

2020 No. 1434

EXITING THE EUROPEAN UNION
CUSTOMS

**The Customs (Tariff-free Access for Goods from British
Overseas Territories) (EU Exit) Regulations 2020**

Made - - - -at 12.26 p.m. on 15th December 2020

Laid before the House of Commons 16th December 2020

Coming into force in accordance with regulation 1

The Treasury, in exercise of the powers conferred by sections 9(1), 19(1), 31(6) and (7) and 32(7) and (8) of the Taxation (Cross-border Trade) Act 2018(a), make the following Regulations.

In accordance with section 9(3) of the Taxation (Cross-border Trade) Act 2018, in considering what provision to include in regulations made under section 9(1) of that Act, the Treasury has had regard to recommendations made to them by the Secretary of State.

The Treasury considers it appropriate, in consequence of, or otherwise in connection with, the withdrawal of the United Kingdom from the European Union, that these Regulations come into force on such day as the Treasury may, by regulations under section 52(2) of that Act, appoint.

PART 1

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Customs (Tariff-free Access for Goods from British Overseas Territories) (EU Exit) Regulations 2020.

(2) They come into force on the day appointed by the Treasury by regulations under section 52(2) of the Act for the coming into force of these Regulations.

(3) These Regulations extend to the United Kingdom.

Application

2. These Regulations apply to originating goods—

- (a) that are imported into the United Kingdom from a British Overseas Territory listed in Annex 1 of the Arrangement in respect of which a liability to a charge to import duty is incurred under the Act; and

- (b) in respect of which a claim is made by the importer or the importer’s representative for a tariff-free access for the goods under the terms of Arrangement.

Interpretation

3.—(1) In these Regulations—

“the Act” means the Taxation (Cross-border Trade) Act 2018;

“the Arrangement” means the Arrangement for import duty on trade in goods from certain British Overseas Territories dated 9th November 2020(a);

“Annex 2 of the Arrangement” means Annex 2 of the Arrangement entitled “Concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation”, Titles 1 to 6 together with accompanying Appendices 1 to 3;

“originating goods” means goods which qualify as originating products under Annex 2 of the Arrangement;

“standard rate of import duty” means, in relation to goods falling within a commodity code set out in the Goods Classification Table in the Tariff of the United Kingdom, the rate of import duty applicable to those goods in a standard case(b).

(2) In these Regulations, other words and expressions have the meaning given in the Customs Tariff (Establishment) (EU Exit) Regulations 2020(c).

PART 2

Tariff-free access: British Overseas Territories

4.—(1) Subject to meeting the conditions set out in regulation 5, where—

- (a) the importer or the importer’s representative makes a Customs declaration under section 3(1) of the Act (obligation to declare goods for a customs procedure on import) claiming tariff-free access for originating goods to which these Regulations apply; and
- (b) that declaration is accepted by HMRC under section 4(1) of the Act (when liability to import duty incurred),

the rate of import duty that is to apply in respect of those goods is 0%.

(2) In paragraph (1)—

- (a) in sub-paragraph (a), the reference to a Customs declaration under section 3(1) of the Act is to be read as including a reference to any such declaration made to HMRC under equivalent provisions of direct EU legislation that have effect in Northern Ireland in respect of goods that are imported into the United Kingdom as a result of their entry into Northern Ireland; and
- (b) in sub-paragraph (b), the reference to the acceptance of a declaration by HMRC under section 4(1) of the Act is to be read as including the acceptance of any such declaration under equivalent provisions of direct EU legislation that have effect in Northern Ireland in respect of goods that are imported into the United Kingdom as a result of their entry into Northern Ireland.

(3) The rate of import duty that, by virtue of paragraph (1), applies to originating goods to which these Regulations apply is without prejudice to the application of any other rate of import duty that

(a) This document is available electronically at: <https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021>. A hard copy is held and available for viewing free of charge at the Department of International Trade, 3 Whitehall Place, London SW1A 2AW.

