

2020 No. 1629

EXITING THE EUROPEAN UNION
CUSTOMS

**The Customs (Modification and Amendment) (EU Exit)
Regulations 2020**

Made - - - - *22nd December 2020*

Laid before the House of Commons *23rd December 2020*

Coming into force in accordance with regulation 1

The Treasury, in exercise of the powers conferred by sections 24(3) and 26(1) of the Finance Act 2003(a), sections 19(1) and (2), 30B, 30C(6)(d), 31(6), 32(7) and (8), 40(6) and (7), 40B, 51(1)(c) and (3), 52(2) and 56(1), (3), (5)(b) and (7) of, and paragraph 5(1) of Schedule 6 to, the Taxation (Cross-border Trade) Act 2018(b), and section 11(5) of the Taxation (Post-transition Period) Act 2020(c) make these Regulations.

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

Part 1

Introduction

Citation and commencement

1.—(1) These Regulations may be cited as the Customs (Modification and Amendment) (EU Exit) Regulations 2020.

(2) Except as provided for in paragraphs (3) to (5), these Regulations come into force on IP completion day.

(3) The following regulations come into force on the day after the day on which these Regulations are made—

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- (a) 2003 c. 14. Section 24 is cited for the meaning of “prescribed”. Section 26 was amended by paragraph 150 of Schedule 7 to the Taxation (Cross-border Trade) Act 2018 (c. 22 “the Act”).
- (b) 2018 c. 22. The Treasury is the appropriate minister for the purposes of section 51 by virtue of section 51(4)(b) and for the purposes of section 56 by virtue of section 56(5)(b). Sections 30B, 30C and 40B were inserted by sections 1 and 2 of the Taxation (Post-transition Period) Act 2020 (c. 26 “the 2020 Act”). Section 40B(5) applies section 40 to regulations under section 40A as it applies to regulations under section 39 other than the first regulations under that section.
- (c) 2020 c. 26.

- (a) this regulation;
 - (b) regulation 3 (amendment to the Customs (Import Duty) (EU Exit) Regulations) 2018).
- (4) Chapter 5 of the Customs (Northern Ireland) (EU Exit) Regulations 2020 (as inserted by regulation 6(8)) comes into force on IP completion day only for the purposes of claims for relief which are made—
- (a) in respect of goods—
 - (i) in respect of which a liability to duty chargeable under section 40A(1)(b) of the Taxation (Cross-border Trade) Act 2018 is incurred; and
 - (ii) which are not chargeable to duty under section 40A(1)(a) of that Act;
 - (b) in the customs declaration(a) made in respect of the goods.
- (5) Chapter 5 of those Regulations comes into force for all other purposes on such day as the Treasury may by regulations under section 52 of the Taxation (Cross-border Trade) Act 2018 appoint.

Part 2

Modifications

Modification of the Taxation (Cross-border Trade) Act 2018

2. In paragraph 158 of Schedule 7 to the Taxation (Cross-border Trade) Act 2018(b) any reference to “vehicle” includes a ship, an aircraft and a railway vehicle.

Part 3

Amendments

Amendment to the Customs (Import Duty) (EU Exit) Regulations 2018

3.—(1) The Customs (Import Duty) (EU Exit) Regulations 2018(c) are amended as follows.

(2) In regulation 43 (payment of import duty)—

- (a) in paragraph (5)(b)—
 - (i) omit “(in addition to that in paragraph (10))”;
 - (ii) omit “and” at the end of paragraph (i);
 - (iii) at the end of paragraph (ii) insert “; and”;
 - (iv) after paragraph (ii) insert—
 - “(iii) the person is established in the United Kingdom.”;
- (b) in paragraph (8)(b)—
 - (i) omit “(in addition to that in paragraph (10))”;
 - (ii) omit “and” at the end of paragraph (i);
 - (iii) at the end of paragraph (ii) insert “; and”;
 - (iv) after paragraph (ii) insert—
 - “(iii) the person is established in the United Kingdom.”;

(a) The requirement to make a customs declaration under the UCC in respect of goods to which this regulation applies is given effect by sections 30A(3) and 40A(4) of the Act.
 (b) That paragraph was inserted into the Act by paragraph 10(6) of Schedule 1 to the 2020 Act.
 (c) S.I. 2018/1248. Relevant amending instruments are S.I. 2020/967 and S.I. 2020/1605.

