



## **What you can do if things are seized by SBA Customs**

SBA Reference : Notice CN 6 ( March 2010)

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Do you have any comments?

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Further help and advice

If you need general advice or more copies of SBA Customs notices, please ring the Fiscal Office on **00357 2596 3337**. You can call between **08:00 and 16:00hrs on Mondays and 08:00 and 13:00 hrs Tuesday to Friday**.

## 1. Introduction

### 1.1 What is this Notice about?

This Notice gives important advice and information on what you can do following the seizure of any thing (including vehicles and other goods) by SBA Customs. This notice provides information about whom to contact when you have had things seized from you.

Things seized from you are listed on either:

A **Notice of Seizure** (sent to you if you or your agent were not present when the thing was seized); or

A Seizure Information Notice on **form CN5** (handed to you or your agent if we seized the thing in your or their presence). The reason for the seizure should have been explained to the person present at the time of seizure.

This Notice and others mentioned are available both on paper and on our website. A glossary of terms used in this notice can be found at section 5.

### 1.2 What can I do now?

If you accept the legality of the seizure and do not wish to ask for the seized things to be returned to you, that is the end of the matter.

However, if you have had something seized by SBA Customs and you do not accept that we were legally entitled to seize it and/or you want us to consider returning it, you can:

**A) Appeal against the legality of the seizure** by sending a Notice of Claim Letter A (See Section 2).

OR

**B) Ask us in writing to return the thing to you, even if you accept that SBA Customs had a legal right to seize it. This is called delivery up.** There is a separate appeals process for people who are dissatisfied with decisions about returning things. This involves an internal review, followed by a right to appeal to the SBA Court. (See Section 3).

OR

**C) Do both of the above at the same time by contesting the legality of the seizure and asking us to return the seized thing(s) in the meantime. (See Sections 2 and 3).**

In addition to the above you may, when appropriate, follow our complaints procedure which is about how you were dealt with as a person rather than whether things should have been seized from you or restored to you. (See Section 4)

A notice of claim against the legality of seizure must be received by SBA Customs **within one month of the date the seizure occurred. You cannot claim against the legality of the seizure at a later date.** Whatever you decide to do, your case will be dealt with more quickly if it is clear from the start what you are asking us to do.

In addition to the information in this notice you may wish to obtain legal advice. You may have to pay for this. **If you instruct an advocate to act on your behalf you should**

**notify the SBA Court of the name and address of that advocate who is qualified to act and is authorised to accept service of process and to act on behalf of you. Service of process on an advocate so specified shall be deemed to be proper service on you (the claimant).**

### **1.3 What about my personal property?**

If we have seized your vehicle you should try to take as much of your personal property from it as you can, particularly any high value items. You will not be allowed to take any seized things. You should tell the seizing officer about any property you are unable to take so that it can be recorded. Smaller items will be placed in a sealed bag.

Write to the address shown on the outside back cover of this Notice, or, if none is shown, to the address shown on the Seizure Information Notice (CN5) or the Notice of Seizure to arrive within 45 days of the date that your personal property was retained with the seized items. Please mark the envelope "Personal Property". You must collect your personal property within a reasonable period.

### **1.4 What about documents Customs have taken from me?**

If you are present at the time of seizure we will, whenever possible, give you copies of any documents that we take from you. If you did not receive copies please contact the officer at the address shown in this Notice or, the address on the Seizure Information Notice (CN5) or the Notice of Seizure to arrange for copies to be sent to you.

## **2. I don't think Customs had a legal right to seize the thing(s)**

If you believe that the thing was not liable to seizure you must challenge the legality of the seizure. You may believe that Customs had no legal right to seize it because for example:

- goods were within your statutory allowance,

- goods were not prohibited or restricted, or

- a vehicle was running on duty-rebated fuel (e.g. red diesel) which it was allowed to use.

