multiply that figure by the reduction for quality of disclosure to arrive at the percentage reduction.

$$10 \times 70\% = 7\%$$

We then deduct the percentage reduction from the maximum penalty percentage we can charge.

$$30\% \text{ minus } 7\% = 23\%$$

This gives IOMCE the penalty percentage rate 23%.

6. Working out the amount of the penalty

To work out the amount of the penalty, IOMCE multiply the maximum amount by the penalty percentage rate. In the above example the penalty would be £10,000 x 23% = £2300.

7. Considering other reductions

After working out the amount of the penalty, IOMCE then take into account any other reductions that are necessary. For example, where we have already charged another penalty on the same tax or duty. This then gives the amount of penalty that we will charge.

How IOMCE tell you about a penalty

IOMCE will write to tell you how much the penalty is and how we have worked it out. If there is anything about the penalty that you do not agree with, or if you think there is any information we have not already taken into account, you should tell us straightaway. After taking account of anything you have told us, we will send you a penalty assessment notice.

When an officer of a company may have to pay some or all of a company's penalty for a deliberate AWRS contravention

A company officer may have to pay some or all of the company's penalty if the penalty is due to their actions, and one or more of the following applies:

- they have gained, or attempted to gain, personally from a deliberate contravention
- the company is, or we believe it is, about to become insolvent – even if the officer did not gain personally from the deliberate contravention

If the company pays the penalty, IOMCE will not ask the individual officers to pay.

A company officer is a director, shadow director, company secretary or manager of a company, or a member of a limited liability partnership.

What happens if you have deliberately done something wrong?

If you:

- give IOMCE information that you know to be untrue, whether verbally or in a document
- commit a criminal offence under the AWRS legislation,

we may carry out a criminal investigation with a view to prosecution.

What to do if you disagree

If there is something that you do not agree with, you should tell IOMCE.

If we make a decision that you can appeal against we will write to you to explain the decision and tell you what to do if you disagree. You will usually have 3 options. Within 30 days you can:

- send new information to the officer you have been dealing with and ask them to take it into account
- have your case reviewed by an IOMCE officer who has not been involved in the matter
- arrange for your appeal to be heard by an independent tribunal, who will decide the matter.

You can find more information about this in factsheet IOMC&E1 *IOM Customs & Excise decisions – what to do if you disagree*. You can find this factsheet at <https://www.gov.im/media/179499/fact-sheet-iom-cande-1-man-nov-2015.pdf> .

When AWRS penalties apply from

The penalty rules in this factsheet apply to AWRS contraventions from the following dates:

- carrying on a controlled activity without an AWRS approval – 1 January 2016
- buying controlled liquor from a wholesaler who should have an AWRS approval – 1 April 2017

Further information

You can find out more information about AWRS in Notice 2001: Alcohol Wholesaler Registration Scheme (a HMRC publication), which should be read in conjunction with Notice 2001 MAN: Isle of Man Supplement to Notice 2001.

This factsheet is one of a series. For the full list of factsheets in our compliance checks series, go to <https://www.gov.im/categories/tax-vat-and-your-money/customs-and-excise/public-notices/visits-by-customs-and-excise-officers/>