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STATUTORY INSTRUMENTS

2020 No. 967

EXITING THE EUROPEAN UNION

CUSTOMS

The Customs (Bulk Customs Declaration and Miscellaneous Amendments) (EU Exit) Regulations 2020

Made - - - - - *9th September 2020*

Laid before the House of Commons *10th September 2020*

Coming into force in accordance with regulation 1(2), (3), (4) and (5).

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The Treasury, in exercise of the powers conferred by sections 31(6) and (7), 32(7), (8) and (13) and 52(2) of, and paragraphs 1(7) and 9(1) of Schedule 1, and paragraphs 3(1)(b) and 5 of Schedule 6 to, the Taxation (Cross-border Trade) Act 2018(a), make regulations 1 to 5 and 7 to 11.

The Commissioners for Her Majesty's Revenue and Customs, considering that it would facilitate the administration, collection and enforcement of import duty, make regulations 1 and 6 in exercise of the powers conferred by section 25(1A)(a) and (b) of the Customs and Excise Management Act 1979(b).

In accordance with section 52(2) of the Taxation (Cross-border Trade) Act 2018, the Treasury consider it appropriate in consequence of, or otherwise in connection with, the withdrawal of the United Kingdom from the EU, that provisions of these Regulations come into force on such day as the Treasury may appoint by regulations under section 52 of that Act.

Part 1

Introductory provisions

Citation and commencement

1.—(1) These Regulations may be cited as the Customs (Bulk Customs Declaration and Miscellaneous Amendments) (EU Exit) Regulations 2020.

(2) Subject to paragraphs (3), (4) and (5) these Regulations come into force on such day as the Treasury may by regulations under section 52 of the Taxation (Cross-border Trade) Act 2018 appoint.

(3) This regulation and regulations 7(4), 8, 10 and 11 come into force on 1st October 2020.

(4) The following provisions come into force on 1st October 2020 for the purposes of any authorisation required by or under these Regulations—

- (a) regulation 2 (interpretation);
- (b) regulation 3 (authorisation requirement); and
- (c) regulation 4 (eligibility for authorisation).

(5) The following provisions come into force on 31st October 2020 for the purposes of any approval or authorisation required by or under the Customs (Import Duty) (EU Exit) Regulations 2018(c)—

- (a) regulation 7(1), (7) and (9) (amendment of the Customs (Import Duty) (EU Exit) Regulations 2018);
- (b) regulation 9 (amendment of the Customs (Crown Dependencies Customs Union) (EU Exit) Regulations 2019);
- (c) regulation 43 of the Customs (Import Duty) (EU Exit) Regulations 2018 (as substituted by regulation 7(7));

(a) 2018 c. 22.

(b) 1979 c. 2. Section 25 was amended by paragraphs 3 and 16 of Schedule 7 to the Taxation (Cross-border) Trade Act 2018 (c. 22).

(c) S.I. 2018/1248. Relevant amending instruments are S.I. 2019/326, 2019/486, 2019/1215.

- (d) regulation 5(9) of the Customs (Crown Dependencies Customs Union) (EU Exit) Regulations 2019(a) (as amended by regulation 9).

Part 2

Bulk Customs declarations

Interpretation

2. In this Part—

- “the Act” means the Taxation (Cross-border) Trade Act 2018;
- “authorised declarant” has the meaning given by regulation 3(1);
- “bulk Customs declaration process” has the meaning given by regulation 5(1);
- “Customs obligation” has the meaning given by regulation 2 of the import duty regulations;
- “the import duty regulations” means the Customs (Import Duty) (EU Exit) Regulations 2018(b);
- “postal packet” means a letter, parcel, packet or other article transmissible by post;
- “UP Convention” means the Universal Postal Convention, as most recently done at Istanbul on 6 October 2016 and in Addis Ababa on 7 September 2018, and any regulations made under it(c).

Authorisation requirement

3.—(1) A person (“an authorised declarant”) may use the bulk Customs declaration process if authorised to do so by HMRC in accordance with these Regulations.

(2) Use of the bulk Customs declaration process is to be treated for the purpose of Part 9 of the import duty regulations as a matter requiring approval under those Regulations.