### **2.1 How do I challenge the seizure?**

You can challenge the seizure by sending us a Notice of Claim setting out your reasons for appeal. In legal terms, by sending a Notice of Claim you are asking us to start condemnation proceedings in the SBA court. You may use Letter A in Section 6 of this notice to challenge the seizure but if you prefer to write in your own words, you should make it clear why you believe we were wrong to seize the thing. You must include your full name and address and any Customs reference you have been given. Use continuation sheets where necessary to include all required information. As explained above, if you instruct an advocate to act on your behalf you should include in the Notice of Claim the name and address of the advocate who is qualified to act and is authorised to accept service of process on your behalf. Service of process upon an advocate so specified shall be deemed to be proper service on you (the claimant).

## 2.2 Who can appeal against seizure?

Only the owner of the thing at the time it was seized can successfully appeal its seizure although the owner can instruct someone else to submit a Notice of Claim on their behalf.

## 2.3 Is there a time limit?

Yes. SBA Customs must receive your Notice of Claim within one calendar month of the date of seizure or the Notice of Seizure.

## 2.4 What if I miss the time limit?

If a valid Notice of Claim is not received within one month of the date of seizure or the Notice of Seizure then the legality of the seizure is confirmed. This is a matter of law.

**You will no longer be able to challenge the legality of the seizure.**

## 2.5 Where should I send the Notice of Claim?

It is important that you send your Notice of Claim to the Fiscal Office, HQ SBAA, BFPO 53. as detailed at the end of this Notice or on the Seizure Information Notice (CN5) or the Notice of Seizure. If you send your notice of claim to another customs office or any address elsewhere, it could delay the processing of the claim.

Please send as much information as you can so that your Notice of Claim can be sent to the correct person to deal with your case.

## 2.6 What if I live or reside outside the Sovereign Base Areas?

If you are outside the Sovereign Base Areas you may appeal on your own behalf but if you instruct an advocate you should provide, within the time limit, the name and address of the advocate instructed to accept the service of legal documents and act on your behalf.

## 2.7 What if I only want to appeal the seizure of some of the things seized?

You must state exactly which things are the subject of your appeal. Be as specific as possible including quantities – for example, number of cigarettes or litres of beer, wine or spirits, weight of rolling tobacco and brand names if possible.

## 2.8 What if some of the seized things are owned by other people?

Every person who wants to appeal the seizure of a thing **must** send a Notice of Claim to us within the time limit. If you want to write a joint letter you must:

all sign it, giving full names and addresses

state, where appropriate which of the seized things are the subject of individual appeals.

use continuation sheets where necessary to include **all required information**.

## 2.9 What happens next?

Upon receipt of a Notice of Claim SBA Customs will apply to the SBA Court for an appeal hearing. You will receive a summons from the court telling you when and where the hearing will take place. If your claim involves a vehicle we will consider automatically whether to make an offer for the return of the vehicle in advance of the appeal hearing.

We will give you a written decision unless you have already been given a decision at, for example, the time of seizure. This process is called delivery up (see Section 3).

### **2.10 Are these criminal proceedings?**

No. Appeals against seizure are civil proceedings mainly concerned with establishing whether the thing subject to the appeal was liable to seizure. You will not have a criminal record just because the court finds the thing was liable to seizure.

### **2.11 What happens in advance of the hearing?**

At least 24 hours before the date of the hearing, you, or your nominated advocate, should confirm on oath, before a notary or the clerk of the SBA Court, that you were the owner of the thing at the time that it was seized. The court may also order you to give security for the cost of the hearing in the form of a payment to the court.

### **2.12 What happens in court?**

SBA Customs will present our evidence as to why we think the thing was liable to seizure. You, or your advocate, will be able to tell the court why you think it was not liable to seizure. The Judge will then decide in favour of one or other party.

### **2.13 Do I need legal representation in court?**

No. You don't have to be legally represented in court but you may want to instruct an advocate (normally at your own expense) to act on your behalf.

### **2.14 How long does the process take?**

The process of appeal against seizure can take several months from the date you send your Notice of Claim until the court hearing. The court hearing itself will normally take less than a day.

### **2.15 What will happen if I am successful at the appeal hearing?**

If the court finds in your favour the thing or any delivery up fee that you have paid will be returned to you. If we have already disposed of the seized thing we will pay you an amount equivalent to its market value at the time of seizure (e.g. the price you paid abroad). You may also submit a claim at the court for your costs in relation to the hearing (for example travel to and from the court, legal fees, photocopying etc).

