

EXPLANATORY MEMORANDUM TO
THE CUSTOMS (CONTRAVENTION OF A RELEVANT RULE) (AMENDMENT)
(EU EXIT) REGULATIONS 2018.

2018 No. 1260

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument is made alongside legislation to be made under the Taxation (Cross-border Trade) Act 2018 (TCTA) to create a new standalone Customs regime following the United Kingdom's (UK) exit from the European Union (EU). In the event of the UK leaving the EU without a deal, legislation will be necessary to ensure the UK's Customs, VAT and Excise regimes function as intended after the UK leaves the EU and so, on a contingency basis this SI sets out the customs civil penalties regime. It amends the Customs (Contravention of a Relevant Rule) Regulations (SI 2003/3113) by prescribing a range of specific circumstances where penalties can be applied, up to a maximum penalty of £2,500, as well as removing references to EU legislation.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The extent of this instrument is the whole of the United Kingdom.
4.2 The territorial application of this instrument is the whole of the United Kingdom

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 This instrument is being made using the powers in section 26 of the Finance Act 2003. The power in section 26(5A) of that Act which was inserted by the TCTA is being used for the first time.

- 6.2 This instrument is coming into force using the power in section 52(2) of the TCTA which allows subordinate legislation to be brought into force on a day appointed by the Treasury in Regulations. This is on the basis that the Treasury is of the view that it is appropriate in consequence of, or otherwise in connection with the UK's withdrawal from the EU.
- 6.3 Currently, the main provisions governing the importation of goods to the UK are set out in directly applicable EU regulations. The Union Customs Code, [Regulation \(EU\) No 952/2013](#) (UCC) is the overarching legislative framework for customs adhered to by all Member States, and is supplemented by many other regulations.
- 6.4 When paragraph 1 of Schedule 7 to TCTA is commenced these EU regulations will be replaced by provision made by and under TCTA (including this instrument) and to the extent that these EU regulations (which will form part of the law of the United Kingdom as a result of section 3 of the European Union (Withdrawal) Act 2018)) impose or otherwise apply in relation to any EU customs duty/import duty they will cease to have effect.
- 6.5 In the UK, the EU regulations are supplemented by the Customs and Excise Management Act 1979, sections 13A to 16 of, and Schedule 5 to, the Finance Act 1994 (reviews and appeals) and Part 3 of the Finance Act 2003 (penalties), which, subject to amendments made by the TCTA, will remain in force after EU exit.

7. Policy background

- 7.1 Customs civil penalties were introduced in 2003 (in SI 2003/3113 cited above) as an alternative to criminal sanctions for serious breaches of customs rules, thus bringing the UK's Customs regime into line both with other customs territories administered by the UK, and with EU expectations. This instrument will ensure that HMRC will be able to operate an effective customs civil penalties regime after the UK exits the EU.
- 7.2 These regulations give HMRC discretion regarding when penalties will be applied; this is similar to the level of discretion in the current processes for applying customs civil penalties. HMRC's approach to civil penalties will take into account any reasonable excuse customers may have for contraventions. If someone disagrees with the penalties applied, they would be able to appeal to the Tribunal. In cases where there is continued or deliberate non-compliance, HMRC will consider all circumstances of the case and take appropriate customs civil penalty action.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the United Kingdom's withdrawal from the European Union insofar as it relates to Part 1 (Import Duty) of the Taxation (Cross-border Trade) Act 2018, which allows civil penalty (contravention) rules to be made with reference to new UK law.

9. Consolidation

- 9.1 This is new legislation and therefore no consolidation is required.

10. Consultation outcome

- 10.1 As the purpose of this instrument is to broadly replace existing EU legislation into domestic legislation, it is considered that no consultation is required.

11. Guidance

- 11.1 Guidance for existing Customs (Contravention of a Relevant Rule) penalties is already available, and will remain available when this instrument is made.

12. Impact

- 12.1 The impact on business, charities and voluntary bodies is an anticipated familiarisation cost. This is because this instrument gives effect to an existing customs penalty system for non-EU trade, so businesses which currently trade only with the EU will also need to understand it.
- 12.2 The impact on the public sector is that there is likely to be some increase in administrative costs for HMRC in applying customs civil penalties given that post EU exit, customs obligations will also apply to EU trade.
- 12.3 This instrument is one of a group of instruments covered by a single overarching HMRC impact assessment which will be published on 4 December 2018 and will be available on the website at <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal>.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses since this instrument does not impose new obligations on them or change existing rules with which they must comply. Appropriate guidance is already in place for the Customs civil penalties regime and will remain available to small businesses when this instrument comes into force.

14. Monitoring & review

- 14.1 The HMRC will keep the instrument under review so that it meets the policy objectives set out in section 2 of this EM and to ensure that burdens on business are carefully monitored and reviewed.
- 14.2 A statutory review clause is not included within these regulations because the SI relates to a tax or duty, and therefore meets the requirements of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

- 15.1 Jane Chaplin at HM Revenue and Customs, Telephone: 03000 586757 or email: jane.chaplin@hmrc.gsi.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Pam Mulholland at HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Mel Stride, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.