Eligibility for authorisation

4.—(1) The following criteria must be met before an authorisation is granted to a person to use the bulk Customs declaration process—

- (a) an HMRC officer(d) must be of the opinion that it is possible to exercise control of any goods declared under the bulk Customs declaration process without the effects being disproportionate to the benefit to the person of using the process; and
- (b) an HMRC officer must be satisfied that the person will exercise proper conduct of the operations necessary to comply with the requirements of the bulk Customs declaration process.

(2) For the purposes of considering whether the person will exercise proper conduct of the operations necessary to comply with the requirements of the bulk Customs declaration process, the matters that an HMRC officer may take into account include (for example)—

- (a) whether the person, or any directors or senior employees of the person, has been involved in a breach of an obligation relating to tax or of a Customs obligation, which in the opinion of an HMRC officer is—

(a) S.I. 2019/385.

(b) S.I. 2018/1248. Relevant amending instruments are S.I. 2019/108, 2019/326, 2019/486, 2019/1215 and 2019/1346.

(c) Available from: <https://www.upu.int/en/Universal-Postal-Union/About-UPU/Acts>. A person unable to access the UP Convention electronically may access the convention 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.

(d) “HMRC officer” is defined in section 37(1) of the Taxation (Cross-border Trade) Act 2018 as an officer of Revenue and Customs.

- (i) a serious breach having regard to the circumstances and nature of any breach and the number of any breaches; and
 - (ii) relevant to the suitability of the person to use the bulk Customs declaration process;
 - (b) whether the person, or any directors or senior employees of the person, has any criminal conviction which in the opinion of the HMRC officer is—
 - (i) serious having regard to the type of conviction; and
 - (ii) relevant to the suitability of the person to use the bulk Customs declaration process;
 - (c) whether the person maintains a logistical system and records that identify sufficiently the movement of, and transactions in, chargeable goods and domestic goods and facilitate compliance with Customs obligations;
 - (d) whether—
 - (i) the person meets any professional standards of competence specified in a notice published by HMRC under regulation 93(2) of the import duty regulations; or
 - (ii) in the opinion of an HMRC officer the person’s practical experience makes that person suitable to be an authorised declarant.
- (3) The bulk Customs declaration process must be used in compliance with any conditions contained in the authorisation.

The bulk Customs declaration process

5.—(1) The bulk Customs declaration process is the process in relation to Customs declarations provided by this regulation such that the requirements made by or under Part 1 of the Act in relation to a Customs declaration which would otherwise apply are disapplied or simplified.

(2) Subject to paragraph (4), an authorised declarant may use a single Customs declaration (“bulk Customs declaration”) to declare for the free-circulation procedure^(a) goods contained within two or more postal packets where—

- (a) each postal packet is sent from a country or territory outside of Great Britain to a recipient in Great Britain;
- (b) each postal packet consists of goods, in respect of which, at the time of import, a relief from import duty is available to the recipient of the goods;
- (c) the number of postal packets declared does not exceed such number as may be specified in a notice published by HMRC; and
- (d) the postal packets are imported in such manner as may be specified in a notice published by HMRC.

(3) HMRC must publish a notice under paragraph (1)(c) or (d).

(4) A bulk Customs declaration may not be used to declare goods where—

- (a) the goods are subject to excise duty;
- (b) the goods are moved in accordance with the UP Convention;
- (c) the goods are subject to a transit procedure^(b) at the time the bulk Customs declaration is made;
- (d) the goods are the subject of a restriction on import imposed under an enactment; or
- (e) the goods are of a description specified in a notice published by HMRC.

(5) For the purpose of this regulation “excise duty” has the meaning given in section 53 of the Act.

^(a) the meaning of goods declared for a “free-circulation procedure” is given by s 3(2) of the Act.

^(b) the meaning of goods declared for a “transit procedure” is given by paragraph 5 of Schedule 2 to the Taxation (Cross-border Trade) Act 2018.

Part 3

Amendments

Amendment of the Customs (Temporary Storage Facilities Approval Conditions and Miscellaneous Amendments) (EU Exit) Regulations 2018

6.—(1) The Customs (Temporary Storage Facilities Approval Conditions and Miscellaneous Amendments) (EU Exit) Regulations 2018(a) are amended as follows.

(2) In regulation 1(3) (interpretation), in paragraph (b)(ii) of the definition of “established in the United Kingdom”, after “activities” insert “for which the person is constituted to perform”.