(b) See section 8(8) of the Taxation (Cross-border Trade) Act 2018 for the meaning given to “a standard case”.

(c) S.I. 2020/1430.

may exist in relation to the same classification of goods by virtue of provision in regulations made under sections 8, 11, 12 or 19 of the Act.

The conditions

5.—(1) For the purposes of regulation 4(1), the conditions set out in this regulation are that—

- (a) the goods qualify as originating products under Annex 2 of the Arrangement; and
- (b) except as otherwise provided by paragraph (2), the importer or the importer’s representative provide, on request from HMRC—
 - (i) a valid proof of origin, in accordance with Annex 2 of the Arrangement, in respect of those goods, and
 - (ii) the documents required under Annex 2 of the Arrangement.

(2) It is not necessary to provide a valid proof of origin under paragraph (1)(b)(i) in respect of any originating goods presented to HMRC that are exempt under the terms of the Arrangement from the requirement to provide such a proof of origin.

Backdated claims for the preferential rate

6.—(1) If, at the time of importation of any originating goods to which these Regulations apply, the importer or the importer’s representative—

- (a) does not have the proof of origin as required by regulation 5(1)(b)(i); and
- (b) pays the standard rate of import duty in respect of those goods,

the importer, or the person who paid the standard rate of import duty, may make a claim for partial repayment of the import duty on presentation to HMRC of a valid proof of origin relating to the goods after their importation.

(2) The amount of import duty that may be repaid in respect of a claim under paragraph (1) is the difference between the amount of that duty which the importer, or other person, paid at the time of the importation of the goods (which is the standard rate of import duty under the Customs Tariff (Establishment) (EU Exit) Regulations 2020) and the rate of import duty rate that applied at that time under of paragraph 3 of the Arrangement.

(3) A repayment of import duty under this regulation must only be granted if HMRC is satisfied that—

- (a) the claim for repayment has been made within a period of three years from the date of importation;
- (b) the declaration presented to HMRC after importation of the goods is genuine; and
- (c) the originating status of the goods to which the declaration relates can still be verified.

(4) For the purposes of this regulation, “the date of importation” is the date of acceptance by HMRC under section 4(1) of the Act of the declaration for free circulation or authorised use that relates to the relevant goods.

PART 3

Crown Dependencies: Modifications

7.—(1) The provisions of the Act and of these Regulations, as modified by regulations 8 and 9, having regard to the existence of the United Kingdom – Crown Dependencies Customs Union, have effect in respect of the customs matters covered by these Regulations.

(2) In paragraph (1), “the United Kingdom – Crown Dependencies Customs Union” means, collectively, the customs union arrangements which were specified in the Exchange of Letters and the Arrangements referred to in the following Orders in Council—

- (a) The Crown Dependencies Customs Union (Guernsey) (EU Exit) Order 2019(a);
- (b) The Crown Dependencies Customs Union (Isle of Man) (EU Exit) Order 2019(b);
- (c) The Crown Dependencies Customs Union (Jersey) (EU Exit) Order 2019(c).

Modification of the Act

8.—(1) The Act is modified as provided for by the following paragraphs.

(2) For the purposes of section 9 of the Act (preferential rates: arrangements with countries or territories outside the United Kingdom), references to “arrangements” are to be read as arrangements—

- (a) with countries or territories outside the United Kingdom other than the Bailiwick of Guernsey, the Isle of Man or the Bailiwick of Jersey; and
- (b) under which the lower rate of import duty provision agreed by the Government of the United Kingdom with such other countries or territories also applies in respect of the Bailiwick of Guernsey or, as the case may be, the Isle of Man or the Bailiwick of Jersey.

(3) In section 19 of the Act (reliefs), the reference to “provision for full or partial relief from a liability to import duty” is to be read as including a reference to provision for a full or partial relief from any such liability under equivalent provisions of customs legislation that have effect in the Bailiwick of Guernsey or, as the case may be, the Isle of Man or the Bailiwick of Jersey.

