EXPLANATORY MEMORANDUM TO

THE CUSTOMS (CONTRAVENTION OF A RELEVANT RULE) (AMENDMENT) REGULATIONS 2011

2011 No. 2534

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs ("HMRC") on behalf of the Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 To amend the Customs (Contravention of a Relevant Rule) Regulations 2003 (S.I. 2003/3113, "the CCRRR") in order to introduce civil penalties for breaches of new customs rules, as well as to remove redundant penalties and improve and simplify the existing provisions of the CCRRR. The amendments will also ensure that persistence in a breach will result in a further penalty.

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

3.1 None

4. Legislative Context

4.1 The CCRRR attach civil penalties (of up to £2500) to breaches of a range of 'customs rules', where a 'relevant tax' is in issue. The customs rules in question include domestic rules (laid down by or under the Customs and Excise Management Act 1979) but, because the operation of the customs union is a matter for the EU, the majority of the rules derive from European legislation, in particular Council Regulation 2913/92/EEC ("the Community Customs Code") and Commission Regulation 2454/93/EEC ("the Implementing Regulation").

4.2 The CCRRR are regularly amended to reflect changes in, or additions to, customs rules. The Community Customs Code and the Implementing Regulation were amended in 2009, by the addition of provisions requiring the submission of 'entry summary declarations' before the introduction of goods into the customs territory of the Community. The UK is under a duty to give effect to these provisions, including, where appropriate, by the application of penalties.

4.3 The Commissioners of HMRC have also recently made directions regulating the movement of 'uncleared goods' and these, too, must be enforced by a penalty. One existing penalty becomes redundant

because of the repeal of the relevant article of the Community Customs Code.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom

6. European Convention on Human Rights

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 Entry summary declarations promote EU border security. The UK fully endorses that aim and, accordingly, put in place the appropriate procedures at the beginning of the year. However, in order to ensure compliance with those procedures (and to fulfil its obligation to give full effect to the relevant European provisions), the UK must ensure that breaches of the procedures will result in suitable penalties. The place for those is in the CCRRR and the latter must, therefore, be amended.

7.2 The new Commissioners' Directions on the movement of uncleared goods are necessary to ensure proper supervision of such goods and, if they are to be effective, must also be underpinned by a penalty in the CCRRR.

7.3 The other amendments made by this instrument correct instances of duplication, overlap, and imprecision. The new provision for the imposition of further penalties for continuing breaches encourages those concerned to correct their conduct, particularly in the case of large businesses.

- ***Consolidation***

7.4 These measures are interim measures as the Customs Law Modernisation Project will look at the various civil penalty regimes that currently apply across customs and excise matters. The aim will be to modernise and update the customs penalties. Part of this exercise may include a provision to consolidate some penalties.

8. Consultation outcome

8.1 The proposed measure (including draft Regulations) was issued for public consultation on 29 July 2011. The consultation ended on 31 August 2011. All those consulted were broadly content and one minor amendment was made as a result of the consultation.

9. Guidance

9.1 There is existing internal guidance Customs Civil Penalties (CCP): Main contents and public notices Civil penalties or contraventions of customs law - Notice 301 that will remain unchanged as these new penalties do not involve any new policies in the way that HMRC apply customs civil penalties.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 There is no impact on the public sector.

10.3 A Tax Information & Impact Note has been produced and has been published on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm

11. Regulating small business

11.1 The legislation applies to small businesses but introduces no new requirements.

12. Monitoring & review

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

12.2 The new penalties will be reviewed as part of the project to modernise excise and customs law, detailed at 7.4.

13. Contact

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