- (c) omit paragraph (10).

Amendment of the Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018

4.—(1) The Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018(a) are amended as follows.

- (2) After regulation 31 (valuation of goods regarded as chargeable goods) insert—

“Repair or alteration

31A.—(1) Where paragraph (2) applies, full relief from a liability to import duty is to be given.

- (2) This paragraph applies where—

- (a) goods are declared for an outward processing procedure(b);
- (b) the processing of the goods under the procedure consists in their repair by any person with charge, or their alteration by any person (whether with or without charge);
- (c) the goods are imported in accordance with the procedure;
- (d) there is no breach of the terms of the declaration for the procedure, or of any other requirement in relation to the procedure, while the procedure has effect; and
- (e) there is an arrangement between Her Majesty’s government in the United Kingdom and the government of the country or territory in which the goods are processed which has the effect that no customs duty is to be applied in relation to those goods.”.

Amendment of the Customs (Transitional) (EU Exit) Regulations 2020

5.—(1) The Customs (Transitional) (EU Exit) Regulations 2020(c) are amended as follows.

- (2) In regulation 7 (requirement to provide evidence)—

- (a) in paragraph (1)(a), after “Great Britain” insert “or Northern Ireland”;
- (b) after paragraph (7) insert—

“(8) Paragraph (6) does not apply to goods removed to Great Britain from Northern Ireland.”

- (3) In regulation 9 (treatment as domestic goods)—

- (a) in paragraph (1), after “non-Union goods” insert “in Great Britain”;
- (b) in paragraph (2), after “Union goods” insert “in Great Britain”.

- (4) After regulation 9 insert—

“Treatment of goods located in Northern Ireland

9A.—(1) Non-Union goods subject to Article 49(1) of the EU withdrawal agreement are to be treated for the purposes of section 30A of the Act as imported into the United Kingdom as a result of their entry into Northern Ireland at the time the EU Customs Code ceases to apply to those goods in accordance that Article where—

- (a) the goods are imported into the United Kingdom as a result of their entry into Northern Ireland before IP completion day; and

(a) S.I. 2018/1249. There are amending instruments, but none is relevant.

(b) The meaning of a declaration of goods for an outward processing procedure is given in section 36(2) of the Act.

(c) S.I. 2020/1449.

(b) the goods are in Northern Ireland when that Article ceases to apply.

(2) Non-Union goods subject to Article 49(1) of the EU withdrawal agreement are to be treated for the purposes of section 40A of the Act as removed to Northern Ireland from Great Britain at the time the EU Customs Code ceases to apply to those goods in accordance with that Article where—

- (a) the goods were imported into the United Kingdom before IP completion day as a result of their entry into Great Britain;
- (b) the goods are subject to an EU transit procedure at IP completion day; and
- (c) the goods are located in Northern Ireland when that Article ceases to apply.

(3) Paragraph (1) does not apply where the EU Customs Code ceases to apply to non-Union goods in Northern Ireland as a result of the conditions in Article 322, 323, 323a or 324 of the IA being met.

(4) The treatment of goods under this regulation as imported into the United Kingdom or removed to Northern Ireland from Great Britain does not—

- (a) affect the application of the EU Customs Code to the goods prior to the EU Customs Code ceasing to apply in accordance with Article 49(1) or anything duly done or suffered under it;
- (b) affect any right, privilege, obligation or liability, acquired, accrued or incurred in relation to the goods under the EU Customs Code or any enactment in relation to the EU Customs Code;
- (c) affect any penalty, forfeiture, or punishment incurred in respect of any offence under the EU Customs Code; or
- (d) affect or prevent any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment.

(5) In this regulation “EU transit procedure” has the same meaning as at Article 210(a) of the UCC.”.

Amendment of the Customs (Northern Ireland) (EU Exit) Regulations 2020

6.—(1) The Customs (Northern Ireland) (EU Exit) Regulations 2020(a) are amended as follows.

