

EXPLANATORY MEMORANDUM TO
THE CONTROL OF CASH (PENALTIES) REGULATIONS 2007

2007 No. 1509

1. This explanatory memorandum has been prepared by HM Revenue and Customs on behalf of HM Treasury and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

These Regulations provide for penalties for failing to declare movements of cash into and out of the European Community, and an appeal mechanism.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None

4. **Legislative Background**

These Regulations are made under section 2(2) of the European Communities Act 1972 to give effect to Community Regulation 1889/2005. This introduces a harmonised control and information procedure for large-scale movements of cash (which is widely defined to include freely-negotiable financial instruments) in or out of the Community, and empowers the national authorities to take appropriate administrative actions, including an obligation to pronounce penalties. Member State enforcement procedures must be in place at the time when the Regulation comes into force on 15th June 2007.

5. **Territorial Extent and Application**

This instrument applies to all of the United Kingdom. It does not apply to the Channel Islands and the Isle of Man.

6. **European Convention on Human Rights**

Dawn Primarolo MP, the Paymaster General, has made the following statement regarding Human Rights:

In my view the provisions of the Control of Cash (Penalties) Regulations 2007 are compatible with the Convention rights.

7. **Policy background**

Under Article 3 of Community Regulation 1889/2005, any person entering or leaving the Community and carrying cash amounting to 10,000 euros or more will be under an obligation to declare that amount. Article 9 thereof requires Member States to introduce

effective, proportionate and dissuasive penalties for failure to comply with this obligation.

In determining the penalties to be applied, it is UK policy to devise a system which both meets the criteria of Article 9 and is in line with HMRC's approach to dealing with other contraventions of customs law.

The UK has largely dispensed with criminal sanctions for contraventions of customs law as they have proved cumbersome to operate and can result in those involved getting a criminal record for relatively minor offences. It is considered that civil penalties provide an appropriate sanction in most such cases.

In the present case, the Commissioners for HMRC are being given the option of imposing a penalty not exceeding £5000 for non-compliance with the obligation to declare. This gives them the opportunity to exercise discretion to impose a lesser amount or to limit action to issuing a warning letter. Factors which would influence the action taken may include the amount of the undeclared cash in any particular case and the number of previous occasions that the person concerned has been identified as failing to comply with the obligation to declare. It is considered that such an approach both meets the requirements of the Community Regulation and accords with existing sanctions policy on contraventions of customs law.

In addition, in order to be consistent with Community and national legislation on appeals mechanisms in respect of other penalty regimes operated by HMRC, the Regulations include provision for the person upon whom the penalty has been imposed to apply to the Commissioners for HMRC to review that decision, and for appeals to be made to the VAT and Duties Tribunal.

As the Regulation does not apply to the Channel Islands or the Isle of Man declarations will be required from persons travelling to and from those places.

8. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

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can answer any queries regarding the instrument.