

EXPLANATORY MEMORANDUM TO

THE CUSTOMS SAFETY AND SECURITY (PENALTY) REGULATIONS 2019

2019 No. 121

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 The instrument forms part of legislation to be made under the European Communities Act 1972 to ensure that the United Kingdom has a safety and security penalty regime in place. It makes provision for civil penalties for non-compliance with certain safety and security obligations. Safety and security is paramount to a nation's protection against threats from terrorism, trade in illegal guns and drugs. This instrument will continue to have effect under the European Union (Withdrawal) Act 2018 in the event of the United Kingdom leaving the European Union without a deal to ensure the safety and security penalty regime remains operable after the United Kingdom departure date.
- 2.2 This instrument will also correct an error in the Customs (Contravention of a Relevant Rule) Regulations 2003. Consequently these regulations are issued free of charge to all known recipients of those regulations.

3. Matters of special interest to Parliament

Matter of special interest to the Joint 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 territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is 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 The instrument is introduced under European Communities Act 1972 to put in place a civil penalties regime that will apply penalties to obligations contained within European regulations. This instrument will form part of retained law under the

European Union (Withdrawal) Act 2018 in the event of a no deal and we expect to make minor updates under this Act to ensure the penalty regime remains in operation after the United Kingdom departure date.

7. Policy Background

What is being done and why?

- 7.1 The European Union introduced a safety and security policy across Europe, governed by the UCC. It requires submission of safety and security declarations in order to risk assess goods before they arrive in or leave the EU. This protects the UK border against trafficking of illegal goods such as drugs and guns and potential bomb threats. This instrument will replace the current penalty regime for non-compliant traders who do not adhere to safety and security obligations at the UK border. It is also a tool to encourage traders to comply with their obligations. Safety and security is paramount for a nation's ability to protect its people, businesses and borders. The enforcement of penalties and possible asset seizure is a deterrent to these traders and assists our border agencies to gather and assess information for risk analysis.
- 7.2 These regulations give HMRC discretion regarding when penalties will be applied; this is similar to the level of discretion 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 will be able to appeal to an independent tribunal.

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 under the European Communities Act. It relates to the withdrawal of the United Kingdom from the European Union because in the event of a 'No Deal' the UK will have a robust safety and security penalty regime in place for traders who fail to comply with the regulations.

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 ensure the United Kingdom continues to have a customs civil penalties regime for safety and security obligations in place, it is considered that no consultation is required. We have had consultation regarding the safety and security obligations and more information on this can be found in the explanatory memorandum to the Customs Safety and Security Procedures (EU Exit) Regulations 2019.

11. Guidance

- 11.1 Safety and security international requirements under the World Customs Organisation are already within the public domain. Guidance on the replacement penalty regime will be published before departure date. HMRC is aware that, in a No Deal scenario, businesses new to safety and security will also need to familiarise themselves with their new obligations. Therefore, HMRC will be pragmatic and use its discretion

when issuing penalties in this situation. Further details can be found at:
<https://www.gov.uk/hmrc-internal-manuals/customs-civil-penalties-guidance>

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is varied. This instrument will introduce an additional administrative and financial burden for businesses that currently trade with the EU. Businesses will need to adapt their process and systems to meet the requirement to make safety and security declarations prior to arrival of goods in the United Kingdom. In respect of charities or voluntary bodies this will depend on the nature of their operation activities. Those entities which have regular trade with the EU will be impacted by the changes.
- 12.2 The impact on the public sector is varied, given that penalties are applied on a case-by-case basis and allow for any 'reasonable excuse' which traders might have in not being able to fulfil their obligations. HMRC is aware that businesses new to safety and security obligations will also need to familiarise themselves with the updated penalty regime.
- 12.3 This instrument will be covered by an overarching HMRC impact assessment (second edition) which will be published and 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 To minimise the impact of the requirements on small businesses, (employing less than 50 people), the approach taken is to work with these businesses to address concerns in submitting safety and security declarations. This instrument will only affect the non-compliant businesses. In November 2018, we launched our general forums (Q&A) discussions with key customs stakeholders on the whole tranche of Customs 'No Deal' instruments.
- 13.3 The basis for the final decision on what action to take to assist small business is to facilitate trade flow at the border but ensure safety and security is not compromised. HMRC will publish guidance on its website and other media outlets that will provide advice on what to do leading up to the UK departure date.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is to assess the impact of the instrument post EU-Exit. HMRC will review the process of applying penalties to traders and take a pragmatic approach in the first year of introduction. Penalties will be applied on a case-by-case basis and allow for any 'reasonable excuse' for not meeting their obligations. Further guidance will be published before 29 March 2019.
- 14.2 The impact on business during the first year of introduction depends on trader compliance and HMRC's pragmatic approach in applying penalties. Each case will be judged on its merits and HMRC allow 'reasonable excuses' for not meeting safety and security requirements. We do not expect a significant impact in the first year but will expect this to be reviewed at the end of the year.
- 14.3 The regulation does not include a statutory review clause and in line with the requirements of the Small Business, Enterprise and employment Act 2015 the

Financial Secretary to the Treasury, the Rt Hon Mel Stride has made the following statement:

‘It is not appropriate to make provision for review as safety and security are and will remain essential to the protection of the country and penalties will continue to be required to ensure compliance with the regime.’

15. Contact

- 15.1 Tyrone Eugene at HM Revenue Customs email: Tyrone.Eugene@hmrc.gsi.gov.uk or telephone: 03000 551348 can be contacted with any queries regarding the instrument.
- 15.2 Pamela Mulholland, Deputy Director for Customs EU-Exit the at HM Revenue Customs Name 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.