

EXPLANATORY MEMORANDUM TO
THE EXPORT (PENALTY) (AMENDMENT) REGULATIONS 2018
2018 No. 507

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends The Export (Penalty) Regulations 2003 (SI 2003/3102) (“the 2003 Regulations”) to replace references to the “Community Customs Code” (“CCC”) and associated legislation with references to the “Union Customs Code” (“UCC”) and associated legislation. The 2003 Regulations make provision for the imposition of civil financial penalties where there has been a failure to comply with a duty, obligation, requirement or condition in the case of specific taxes or duties. The CCC has now been replaced with the UCC (Regulation (EU) No 952/2013), and this instrument therefore amends the Regulations to replace references in relation to the CCC with references in relation to the UCC.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The Export (Penalty) Regulations 2003 were made in exercise of the powers conferred upon the Commissioners of Her Majesty’s Revenue and Customs, being a Department designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to customs matters of the European Union. The Regulations prescribe where a breach of a requirement imposed by or under specified tax legislation relating to exports makes a person liable to a civil financial penalty. The CCC is one of the pieces of tax legislation specified in the Regulations for these purposes and the precise requirements to which an administrative civil penalty attaches (together with the person who is liable to the penalty) are prescribed in the Schedule contained in the 2003 Regulations. As the CCC has been replaced by the UCC this instrument amends the Regulations to replace references in relation to the CCC and associated legislation with references in relation to the UCC and associated legislation.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 This amendment ensures that UK domestic law concerning the imposition of civil administrative financial penalties, which is intended to be applied in conjunction with provisions of EU law, cross-refers to the most recent version of the EU legislation with which it was intended to operate. It does not seek to materially alter the scope of the power to impose civil penalties, the circumstances in which a person may be liable to a penalty, person who is liable, or the amount of the penalty which may be imposed.

8. Consultation outcome

- 8.1 No consultation has taken place as this is a technical amendment.

9. Guidance

- 9.1 There is existing internal guidance on penalties and Notice 301 – Civil penalties for contraventions of customs law which can be found on www.gov.uk.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is nil where they are compliant with customs legislation.
- 10.2 There is no impact on the public sector.
- 10.3 A Tax Information and Impact Note (TIIN) covering this instrument will be published on the gov.uk website at the following link:
<https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 11.3 The basis for the final decision on what action to take to assist small businesses was that, although the changes do not discriminate between businesses few, if any, small businesses are affected. The impact on small and micro businesses is negligible.

12. Monitoring & review

- 12.1 The application of penalties is already carefully monitored to ensure that the penalties are applied correctly, effectively and consistently. That monitoring will continue.

13. Contact

- 13.1 Marilyn Seago at HM Revenue and Customs. Telephone: 03000 593391 or email: marilyn.seago@hmrc.gsi.gov.uk can answer any queries regarding the instrument.