(2) In regulation 3 (Part 2 interpretation)—

(a) after the definition of “catch” insert—

““Delegated Regulation” means Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning provisions of the Union Customs Code(b);”;

(b) after the definition of “goods for the internal market” insert—

““Tariff of the United Kingdom” has the same meaning as it has in the Customs Tariff (Establishment) (EU Exit) Regulations 2020(c).”.

(3) In regulation 7 (application of provisions made by or under the Act), after paragraph (2) insert—

“(3) Section 7(1) of the Act applies as if in the Tariff of the United Kingdom—

- (a) where a term used corresponds to a term used in the Union customs legislation(d), the term were a reference to the corresponding term in the Union customs legislation, as the context requires;

(a) S.I. 2020/1605.

(b) OJ L 343, 29.12.2015, p. 1.

(c) S.I. 2020/1430.

(d) “Union customs legislation” is defined in section 37 of the Act. The definition was inserted by paragraph 6 of Schedule 1 to the 2020 Act.

- (b) in Part Two, in Section 1, in paragraph 9, for “Part 12 of the Customs (Import Duty) (EU Exit) Regulations 2018” there were substituted “Articles 71 to 76 of the Union Customs Code”; and
 - (c) in Part Four—
 - (i) in paragraph 3, for “Part 12 of the Customs (Import Duty) (EU Exit) Regulations 2018” there were substituted “Articles 71 to 76 of the Union Customs Code”;
 - (ii) in paragraph 17—
 - (aa) for “regulations 18 and 23 of the Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018” there were substituted “Article 86(4) of the Union Customs Code and Article 76 of the Delegated Regulation”;
 - (bb) “United Kingdom” were omitted;
 - (iii) in paragraph 18, for the words from “the value of the processed goods” the first time it occurs to the end there were substituted “Article 75 of the Delegated Regulation”; and
 - (iv) in paragraph 19, for the words from “(as defined in” to the end there were substituted “any amount of duty applicable shall be calculated on the basis of Article 75 of the Delegated Regulation”.”.
- (4) In regulation 9 (relief from section 30A duty)—
- (a) omit “and” at the end of paragraph (b);
 - (b) at the end of paragraph (c) insert “; and”;
 - (c) after paragraph (c) insert—
 - “(d) Chapter 5 (reliefs and repayment).”.
- (5) In regulation 13 (application of provisions made by or under the Act)—
- (a) in paragraph (1), at the end insert “and with the modifications in paragraph (3)”;
 - (b) after paragraph (2) insert—
 - “(3) Section 7(1) of the Act applies as if, in the Tariff of the United Kingdom—
 - (a) where a term used corresponds to a term used in the Union customs legislation, the term were a reference to the corresponding term in the Union customs legislation, as the context requires;
 - (b) in Part Two, in Section 1, in paragraph 9, for “Part 12 of the Customs (Import Duty) (EU Exit) Regulations 2018” there were substituted “Articles 71 to 76 of the Union Customs Code”;
 - (c) in Part Four—
 - (i) in paragraph 3, for “Part 12 of the Customs (Import Duty) (EU Exit) Regulations 2018” there were substituted “Articles 71 to 76 of the Union Customs Code”;
 - (ii) in paragraph 17—
 - (aa) for “regulations 18 and 23 of the Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018” there were substituted “Article 86(4) of the Union Customs Code and Article 76 of the Delegated Regulation”;
 - (bb) “United Kingdom” were omitted; and
 - (iii) in paragraph 18, for the words from “the value of the processed goods” the first time they occur to the end there were substituted “Article 75 of the Delegated Regulation”;

- (iv) in paragraph 19, for the words from “(as defined in” to the end there were substituted “any amount of duty applicable shall be calculated on the basis of Article 75 of the Delegated Regulation”.”.
- (6) In regulation 15(3) (amount of section 40A charge), for sub-paragraph (b) substitute—
 - “(b) the Delegated Regulation;”.
- (7) In regulation 16(1) (relief from section 40A duty)—
 - (a) omit “and” at the end of sub-paragraph (b);
 - (b) at the end of sub-paragraph (c) insert “; and”;
 - (c) after sub-paragraph (c) insert—
 - “(d) Chapter 5 (reliefs and repayment).”.
- (8) After regulation 16 insert—

