EXPLANATORY MEMORANDUM TO

THE FINANCE ACT 2003, PART 3 (AMENDMENT) ORDER 2018

2018 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument amends Part 3 of the Finance Act 2003 ("the Act") to replace references to "the Community Customs Code" ("CCC") in that Part with references to the Union Customs Code ("UCC"). The Act makes 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 Community Customs Code (Council Regulation (EEC) 2913/92) is one of the duties specified in the Act. The CCC has now been replaced with the UCC (Regulation (EU) No 952/2013), and this instrument therefore amends the Act to replace references to the CCC with references to the UCC.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

4.1 Part 3 of the Act gives a power for HM Treasury to prescribe where a breach of a requirement imposed by or under specified tax legislation makes a person liable to a civil financial penalty, up to a maximum amount set out in section 26 of the Act. The CCC is one of the pieces of tax legislation specified in the Act 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 Customs (Contravention of a Relevant Rule) Regulations 2003 (SI 2003/3113). As the CCC has been replaced by the UCC this Order amends Part 3 of the Act to replace references to the CCC with references to the UCC.

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 The Financial Secretary to the Treasury, Mel Stride, has made the following statement regarding Human Rights:

"In our view the provisions of the Finance Act 2003, Part 3 (Amendment) Order 2018 are compatible with the Convention rights."

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.