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

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

(2) In regulation 2 (interpretation) after the definition of “EU customs procedure”(c) insert—

“guaranteeing association” has the same meaning as in the Article 1 of the ATA Convention, Article 1 of Annex A to the Istanbul Convention or Article 1(q) of the TIR Convention, as the case may be;”.

(3) In regulation 6 (no requirement to present on import) after “vessel” in each place it occurs insert “, train”.

(4) In regulation 31(2) (persons authorised to use the simplified Customs declaration process) for “regulation 93(1)(b) and (c)” substitute “regulation 93(1)(c) and (d)”.

(5) In regulation 40 (notification of liability by release to certain Customs procedures) after paragraph (2) insert—

“(3) Paragraph (1) does not apply if—

- (a) the person making the declaration, or the person in whose name the declaration is made, is approved to defer payment of liability to import duty under regulation 43(5) or (8);
- (b) HMRC has been notified by, or on behalf of, the person so approved that that person intends to defer liability in respect of the chargeable goods to which the declaration relates; and
- (c) that deferral would be in accordance with regulation 43(4).”.

(6) After regulation 40 insert—

“Notification of a liability to pay import duty where declaration made by carnet

40A.—(1) Where a Customs declaration is made by means of an ATA carnet a claim by HMRC for the sum undertaken to be paid by the guaranteeing association is to be taken to be notification of the liability to pay the import duty stated in the claim.

(2) Where a Customs declaration is made by means of a CPD carnet notification by HMRC to the guaranteeing association of non-discharge of the carnet is to be taken to be notification of the liability to pay the import duty stated in the notification of non-discharge.

(3) In this regulation “ATA carnet” and “CPD carnet” have the same meanings as in regulation 22.(d)”.

(7) For regulation 43 (payment of import duty) substitute—

(a) S.I. 2018/1247. There are amending instruments, but none are relevant.

(b) S.I. 2018/1248. Relevant amending instruments are S.I. 2019/326, 2019/486, 2019/1215, and 2019/1346.

(c) The definition of “EU Customs Procedure” was inserted by regulation 11 of S.I. 2019/1215.

(d) Regulation 22(5) was substituted by S.I. 2019/1346.

“43.—(1) A person who is liable to pay import duty must pay the duty before the end of the period of 10 days beginning with the date following the date on which the person is notified of the liability.

This is subject to paragraphs (2) to (13).

(2) If—

(a) a person who is liable to pay import duty is approved by HMRC to defer payment of any liability to import duty; and

(b) a single guarantee is given in relation to the payment of the liability to import duty, the person must pay the duty before the end of the period of 30 days beginning with the date on which the person is notified of the liability.

(3) If—

(a) a person who is liable to pay import duty is approved by HMRC to defer payment of any liability to import duty; and

(b) a comprehensive guarantee^(a) is given in relation to the payment of the liability to import duty,

the person must pay the duty before the end of the period of 15 days beginning with the date following the date on which the person is notified of the liability.

(4) A person approved under paragraph (5) or paragraph (8) to defer payment of liability to import duty must pay the duty for which the person is liable, to which the approval relates, before the end of the period of 15 days beginning with the date following the date on which the person is notified of the liability.

(5) HMRC may approve a person to defer payment of liability to import duty under paragraph (4) only if—

(a) the person is an authorised economic operator; or

(b) the following eligibility criteria (in addition to that in paragraph (10)) are met—

(i) the person meets the criteria which apply to be approved as an authorised economic operator as provided by regulation 93(1)(c) and (d), as if reference to suitability to be an authorised economic operator were a reference to suitability to defer payment of liability under paragraph (4); and

(ii) HMRC is satisfied that the person is solvent.

(6) An approval under paragraph (5) is subject to the condition that it does not permit the approved person to defer payment of any liability to import duty notified within a calendar month that is above the specified limit unless the approval is amended in accordance with paragraph (7).

(7) Where a person is approved under paragraph (5) HMRC may on application by the approved person amend the approval to replace the condition imposed by paragraph (6) with a condition that the approval does not permit the approved person to defer payment of any liability to import duty notified within a calendar month that is above a different limit specified in the amended approval (“the amended limit”) if—

(a) the person is an authorised economic operator; or

(b) HMRC is satisfied that the person has sufficient resources to be able to pay any liability up to the amended limit.

