EXPLANATORY MEMORANDUM TO

THE CUSTOMS (CONTRAVENTION OF A RELEVANT RULE) (AMENDMENT) REGULATIONS 2009

2009 No. 3164

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 Customs (Contravention of a Relevant Rule) Regulations 2003 ('the 2003 Regulations') cover general non-compliance with the law where evasion of duty or taxes is not involved. They permit penalties to be imposed in relation to failures to meet certain requirements set out, for example, in the Customs and Excise Management Act 1979 or in directly applicable European legislation. The purpose of the instrument is to amend these regulations to clarify and add new civil penalty provisions to take account of changes in European legislation. The instrument also makes clear that the UK Border Agency comes within the definition of 'Customs' and therefore can issue penalties under the Regulations.

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

3.1 None

4. Legislative Context

4.1 The instrument makes amendments to the 2003 Regulations to reflect changes made to the Community Customs Code (Council Regulation 2913/92/EEC) and its Implementing Regulation (Commission Regulation 2454/93EEC). This European legislation, which has direct effect in the UK and does not require implementation in national legislation, imposes requirements on certain persons and the 2003 Regulations enable a civil penalty to be imposed if those requirements are not met.

4.2 The Borders, Citizenship and Immigration Act 2009 enables the UK Border Agency to exercise customs functions. The amendment to the definition of 'customs' in this instrument makes it clear that UKBA may issue penalties in relation to all of the customs rules set out in the 2003 Regulations.

5. Territorial Extent and Application

5.1 This instrument applies to all of 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

7.1 The Customs (Contravention of a Relevant Rule) Regulation 2003 covers general non-compliance with the law where evasion of duty or taxes is not involved. It is used in cases where there is a failure to comply with legal requirements and obligations, duties or conditions imposed under national and community customs law. Only those businesses or persons who do not comply with their legal obligations will be liable to a civil penalty. The amendments to the 2003 Regulations are in respect of the following items.

Authorised Economic Operators
Traders that are eligible to become Authorised Economic Operators (AEO) have to meet certain criteria. The benefit of being an AEO is that they obtain faster clearance at the frontier for their goods. A provision has been included to penalise those traders who fail to notify any relevant changes that may affect their ability to remain within the AEO scheme.

Transit
The transit amendments reflect the recent changes that have been made to European legislation.

Banana weighing
An authorised banana weigher must fulfil certain conditions. If they fail to do so they may be liable to a penalty under the amended regulations.

Preference
The European Community has a number of preferential trade arrangements with certain individual countries or groups of countries outside the EC. These provide for particular goods originating in the countries concerned to be imported and entered to free circulation in the Community at reduced or zero rates of customs import duty. These changes are being made to clarify that any person presenting a proof of preferential origin which contains incorrect information for the purposes of obtaining preferential treatment may be subject to a penalty. As many of the preferential arrangements are reciprocal the changes also provide for a penalty to be issued to any person in the UK who draws up a proof of preferential origin which contains incorrect information for the purposes of obtaining preferential tariff treatment.

- ***Consolidation***

7.2 Further amendments are anticipated to the 2003 Regulations, for example, to reflect further changes made to the Community Customs Code and Implementing Regulation by Commission Regulation (EC) 1875/2006 and Regulation (EC) 648/2005 of the European Parliament and Council. These are concerned with ensuring that goods are imported to and exported from the European Community safely and securely. The department intends to consolidate the 2003 Regulations although the timing of such consolidation will depend on when such further amendments to the Community Customs Code and Implementing Regulation are

brought into force. In the interim, an informal consolidated text will be made available on the HM Revenue and Customs website.

8. Consultation outcome

8.1 A Joint Customs Consultative Committee sub group on civil penalties was set up after the civil penalty Post Implementation Review was completed in 2006. The trade group discuss and address any concerns relating to civil penalties including any amendments to the Customs (Contravention of a Relevant Rule) Regulations 2003.

9. Guidance

9.1 A Customs Information Paper (CIP) will be produced in relation to these Regulations which will be published on the HM Revenue and Customs website. CIPs are the format which the department uses to communicate changes to customs rules and procedures to affected parties. Further publicity will be provided via the Joint Customs Consultative Committee sub group on Customs Civil Penalties.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument because there is no impact on business, charities, voluntary bodies or the public sector.

11. Regulating small business

11.1 The legislation may apply to small business but a Small Firms Impact Test has not been undertaken because the legislation does not alter the operation of existing procedures.

12. Monitoring & review

12.1 HM Revenue and Customs recognises that the majority of the Trade are compliant. This amendment provides HM Revenue and Customs with further measures to penalise those members of the Trade who are non compliant. One success mechanism will be where traders become compliant and do not receive further penalties. This will be evident from statistics.

13. Contact

Meryl Good at HM Revenue and Customs Tel: 01702 361775 email: meryl.good@hmrc.gsi.gov.uk can answer any queries regarding the instrument.