### **2.16 How likely is it that Customs will have disposed of the seized thing?**

We will dispose of perishable goods (including tobacco and beer and all food products) as quickly as possible. We will normally begin to dispose of non-perishable things (such as vehicles and spirits) 45 days after the date of seizure unless we have received an appeal against seizure, in which case they will normally be retained by us until the seizure appeal process is concluded.

### **2.17 What will happen if the court finds in favour of SBA Customs?**

If the court finds in our favour it will make an order forfeiting the seized thing to Customs. The court may also order you to pay our costs. At the time this notice was published it was considered that a suitable amount for costs would be in the region of €200 although this may be considerably more in complex cases.

## 2.18 Can I change my mind part way through the appeal process?

Yes. You can withdraw your appeal against seizure of a thing at any stage by writing to us but you may still be liable to pay some of our costs if the case is well advanced. If you withdraw your appeal against seizure this will not affect any request for delivery up (see Section 3) but the legality of the seizure will have been established and you will be unable to challenge it during any subsequent consideration of a request for delivery up.

## 2.19 What if I don't want to go through the appeals process but would like SBA Customs to consider returning the seized thing?

If you do not lodge an appeal against the legality of the seizure by submitting a valid Notice of Claim within the time limit, ownership of the seized thing will pass automatically to SBA Customs and you will be unable to challenge the legality of the seizure at a later date. However, if you accept that the thing was legally seized, you can still ask us to consider returning the seized thing (see Section 3).

## 3 I want SBA Customs to return the seized thing(s)

### 3.1 In what circumstances can I ask for the return of a seized thing?

You can ask us to consider returning the seized thing, if it is not a prohibited or restricted item and:

you accept that it was liable to seizure; or

you have already challenged the seizure and you are waiting for a court hearing; or

the time limit for challenging the seizure has expired and ownership of the thing has passed automatically to Customs; or

you don't accept that it was liable to seizure but you do not wish to challenge the legality of the seizure.

This process is called delivery up. If you maintain that a seized thing should not have been seized you **cannot** rely on that as a reason for it to be returned to you. In those circumstances you **must** also challenge the legality of the seizure as set out in Section 2.

If the seizure involves a vehicle you may be given a decision about delivery up of the vehicle at the time of seizure or after we have received a valid Notice of Claim notifying us that you wish to contest the seizure (see section 2).

### 3.2 Are Customs likely to return seized thing(s)?

Our general policy is **not** to return seized excise goods (such as alcohol or cigarettes), vehicles used for commercial smuggling or any seized prohibited thing (such as illegal drugs, offensive weapons, counterfeit goods, vegetables or animals / animal products or endangered plant and animal species). However, we will consider all requests taking into account all relevant facts. Under para 14 (a) of Schedule 1 of the Customs Ordinance 2005 consideration may be given to the return of other seized goods on payment of a sum. As a guide the expected sum could be in the region of 25% to 50% of the value of the goods. Such offers will only be considered for the first offence.

### **3.3 How do I ask Customs to restore a seized thing?**

You should make your request for delivery up in writing although the seizing officer **may** offer to deliver up the thing at the time of the seizure (e.g. on humanitarian grounds).

You can use Letter B in section 6 of this Notice or, if you prefer to you may write in your own words, you must make it clear that you want the seized thing restored to you.

### **3.4 Where should I send a letter requesting the delivery up of a seized thing?**

It is important that you send your request for delivery up to the Fiscal Office, HQ SBAA, BFPO 53 as detailed at the end of this Notice or on the Seizure Information Notice (CN5), or the Notice of Seizure. If you send your notice of claim to another customs office or any address elsewhere, it could delay the processing of the claim.

### **3.5 What should I include in my letter?**

Explain why you think the thing should be returned to you. Tell us the full circumstances and enclose any available evidence to support your claim. If your reason for asking for delivery up is simply because you think that it should not have been seized, you **should** also appeal against the legality of the seizure (see section 2). If the court concludes it was not lawful, the seized thing (or any amount paid if we have already agreed to deliver up the goods) will be returned to you in accordance with paragraph 2.14).