“CHAPTER 5

Reliefs and repayment

SECTION 1

Introduction

Reliefs etc. – interpretation

16A. In this Chapter—

- “applicable de minimis state aid limit” has the meaning given in regulation 16E(2);
- “claim for relief” means a claim made in accordance with Section 2 that relief be granted in respect of goods;
- “claimant” means a person who makes a claim for relief;
- “customs declaration” has the meaning given in Article 5(12) of the UCC;
- “eligibility criteria” means the criteria described in regulation 16E(1);
- “fiscal year” in relation to an undertaking has the meaning given in the EU regulation referred to in regulation 16E(2) which applies in relation to the undertaking;
- “principal” has the meaning given in regulation 16C(1);
- “relief” means relief, calculated in accordance with regulation 16I, from a liability to duty under section 30A(3) or 40A(1);
- “relief agent” has the meaning given in regulation 16C(1).

Establishment

16B. In this Chapter, a person is established in the United Kingdom—

- (a) in the case of an individual, where the individual is resident in the United Kingdom; and
- (b) in any other case, where the person—
 - (i) has a registered office in the United Kingdom; or
 - (ii) has a permanent place in the United Kingdom from which the person carries out activities for which the person is constituted to perform.

Relief agents

16C.—(1) A person (a “principal”) may appoint any other person (a “relief agent”) to act on the principal’s behalf for the purposes of this Chapter.

(2) A person may not act as a relief agent unless the person—

- (a) is appointed to act in the capacity of a customs representative as described by Article 5(6) of the UCC on behalf of the principal; or
- (b) is established in the United Kingdom.

(3) The relief agent must disclose their appointment to HMRC in each claim for relief which is made as agent on behalf of the principal.

(4) Where a claim for relief is made in a customs declaration, a statement made to HMRC for the purposes of Article 19(1) of the UCC is to be treated as a disclosure of the appointment as a relief agent for the purposes of paragraph (3).

(5) The effect of an appointment of a person as a relief agent is that anything done under, or otherwise for the purposes of, this Chapter by, or in relation to, the agent is regarded as done under, or otherwise for the purposes of, this Chapter by, or in relation to, the principal (and not by the agent).

SECTION 2

Application, claims and waivers

Reliefs – application of Chapter 5

16D.—(1) Subject to paragraph (2), this Chapter applies to—

- (a) goods which are not relevant goods for the purposes of Chapter 3, in respect of which a liability to duty chargeable under section 30A(3) of the Act is incurred; and
- (b) goods in respect of which a liability to duty chargeable under section 40A(1)(b) of the Act is incurred.

(2) This Chapter does not apply to goods where—

- (a) a liability to duty in respect of the goods is incurred by virtue of Article 79 of the UCC^(a); and
- (b) the condition specified in Article 86(6) of the UCC does not apply^(b).

Eligibility criteria

16E.—(1) The eligibility criteria for a claim for relief are that—

- (a) the claimant—
 - (i) is established in the United Kingdom;
 - (ii) is registered with HMRC in accordance with Article 9 of the UCC; and
 - (iii) has incurred a liability to duty under section 30A(3) or section 40A(1)(b) of the Act in the course of a commercial activity; and
- (b) grant of the relief claimed would not result in the claimant being granted aid in excess of the applicable de minimis state aid limit or any other breach of any other EU law that has effect as a result of section 7A of the European Union (Withdrawal) Act 2018^(c).

(2) In paragraph (1)(b), the “applicable de minimis state aid limit” means the limit on the amount of de minimis state aid which may be granted to the claimant by virtue of, as the case may be—

(a) Article 79 of the UCC applies to non-Union goods imported into the United Kingdom by virtue of section 30A(3) of the Act.

(b) Article 86(6) of the UCC sets out favourable tariff treatment and reliefs may apply to cases where a customs debt (liability) is incurred pursuant to Article 79 on condition that the incurrence did not constitute an attempt at deception.

(c) 2018 c. 16. Section 7A was inserted by section 5 of the European Union (Withdrawal Agreement) Act 2020 (c. 1).

- (a) Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid(a);
- (b) Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest(b);
- (c) Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector(c); or
- (d) Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector(d).

(3) Where the claim for relief is made by a relief agent on behalf of a principal the references to “the claimant” in paragraph (1) are to the principal.