(4) In paragraph (2)(b), “lower rate of import duty provision” means provision of the type referred to in section 9(1)(b) of the Act (including, where applicable, provision under that section as modified by regulation 6 of the Taxation Cross-border Trade (Special Procedures Supplementary and General Provision etc.) (EU Exit) Regulations 2020(d).

Modification of these Regulations

9.—(1) Where, by virtue of these Regulations, goods that originate from any of the British Overseas Territories listed in Annex 1 of the Arrangement are subject to tariff free access on importation into Great Britain or, as the case may be, Northern Ireland, are also subject to tariff free access under equivalent provisions of customs legislation that have effect in the Bailiwick of Guernsey or, as the case may be, the Isle of Man or the Bailiwick of Jersey, these Regulations are modified as follows.

(2) In regulation 3—

- (a) in paragraph (1)(a), the reference to “goods that are imported into Great Britain from a British Overseas Territory listed in Annex 1 of the Arrangement” is to be read as including a reference to goods imported into the Bailiwick of Guernsey, or as the case may be, the Isle of Man or the Bailiwick of Jersey from a British Overseas Territory listed in Annex 1 of the Arrangement;
- (b) in paragraph (1)(b), the reference to “goods that imported into Northern Ireland from a British Overseas Territory listed in Annex 1 of the Arrangement” is to be read as including a reference to goods imported into Bailiwick of Guernsey, or as the case may be, the Isle of Man or the Bailiwick of Jersey from a British Overseas Territory listed in Annex 1 of the Arrangement.

(3) In regulation 4—

- (a) in paragraph (1)—
 - (i) in sub-paragraph (a), except as otherwise provided in paragraph (2), the reference to “a Customs declaration under section 3(1) of the Act claiming tariff-free access for

(a) S.I. 2019/254.
(b) S.I. 2019/257.
(c) S.I. 2019/256.
(d) S.I. 2020/1439.

originating goods to which these Regulations apply” is to be read as including an equivalent declaration made to the customs authorities of the Bailiwick of Guernsey or, as the case may be, the Isle of Man or the Bailiwick of Jersey in respect of the originating goods to which equivalent provisions of customs legislation that have effect in the Bailiwick of Guernsey, or as the case may be, the Isle of Man or the Bailiwick of Jersey;

(ii) in sub-paragraph (b), except as otherwise provided in paragraph (2), the reference to the acceptance of a declaration by HMRC is to be read as including the acceptance of such a declaration by the customs authorities of the Bailiwick of Guernsey, or as the case may be, the Isle of Man or the Bailiwick of Jersey;

(b) in paragraph (3), the reference to “regulations made under sections 8, 11, 12 or 19 of the Act” is to be read as including a reference to any regulations made under equivalent provisions of customs legislation that have effect in the Bailiwick of Guernsey, or as the case may be, the Isle of Man or the Bailiwick of Jersey.

(4) In regulation 5, in paragraphs (1)(b) and (2), the references to “HMRC” are to be read as including a reference to the customs authorities of the Bailiwick of Guernsey, or as the case may be, the Isle of Man or the Bailiwick of Jersey.

(5) In regulation 6—

(a) in paragraph (1)—

(i) the reference to “the time of importation of the goods into the United Kingdom” is to be read as the time of importation of those goods into the Bailiwick of Guernsey, or as the case may be, the Isle of Man or the Bailiwick of Jersey;

(ii) the reference to “HMRC” is to be read as including a reference to the customs authorities of the Bailiwick of Guernsey, or as the case may be, the Isle of Man or the Bailiwick of Jersey;

(b) in paragraph (2)—

(i) the reference to the “time of importation of the goods” is to be read as including a reference to the time of importation of the goods into the Bailiwick of Guernsey, or as the case may be, the Isle of Man or the Bailiwick of Jersey;