You should also enclose proof of ownership of the thing (such as purchase receipts). A copy of a vehicle registration document is useful. We will normally only restore a thing to its rightful owner but will take into consideration arrangements with third parties. You should give your full name and address and quote any Customs reference number shown on the Seizure Information Notice (CN5) or Notice of Seizure. We will normally respond within 10 working days.

### **3.6 Is there a time limit?**

There is no time limit prescribed by law but we would normally expect to receive a request for the return of a seized thing within one month of the date of seizure or the Notice of Seizure. However, if we have not heard from you within 45 days we will begin disposing of non-perishable seized things. Once they have been disposed of it will not be possible for them to be delivered up.

### **3.7 How likely is it that Customs will have disposed of the seized thing(s)?**

We will dispose of seized perishable goods (including tobacco, beer and all animal and food products) as quickly as possible. We will normally begin to dispose of non-perishable things (such as vehicles and spirits) 45 days after the date of seizure unless we receive a request for their delivery up in the meantime, in which case they will normally be retained by us until the process to provide the delivery up (return) of the item(s) is fully concluded.

### **3.8 If Customs deliver up the seized thing(s) will I have to pay anything?**

If we do offer to deliver up a seized thing this will normally be on payment of a fee. Any such fee will vary depending on the specific circumstances. Some guidance is available in para 3.2 of this notice. We may also ask you to pay any duty and/or VAT due if applicable.

### **3.9 What can I do if Customs refuse to deliver up the seized thing, or if I disagree with the conditions of its delivery up?**

When we give you our decision concerning delivery up we will explain how you can request a review of that decision if you do not agree with it. As described in section 102 of the Customs Ordinance 2005, the Chief Officer of the SBA Administration will consider your case.

The Chief Officer can confirm, vary or withdraw the original decision and will be independent of both the officer who seized the thing and the officer who made the original decision.

### **3.10 How do I request a review?**

The notification of a decision about delivery up will normally contain a paragraph which briefly sets out your rights, the time limit (see 3.12) and gives advice on how to request a review. Your request should clearly set out the reasons why you disagree with the decision. It will be helpful if you can attach a copy of the notification or include details of any reference. The Chief Officer will acknowledge receipt of your application for a review and will confirm the expiry date of the 30 day period for conducting the review.

### **3.11 How will the review be conducted?**

The Chief Officer will call for all the papers from the Officer who issued the decision and may discuss the reasons for the decision with him or her. The Chief Officer may need to contact you to clarify any points or seek further information. The review stage, though mandatory, is not intended to be complex or to require professional representation. Nevertheless, if you choose to employ professional advisers you should bear in mind that you will be responsible for their charges. If you do so we will ask you to confirm that they are representing you. We will advise you in writing of the outcome of the review and of any further rights of appeal.

### **3.12 What about time limits?**

**You** have up to **60 days** from the date we issue our decision on delivery up to write and ask us to review it (we will normally tell you if our decision is appealable).

**We** then have up to **30 days** from the receipt of your letter requesting us to review our decision to carry out a review and notify you of the outcome. If, following the review, you still wish to pursue the matter you have **30 days** from the date of the review decision to lodge your appeal with the SBA Court.

If you request a review outside of the statutory 60 day time limit you must be able to show a 'reasonable excuse' why your request is outside the time limit – for example because of ill health or bereavement. You should include your reasons, in writing, with your request.

If your request for an 'out of time' review is refused you may, appeal against our refusal to the SBA Court.

### **3.13 Can the time limit for a review to be carried out be extended?**

If we do not complete a review within 30 days then this can be extended, by mutual agreement, by another 30 days.

### **3.14 What if I still disagree? Can I appeal to someone else?**

Yes. If you disagree with the Review Officer's decision you have the right to appeal to the Sovereign Base Area Court, which is independent of SBA Customs

### **3.15 What happens if I do not get a review decision within 30 days of requesting it but I still want to appeal to the SBA Court?**

If we do not complete the review within 30 days and there has not been agreement to extend the review time then:

The original decision stands; and

You have the right to lodge an appeal with the SBA Court.