Waiver of commercial activity criterion

16F.—(1) HMRC may grant a claim for relief even where the eligibility criterion in regulation 16E(1)(a)(iii) is not met if an HMRC officer is of the opinion that it is appropriate to approve a waiver of the criterion, taking into consideration factors specified in a notice published by HMRC.

(2) A claimant may apply to HMRC for approval of a waiver in accordance with paragraph (1).

(3) Regulations 85 to 91 of the import duty regulations apply in relation to an application under paragraph (2).

(4) Section 23(5) of the Act applies to approvals granted under this regulation, including where the approval relates to a claim for relief in relation to a liability to duty chargeable under section 40A(1) of the Act.

Making a claim

16G.—(1) A claim for relief in respect of goods may be made—

- (a) in the customs declaration(e) made in respect of the goods or at the same time as that declaration is made; or
- (b) at any time before the expiry of the period of 3 years beginning with the later of—
 - (i) the date on which notification is given by HMRC of the liability to duty chargeable under section 30A(3) or 40A(1)(b) of the Act in respect of the goods(f); and
 - (ii) the date on which this regulation comes into force.

(2) A claim for relief in respect of goods may not be made—

- (a) where—

(a) OJ L 352, 24.12.2013, p. 1. The Commission Regulation applies to the United Kingdom in respect of measures which affect trade between Northern Ireland the European Union which is subject to the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement (“the Northern Ireland Protocol”) as a result of Article 10 of the Northern Ireland Protocol and section 7A of the European Union (Withdrawal) Act 2018 (c. 16), which was inserted by section 5 of the European Union (Withdrawal Agreement) Act 2020.

(b) OJ L 114, 26.4.2012, p. 8. (See footnote (d) regarding the application to the United Kingdom.)

(c) OJ L 352, 24.12.2013, p. 9. (See footnote (d) on page 7 re application to the United Kingdom.)

(d) OJ L 190, 28.6.2014, p. 45. (See footnote (d) on page 7 re application to the United Kingdom.)

(e) The requirement to make a customs declaration under the UCC in respect of goods to which this regulation applies is given effect by sections 30A(3) and 40A(4) of the Act.

(f) Notification of liability to duty is provided for in Article 102 of the UCC (notification of the customs debt).

- (i) more than one person is liable to duty under section 30A(3) or 40A(1)(b) in respect of the goods; and
 - (ii) one of the persons liable has made a claim for relief in respect of the goods;
 - (b) where the goods are catch caught by a vessel which is not a British ship; or
 - (c) where a claim for the relief was previously made and determined unless an HMRC officer consents to the making of the further claim.
- (3) A claim must be made in the form and manner specified in a notice published by HMRC.
- (4) HMRC must publish a notice specifying the form and manner referred to in paragraph (3).

Information and evidence in relation to claims

- 16H.**—(1) A claim for relief must—
- (a) contain information of a description specified in a notice published by HMRC Commissioners;
 - (b) be accompanied by such documents of a description specified in a notice published by HMRC Commissioners; and
 - (c) include a declaration by the person making the claim containing statements of a description specified in a notice published by HMRC Commissioners.
- (2) A claim for relief is to be treated as not made unless the claimant provides, to the satisfaction of an HMRC officer, the information, documents and declaration specified in paragraph (1).
- (3) In cases specified in a notice published by HMRC Commissioners, the requirement under paragraph (1)(b) may be met by the person who has made the claim, or any other person—
- (a) making the documents available for inspection by an HMRC officer; or
 - (b) making available to HMRC information of a description specified in the notice (whether electronically or otherwise).
- (4) Where a claim for relief is made in the customs declaration made in respect of the goods, the person making the claim is to be treated as having made a declaration that the eligibility criterion in regulation 16E(1)(b) is met.