(ii) the reference to the “standard rate of import duty under the Customs Tariff (Establishment) (EU Exit) Regulations 2020” and the reference to “the rate of import duty rate that applied” are to be read as a reference to the standard rate of import duty or, as the case may be, a reference to the rate of import duty that applied under equivalent provisions of customs legislation that have effect in the Bailiwick of Guernsey, or as the case may be, the Isle of Man or the Bailiwick of Jersey;

(c) in paragraph (3), the reference to “HMRC” is to be read as including a reference to the customs authorities of the Bailiwick of Guernsey, or as the case may be, the Isle of Man or the Bailiwick of Jersey;

(d) in paragraph (4)—

(i) “the date of importation” in relation to goods imported from a British Overseas Territory listed in Annex 1 of the Arrangement is to be read as including a reference to the date of importation of such goods into the Bailiwick of Guernsey, or as the case may be, the Isle of Man or the Bailiwick of Jersey from any such British overseas territory;

(ii) the reference to “the date of acceptance by HMRC of the declaration for free circulation or authorised use” is to be read as including a reference to the date of acceptance of any such equivalent declaration by the customs authorities of the Bailiwick of Guernsey, or as the case may be, the Isle of Man or the Bailiwick of Jersey from any such British overseas territory.

David Rutley
Maggie Throup

At 12.26 p.m. on 15th December 2020
Treasury

Two of the Lord's Commissioners of Her Majesty's

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made by the Treasury in exercise of the powers conferred by sections 9(1), and 31(6) and 32(7) and (8) of the Taxation (Cross-border Trade) Act 2018 (the Act). They are to be brought into force by way of a separate statutory instrument made under the Act.

These Regulations apply to any originating goods, as defined in regulation 3, that are imported into the United Kingdom from a country or territory outside of the United Kingdom that are chargeable to import duty under Part 1 of the Act. They make provision for goods which originate from certain British Overseas Territories to be imported into the United Kingdom free of import duty.

By Council Decision (EU) 755/2013 (“The Overseas Association Decision (“OAD”)”), goods originating in the overseas territories of Member States of the European Union that are listed in Annex 2 to the Treaty on the Functioning of the European Union, obtain tariff-free access to the European Union subject to certain conditions.

At the end of the implementation period, the OAD ceases to apply to the British Overseas Territories listed in Annex 1 of the Arrangement. These Regulations therefore give effect to paragraph 3 of the Arrangement between Her Majesty's Government in the United Kingdom and the governments of certain British Overseas Territories to maintain tariff-free access for goods that originate from British Overseas Territories as provided for in the Regulations. The provisions of these Regulations are also modified so that the same tariff-free access for such goods will apply where those goods are imported into the customs territories of the Crown Dependencies pursuant to the terms of the United Kingdom – Crown Dependencies Customs Union. This Arrangement is available electronically at: <https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021> and to view free of charge at the Department of International Trade, 3 Whitehall Place, London SW1A 2AW. A person unable to access the Arrangement electronically can arrange access to a hard copy, while government advice on social distancing and unnecessary travel applies, by telephoning the Department for International Trade on 020 7215 5000.

This instrument is one of a group of instruments covered by a single overarching full Tax Information and Impact Note (TIIN). The TIIN primarily focuses on the Customs Tariff (Establishment) (EU Exit) Regulations 2020 and will be available electronically in due course at: <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. A hard copy will be held and available for viewing free of charge at the Department of International Trade, 3 Whitehall Place, London SW1A 2AW. A person unable to access this document electronically can arrange access to a hard copy, while government advice on social distancing and unnecessary travel applies, by telephoning the Department for International Trade on 020 7215 5000.

An Explanatory Memorandum is being published on the same website. There is no significant impact on business, charities or voluntary bodies as this instrument broadly replicates the effect of European Union legislation.

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