If the 30 day time limit has expired for you to lodge an appeal to the SBA Court then you must apply direct to the Registrar of the Court for an extension of time in which to lodge and appeal. SBA Court appeal forms are available by telephoning the SBA Court or to ask for copies you may write to the Registrar at the SBA Court.

### **3.16 Can I accept an offer to restore the seized thing even if I am unhappy with the fee payable, and then ask for a review of the restoration offer?**

Yes. If you accept the restoration offer, pay the delivery up fee (as applicable) , and take back possession of the seized thing but you consider the fee to be unreasonable, you can ask for a review of the delivery up decision. If you remain dissatisfied you may then appeal the 'reviewed' decision to the SBA Court. However you will not be able to challenge the legality of the seizure (Section 2) **unless** we receive a valid Notice of Claim within one month of the date of seizure.

### **3.17 Can I appeal direct to the SBA Court?**

No. You must first ask SBA Customs to review the original decision. You cannot appeal to the SBA Court until this process has been completed. Note, however, that you can appeal direct to the SBA Court if the Chief Officer undertaking the review has been unable to reach a decision within the 30 day time limit and you have not agreed an extension.

### **3.18 Can I have a restoration decision reviewed even when I am appealing against the seizure?**

Yes. You can submit a Notice of Claim against the seizure (Section 2) and still receive a delivery up decision that can then be reviewed prior to the condemnation proceedings in the SBA court. If you are dissatisfied with the reviewed decision you may then appeal the reviewed decision to the SBA Court. We would normally ask for any court hearing to be deferred until the condemnation proceedings have been concluded.

### 3.19 How do I appeal to the SBA Court?

The SBA Court will hear an appeal after the Chief Officer has reviewed the original decision and provided his decision to you. As described above if you are dissatisfied with the decision of the Chief Officer you may appeal to the SBA Court. You must provide a copy of the original decision and a copy of any letter notifying you of the outcome of the Departmental review to accompany your appeal to the SBA court. Your appeal to the court should be sent to the appropriate Court office and **not** to SBA Customs.

### 3.20 Will my request for delivery up be affected if I lose the appeal against seizure?

No. Losing an appeal against the legality of the seizure does not affect any simultaneous request for the delivery up of the thing.

### 3.21 Where can I find out more?

See our Internet site or contact the SBA Customs Fiscal office. Contact details are shown at the beginning of this notice.

## 4. Complaining about the way you were dealt with by SBA Customs

If you are unhappy about the way you were dealt with or about the behaviour of our Officers you may make a complaint to the officer or to one of the SBA Customs offices and, if not satisfied by our response, to the Chief Officer, HQ SBAA. This is entirely separate from the appeals procedures in sections 2 and 3 which deal with the things seized from you and the reasons they were seized. The complaints procedure is about how you were dealt with as a person rather than whether things should have been seized from you or restored to you. The Chief Officer **cannot** deal with claims against seizure or requests for restoration.

## 5. Glossary of terms used in this Notice

Glossary	
Seizure	The physical act of Customs taking possession of a thing which they believe to be liable to forfeiture under the Customs and associated Ordinances.
Forfeiture	The legal act, whether by order of a court or by passage of time (if there is no appeal) which transfers ownership of a seized thing to Customs.
Notice of Claim	A letter formally appealing against the seizure of a thing by Customs. Legal ownership of the seized thing will pass automatically to Customs within one month of the date of seizure if a Notice of Claim is not submitted. See paragraph 2.1.
Condemnation proceedings	The legal term for an appeal against the seizure of a thing by Customs. Condemnation proceedings will establish whether or not legal ownership of the seized thing will pass to Customs. See paragraph 2.1.
Delivery up	A means by which Customs can return a seized thing to its owner, usually for a sum of money.

**6. Letter A – Notice of Claim – Use this letter if you want to appeal to a court against the legality of the seizure (see section 2 of this notice)**

My address

Daytime Telephone No

Date

Customs address (see section 2.5 of this Notice)

Any Custom Seizure Reference No; + date and place of seizure.

