

EXPLANATORY MEMORANDUM TO
THE CUSTOMS (CONTRAVENTION OF A RELEVANT RULE) (AMENDMENT)
(EU EXIT) REGULATIONS 2019

2019 No. 148

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.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument forms part of a package of secondary legislation which is being made to ensure, that in the event of the United Kingdom (UK) leaving the European Union (EU) without a negotiated deal, the UK has a customs regime in place before the date of departure.
- 2.2 This instrument introduces customs civil penalties which HM Revenue and Customs (HMRC) can apply in circumstances when customs export requirements are not followed ensuring that there continues to be effective civil penalty provisions for export procedures. The instrument prescribes a range of specific circumstances where penalties can be applied, up to a maximum penalty of £2,500.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 Amendments are made to the Customs (Contravention of a Relevant Rule) (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1260) (“2018 Regulations”) which correct errors in that instrument as identified by letter dated 19 December 2018 by the Select Committee on Statutory Instruments. These amendments to the 2018 regulations will come into force 21 days after this instrument is made.
- 3.2 The amendments made by this instrument to the Customs (Contravention of the Relevant Rule) Regulations 2003 (S.I. 2003/3113) will come into force on a day to be appointed by the Treasury pursuant to the power contained in section 52(2) of Taxation (Cross border Trade) Act 2018 (TCTA). The amendments made by the 2018 Regulations to the Customs (Contravention of the Relevant Rule) Regulations 2003 were also stated to come into force on a day to be appointed by the Treasury.

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)

- 3.3 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 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 is a second set of amendments to the Customs (Contravention of a Relevant Rule) Regulations 2003 (S.I. 2003/3113) that includes customs civil penalty rules in relation to the export of goods from the UK which are contained in the Customs (Export) (EU Exit) Regulations 2019 (S.I. 2019/108). Provision is also made for civil penalties in relation to customs record keeping obligations contained in the Customs (Records) (EU Exit) Regulations 2019 (S.I. 2019/113). The first set of customs civil penalty amendment regulations which relate to contraventions of rules governing the import of goods, were laid before the House of Commons on 30 November 2018.
- 6.2 Currently, the main provisions governing the import and export of goods to and from the UK are set out in directly applicable EU regulations. The Union Customs Code (UCC), [Regulation \(EU\) No. 952/2013](#) is the overarching legislative framework for customs adhered to by all Member States, and is supplemented by many other regulations.
- 6.3 When paragraph 1 of Schedule 7 to the Taxation (Cross-border Trade) Act 2018 (TCTA) is commenced these EU regulations will be replaced by provision made by and under TCTA. The current export civil penalty provisions will cease to be valid and will be replaced by the provisions in this instrument.
- 6.4 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 TCTA, will remain in force after the UK exits the EU.

7. Policy background

- 7.1 Customs civil penalties were introduced by the 2003 Regulations as an alternative to criminal sanctions for serious breaches of customs rules, thus bringing the UK's customs regime into line with EU expectations. The policy intention is to ensure that the UK continues to have a viable customs civil penalties provision in place when it has left the EU, and is in keeping with customs provisions set out in TCTA.
- 7.2 Customs civil penalties are used to encourage compliance with customs law and are applied when the customs contravention is of a non-criminal nature. The civil penalties being introduced through this instrument are in addition to those already introduced by the 2018 Regulations. Customs civil penalties can be applied when there has been a contravention of customs requirements. The application of these penalties will depend on the circumstances surrounding the contravention and the trader's compliance history or attitude towards compliance.

7.3 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 will be able to appeal to an independent 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 2 (Export 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 instrument further amends the 2003 Regulations. This instrument also makes some amendments to the 2018 Regulations. Details of the customs civil penalties amounts which can be charged for contraventions are set out in the contravention schedule. This instrument introduces additional export penalties to the 2003 Regulations, therefore no consolidation is required.

10. Consultation outcome

10.1 As the purpose of this instrument is to broadly replace existing EU legislation as well as introducing some additional penalties for failure to comply with export procedures as laid out within TCTA, it is considered that no consultation is required.

11. Guidance

11.1 Guidance for existing customs civil penalties is already available <https://www.gov.uk/government/publications/excise-notice-301-civil-penalties-for-contraventions-of-customs-law>. Revised Guidance to account for the change in legislation will be made available before 29 March 2019.

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 traders who export to countries outside of the European territory (rest of world traders). On exit from the EU on 29 March 2019, all trade leaving the UK will be classed as rest of world. Businesses which currently trade only with the EU will need to be aware of the civil penalty implication for contravening export rules.

12.2 The impact on the public sector is that there is likely to be some increase in administrative costs for HM Revenue and Customs in applying customs civil penalties given that post the UK's exit from the EU, customs obligations will also apply to EU trade.

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:

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 (employing up to 50 people).
- 13.3 The basis for the final decision on what action to take to assist small businesses is that similar customs penalties exist and HMRC will take a pragmatic approach on applying a penalty on traders who contravene the regulations. 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 HMRC will keep the instrument under review so that it meets the policy objectives set out in section 7 of this Explanatory Memorandum 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 Statutory Instrument 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 Deputy Director, Customs, EU Exit Policy and Legislation 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.