Granting claims for relief

- 16I.**—(1) A claim for relief must be granted by HMRC if—
- (a) the eligibility criteria are met; and
 - (b) the relief, as determined in accordance with paragraphs (2) or (3), is a positive amount.
- (2) Where a claim for relief from duty charged under section 30A(3) of the Act is granted, the relief from liability is—
- (a) where the goods would not be chargeable to duty under regulation 5 if they were goods for the internal market, full relief; and
 - (b) in any other case, the difference between the liability incurred under section 30A(3) Act and the amount of duty that would have been chargeable in accordance with regulation 8 if the goods were relevant goods for the purposes of Chapter 3.
- (3) Where a claim for relief from duty charged under section 40A(1)(b) of the Act is granted, the relief from liability is—
- (a) where the goods are chargeable to duty under section 40A(1)(a), the difference between the liability incurred under 40A(1)(b) and the amount of duty that would

have been chargeable in accordance with regulation 14 if the goods were relevant goods for the purposes of Chapter 4; and

- (b) in any other case, full relief.

Notifications further to a claim for relief

16J.—(1) Notification of receipt of the claim for relief must be given by HMRC to the claimant—

- (a) as soon as practicable after the date on which HMRC receive the claim and the evidence required in support of the claim; and
- (b) in any event, by no later than the expiry of the period of 30 days beginning with that date.

(2) Where a claim for relief is made in the customs declaration made in respect of the goods and the declaration is accepted or rejected before the expiry of the period in paragraph (1), the claimant is to be treated as having been notified under paragraph (1).

(3) Notification that HMRC have determined to grant or refuse a claim for relief must be given to the claimant, and HMRC must do so—

- (a) in relation to a claim for relief that is less than the full liability incurred, or where HMRC have determined to refuse a claim, with the notification of liability to duty in respect of the goods to which the claim relates, unless that notification of liability has been given before the date of the determination; and
- (b) as soon as practicable after the date on which notification is given under paragraph (1) and, in any event, by no later than the expiry of the period of 120 days beginning with that date.

(4) Where—

- (a) a claim is made for full relief;
- (b) the claim is made in the customs declaration that was made in respect of the goods; and
- (c) the declaration is accepted,

the claimant is to be treated as having been notified under paragraph (3).

(5) Reasons for a refusal of a claim for relief must be given with the notification of the determination.

(6) Where HMRC fail to comply with paragraph (1) or (3), the claim is to be treated as refused.

SECTION 3

Repayment

Repayment of duty

16K.—(1) Where—

- (a) a claim for relief is granted in respect of goods; and
- (b) the claimant has paid a liability to duty chargeable under section 30A(3) or 40A(1)(b) of the Act in respect of the goods before the claim is granted,

HMRC must, when notification of the grant is given, repay the claimant the amount referred to in regulation 16I(2) or (3), as the case may be.

(2) Paragraph (3) applies where—

- (a) a period of 30 working days has expired since the date that a notification of the grant is given;

- (b) HMRC have failed to repay some or all of the duty that is due to be repaid under paragraph (1) (“the outstanding amount”); and
 - (c) that failure is substantially the fault of HMRC.
- (3) HMRC must pay interest at the applicable rate on the outstanding amount for the period—
- (a) beginning with the day after the date on which the period mentioned in paragraph (2)(a) expires; and
 - (b) ending with the date on which the outstanding amount is paid in full.
- (4) In this regulation—
- (a) “the applicable rate” means the rate of interest provided by regulations for the purposes of section 197(2)(f) of the Finance Act 1996(a);
 - (b) “working day” means any day except—
 - (i) a Saturday or Sunday;
 - (ii) Good Friday or Christmas day; or
 - (iii) a bank holiday within the meaning of section 1 of the Banking and Financial Dealings Act 1971(b), including those bank holidays in part only of the United Kingdom;
 - (c) where the claim for relief is made by a relief agent on behalf of a principal the references to “the claimant” are to the principal.

SECTION 4

Errors and breaches

Section 4 – interpretation

16L. In this Section “error” does not include an error that results in the claimant being granted relief despite not meeting the eligibility criterion in regulation 16E(1)(b).

Notification of limit breach or error

16M.—(1) Paragraph (2) applies where—

- (a) a claim for relief is granted; and
 - (b) any of the following occurs—
 - (i) the claimant becomes aware that the eligibility criterion in regulation 16E(1)(b) was not met at the time of the grant of the claim;
 - (ii) the claimant becomes aware of an error in the claim for relief; or
 - (iii) the claimant becomes aware that relief has been granted in error.
- (2) The claimant must—
- (a) notify HMRC as soon as practicable of details of, as the case may be—
 - (i) the circumstances in which relief was granted despite the eligibility criterion in regulation 16E(1)(b) not being met, including when that first came to the claimant’s attention; or
 - (ii) the error, including when it first came to the claimant’s attention; and
 - (b) make the notification in such form, and accompany it with such additional information or documentation, as HMRC may provide by notice.