List the seized things you wish to be included in your appeal:

Owner	Thing and Quantity*

NB: Remember to include proof of ownership (this is particularly important if vehicles are concerned), together with any documentary information to support your claim. I / we\*\* the undersigned wish to appeal against Customs' legal right to seize the thing(s) listed above (see also attached sheet\*\*). Please commence legal proceedings so that I / we\*\* can challenge why the thing(s) were seized by Customs.

Signed(1)

Signed(2)\*\*

Signed(3)\*\*

Signed(4)\*\*

Print name

Print name\*\*

Print name\*\*

Print name\*\*

*\*For example show kilos (of rolling tobacco), number (of cigarettes) and litres (of alcohol) + brand name*

*\*\*Delete as applicable*

**EACH PERSON APPEALING AGAINST SEIZURE MUST PROVIDE THEIR FULL NAME AND ADDRESS. USE CONTINUATION SHEETS WHERE NECESSARY.**

**7. Letter B – Use this letter if you want Customs to return seized things to you (see section 3 of this notice)**

My address:

Daytime Telephone No:

Date:

Customs address (see section 3.4 of this Notice)

Any Custom Seizure Reference No; + date and place of seizure.

List the seized things you wish to be returned to you (if you are also appealing against the legality of the seizure and have already listed the things in Letter A you need only tick here [  ]):

Owner	Thing and Quantity*

NB: Remember to include proof of ownership (this is particularly important if vehicles are concerned), together with any documentary information to support your claim. I / we\*\* the undersigned ask for the return of the thing(s) indicated above (see also attached sheet\*\*).

I / we\*\*believe that these things should be returned for the following reasons (please refer to section 3.5), if you require more space please attach a separate sheet:

**Note:** If your only reason for requesting the return of seized things is that you think that Customs had no legal right to seize them you cannot rely on that as a reason for it to be returned to you. In those circumstances you must also challenge the legality of the seizure as set out in Section 2 of this notice.

If you wish us only to consider returning the seized thing you must make it clear (by ticking the box below) that you do not also wish to contest the legality of the seizure.

**I / we\*\* do not wish to contest the legality of the seizure:** [  ]

Signed(1)

Signed(2)\*\*

Signed(3)\*\*

Signed(4)\*\*

Print name

Print name\*\*

Print name\*\*

Print name\*\*

*\*For example show kilos (of rolling tobacco), number (of cigarettes) and litres (of alcohol) + brand name*

*\*\*Delete as applicable*

**Complete both Letter A and Letter B if you wish to** contest the legality of the seizure and, at the same time, ask Customs to consider returning a seized thing (**see sections 2 and 3 of this notice**).

EACH PERSON REQUESTING THE RETURN OF SEIZED THINGS MUST PROVIDE THEIR FULL NAME AND ADDRESS. USE CONTINUATION SHEETS WHERE NECESSARY.

**Do you have any comments?**

We would be pleased to receive any comments or suggestions you may have about this notice. Please write to:

The Fiscal Officer

**SBA Customs & Immigration  
HQ SBAA**

**BFPO 53**

**If you have a complaint or suggestion**

If you have a complaint please try to resolve it on the spot with our officer. If you are unable to do so, or have a suggestion about how we can improve our service, you should contact the Fiscal Office, HQ SBAA, BFPO 53. The telephone number is +357 2596 3337. You will find further information on the Customs Portal of our [website at \*\*http://www.sba.mod.uk\*\*](http://www.sba.mod.uk)

If we are unable to resolve your complaint to your satisfaction you can ask the Chief Officer of the Sovereign base Areas Administration to look into it. The Chief Officer, is a fair and unbiased referee whose recommendations are independent of SBA Customs.

You can contact the Chief Officer at:

**The Chief Officer  
HQ SBAA  
Block C  
BFPO 53**

**Phone: (+357) 2596 3755**  
Fax: (+357) 2596 3993  
Email: [hqsbba@cytanet.com.cy](mailto:hqsbba@cytanet.com.cy)  
Internet: <http://www.sba.mod.uk>