EXPLANATORY MEMORANDUM TO

THE EXPORT (PENALTY) (AMENDMENT) REGULATIONS 2011

2011 No. 2512

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs ("HMRC") and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 To amend the Export (Penalty) Regulations 2003 (S.I. 2003/3102, "the EPR") in order to introduce civil penalties for breaches of new customs rules, as well as to improve and simplify the existing provisions of the EPR.

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

3.1 None

4. Legislative Context

4.1 The EPR attach civil penalties (of up to £2500) to breaches of a range of 'export rules' laid down by or under European legislation.

4.2 Council Regulation 2913/92/EEC ("the Community Customs Code") was amended in 2005, by the addition of new provisions on export declarations. Commission Regulation 2454/93/EEC ("the Implementing Regulation") was amended in 2006, with the addition of new provisions on 'exit summary declarations' and post-export notification. It was further amended in 2008 with the introduction of provisions concerning authorisation to use simplified procedures. The UK is under a duty to give effect to these provisions, including, where appropriate, by the application of penalties.

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 Compliance with EU export procedures is necessary both for the proper operation of the customs union and to preserve EU border security. In order to ensure such compliance (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 EPR and the latter must, therefore, be amended. The other amendments made by this instrument correct instances of duplication, overlap, and imprecision in the descriptions of the existing rules.

- ***Consolidation***

7.2 The Customs Law Modernisation Project will include consideration of the various civil penalty regimes that currently apply across customs and excise matters. It is possible that the exercise will result in consolidation.

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 although one minor amendment was made as a result of the consultation.

9. Guidance

9.1 The existing internal Customs Civil Penalties (CCP): Main contents and public Civil penalties or contraventions of customs law - Notice 301 guidance is confined to the way the penalties are applied and will not need to be amended.

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 EPR 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, described at paragraph 7.2.

13. Contact

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