(a) 1996 c. 8. Section 197(2)(f) was inserted by section 130(3) of the Finance Act 1999. At the time these Regulations are made, the rate is provided by regulation 5(1)(e) of S.I. 1998/1461 as 5% per annum. Regulation 5 was substituted by S.I. 2000/631 and regulation 5(1)(e) amended by S.I. 2003/230.

(b) 1971 c. 80.

(3) If required to do so by an HMRC officer by notice, the claimant must provide to the officer such additional information regarding the matters referred to in paragraph (1)(b) as the officer requires.

(4) Where a relief agent made the claim on behalf of a principal and paragraph (1)(b)(i) applies, the references in paragraphs (2) and (3) to the claimant are to be read as referring to the principal.

(5) Where—

(a) a relief agent made the claim on behalf of a principal; and

(b) the principal becomes aware of a matter described in paragraph (1)(b)(ii) or (iii), paragraphs (2) and (3) apply to the principal as if the references to the claimant were to the principal.

Rectification of errors in claim for relief

16N. Where a notification of an error in a claim for relief is received by HMRC before the claim for relief is granted or repayment made—

(a) an HMRC officer must correct the claim, or direct the claimant to make the necessary corrections; and

(b) any liability to duty under section 30A(3) or 40A(1) of the Act is determined on the basis of the information contained in the claim for relief as corrected (or required to be corrected) under this regulation.

Liability to duty due to error

16O.—(1) Where—

(a) a claim for relief is granted in respect of goods; and

(b) an HMRC officer becomes aware of an error in the claim for relief which resulted in a grant of an amount of relief to which the claimant was not entitled, whether by way of a notification under regulation 16M or otherwise,

the claimant is liable to duty under section 30A(3) or 40A(1) in respect of the goods, as the case may be.

(2) Where paragraph (1) applies, the liability referred to in that paragraph is the amount of duty corresponding to the relief to which the claimant was not entitled.

(3) Paragraph (4) applies for the purposes of determining the date (“the relevant date”) on which the liability arises.

(4) The relevant date is—

(a) the date stated in the notification required to be made under regulation 16M(2) as the date on which the error first came to the attention of the person making the notification; or

(b) where—

(i) details of the error are not notified to HMRC as required; or

(ii) HMRC are not satisfied with the details notified,

the date the claim was granted.

(5) It is to be presumed that the claimant is notified of the liability on the relevant date.

(6) Where the claim for relief is made by a relief agent on behalf of a principal the references to “the claimant” in this regulation are to the principal.

Liability to duty on limit breach

16P.—(1) Where—

- (a) a claim for relief is granted in respect of goods; and
- (b) an HMRC officer becomes aware that the eligibility criterion in regulation 16E(1)(b) was not met at the time of the grant of the claim, whether by way of a notification under regulation 16M or otherwise,

the claimant is liable to duty under section 30A(3) or 40A(1), as the case may be.

(2) Where paragraph (1) applies, the liability referred to in that paragraph—

- (a) is the amount of duty corresponding to the relief granted in relation to the claim; and
- (b) is to be treated as arising on the date the claim was granted.

(3) Where a notification is given under regulation 16M(2)(a)(i), it is to be presumed that the claimant is notified of the liability on the date stated in the notification as the date on which the fact that the eligibility criterion was not met first came to the attention of the person making the notification.

(4) Where—

- (a) no notification is given under regulation 16M(2)(a)(i); or
- (b) HMRC are not satisfied with the details notified,

HMRC must notify the claimant of the liability.

(5) Where a liability is incurred under this regulation, the claimant must pay interest at the applicable rate on the liability for the period—

- (a) beginning with the day after the date on which the claim for relief is granted; and
- (b) ending with the date on which the liability is paid in full.

(6) In this regulation “the applicable rate” means the State aid recovery interest rate fixed in accordance with Article 9 of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty and applied in accordance with Article 11 of that Regulation.

(7) A notification of liability required by paragraph (4) may be withdrawn if an HMRC officer considers there to be sufficient evidence to demonstrate that the eligibility criterion in regulation 16E(1)(b) was met at the time of the grant of the claim.

(8) Where the claim for relief is made by a relief agent on behalf of a principal the references to “the claimant” in this regulation are to the principal.

Recovery of duty

16Q.—(1) Paragraph 12 of Schedule 6 to the Act applies to an amount due by way of duty incurred under regulation 16P as if it were an amount due by way of import duty.

(2) The power to recover by virtue of paragraph (1) is subject to the limitation period specified in Article 17 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union(a).

(3) This regulation does not restrict any other way in which duty may be recovered.

Agents’ liability

16R. If a relief agent makes a claim for relief on behalf of a principal, the agent is also liable to duty chargeable under section 30A(3) or 40A(1) arising under regulation 16O in relation to the claim if—

(a) OJ L 248, 24.9.2015, p. 9.

- (a) the agent acts at a time when the appointment has not been disclosed to HMRC as mentioned in regulation 16C(3);
- (b) the agent purports to act on behalf of the principal when the agent has no authority to do so; or
- (c) the agent provides false information in connection with a claim for relief and the agent knew, or ought reasonably to have known, that the information was false.

SECTION 1

Records

Record keeping

16S.—(1) The claimant must keep and preserve such records in respect of any claim for relief made under this Chapter, and in such form, as specified in a notice published by HMRC.

- (2) Where the claim for relief is made by a relief agent on behalf of a principal—
 - (a) the reference to “the claimant” in paragraph (1) is to the principal; and
 - (b) the agent must provide to the claimant such documents as may be specified in a notice published by HMRC.
- (3) HMRC must publish a notice specifying—
 - (a) the records to be kept and preserved under paragraph (1);
 - (b) the form in which they are to be kept; and
 - (c) the period for which they must be kept and preserved.”.

Amendment of the Customs (Contravention of a Relevant Rule) Regulations 2003

7.—(1) The Schedule to the Customs (Contravention of a Relevant Rule) Regulations 2003(a) is amended as follows.

- (2) Under the heading “reliefs”(b), at the end insert—

“The Customs (Northern Ireland)

(EU Exit) Regulations 2020

Regulation 16M

Where a claim for relief is granted and the claimant becomes aware of the eligibility criterion in regulation 16E(1)(b) not having been met at the time of the grant of the claim, or an error, the claimant must notify HMRC as soon as practicable in accordance with regulation 16M of the Customs (Northern Ireland) (EU Exit) Regulations 2020.

The person required to make the notification. £2,500.

(a) S.I. 2003/3113 amended by S.I. 2009/3164, 2011/2534, 2015/636, 2018/483, 2018/1260, 2019/148 and 2020/1431. There are other amending instruments, but none is relevant.
 (b) Inserted by regulation 5(23) of S.I. 2018/1260.

Regulation 6 amends the Customs (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1605). Paragraphs (2), (3), (5) and (6) provide for the modification of the application of the customs tariff in relation to goods chargeable to duty under sections 30A and 40A of the Act by modifying the application of the Tariff of the United Kingdom reference document. Paragraph (8) inserts Chapter 5 to provide for relief or repayment of duty charged under section 30A(3) or 40A(1) where such relief or repayment would not breach de minimis state aid limits. Paragraphs (4) and (7) make minor consequential amendments to those regulations.

Regulations 7 and 8 make consequential amendments in relation to the Customs (Contravention of a Relevant Rule) Regulations 2003 (S.I. 2003/3113) and the Customs (Crown Dependencies Customs Union) (EU Exit) Regulations 2019 (S.I. 2019/385).

The notices referred to in regulations 16F, 16G, 16H and 16S of the Customs (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1605) that are inserted by regulation 6(8)) will be published at <https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021>. A person unable to access the notices electronically may access them, while government advice on social distancing and unnecessary travel applies, in hard copy by post free of charge on application to 07741835049, and otherwise by inspection free of charge at HMRC, 100 Parliament Street, London SW1A 2BQ.

A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

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