(8) HMRC may approve a person to defer payment of liability to import duty above the specified limit, up to a limit specified in the approval (“the higher limit”), under paragraph (4) only if—

(a) the person is an authorised economic operator; or

(b) the following eligibility criteria (in addition to that in paragraph (10)) are met—

(a) “Comprehensive guarantee” is defined in paragraph 8(1)(b) of Schedule 6 to the Act.

- (i) the person meets the eligibility criteria in paragraph (5)(b); and
- (ii) HMRC is satisfied that the person has sufficient resources to be able to pay any liability up to the higher limit.

(9) An approval to defer payment of liability to import duty under paragraph (5) or (8) is granted subject to such conditions as may be specified in the approval notification issued in relation to the approval.

(10) A person is only eligible for approval to defer payment of liability to import duty if the person is established in the United Kingdom.

(11) If a liability to import duty is determined on the basis of information contained in a Customs declaration corrected (or required to be corrected) under paragraph 14 of Schedule 1 to the Act, a person who is liable to pay the import duty, who is not approved to defer payment of liability to import duty under paragraph (5) or paragraph (8), must pay the duty before the end of—

- (a) a period of 10 days beginning with the date following the date on which the person is notified of the liability; or
- (b) if a guarantee is given in relation to the payment of the liability, such longer period as is notified to the person liable which an HMRC officer considers reasonable in the circumstances but not longer than a period of 6 months beginning with the date following the date on which the person is notified of the liability.

(12) In a case within paragraph (11), if the inaccuracy in the Customs declaration is discovered after the date on which the person was notified of the liability to pay import duty determined on the basis of the information contained in the Customs declaration before the correction, paragraph (11) only applies in relation to any additional import duty arising as a result of the correction.

(13) If the duty to notify a liability to pay import duty is taken to be met under regulation 40A (notification of liability where declaration made by carnet) payment must be made in accordance with Article 7 of the ATA Convention or Article 9 of Annex A to the Istanbul Convention as the case may be.

(14) In this regulation—

“duty deferment arrangement” has the meaning given in regulation 3 of the Excise Goods (Holding, Movement and Duty Point) Regulations 2010(a);

“excise duty” has the meaning given by section 49 of the Act;

“import VAT” means value added tax chargeable by virtue of section 1(1)(c) of the Value Added Tax Act 1994(b);

“relevant duties and taxes” means—

- (a) any liability to import duty notified to a person within a calendar month, which—
 - (i) has not been discharged in accordance with regulation 41;
 - (ii) is not suspended in relation to that person under regulation 44;
 - (iii) has not been remitted in accordance with Part 7 of these Regulations;
- (b) any liability to excise duty arising from an excise duty point provided for in regulation 5 of the Excise Goods (Holding, Movement and Duty Point) Regulations 2010 that occurs within the same calendar month, where the liability is subject to a duty deferment arrangement; and
- (c) any liability to import VAT incurred on the importation of goods in relation to which liability to import duty is notified in the same calendar month except to the extent that the obligation to pay that VAT is deferred or postponed without a

(a) S.I. 2010/593. There are amending instruments, but none are relevant.

(b) 1994 c. 23. Section 1(1)(c) is substituted by section 41(2)(b) of the Taxation (Cross-border Trade) Act 2018 (c.22) (“the Act”).

requirement for a guarantee by virtue of regulations modifying the effect of section 16(2) of the Value Added Tax Act 1994(a);

“specified limit” in relation to a calendar month means where the combined value of the liability to the relevant duties and taxes is an amount set out in a notice published by HMRC Commissioners.

(15) In this regulation—

- (a) a liability to import duty is above the specified limit, the amended limit or the higher limit, if—
 - (i) it is notified to a person who has, in the same calendar month, been notified of, or otherwise incurred, liability to relevant duties and taxes of, or exceeding, the specified limit, the amended limit or the higher limit as the case may be; or
 - (ii) it is the part of a notified liability to import duty that, when added to other liability to relevant duties and taxes notified or otherwise incurred in the calendar month, exceeds the specified limit, the amended limit or the higher limit as the case may be;
- (b) reference to duty to which the approval relates means duty which is not above the higher of—
 - (i) the specified limit; and
 - (ii) any higher limit specified in a notification of approval issued in relation to an amendment of an approval under paragraph (7) or an approval under paragraph (8).”

(8) In regulation 94 (interpretation) omit the definition of “guaranteeing association”.

(9) In regulation 97 (single and comprehensive guarantees) in paragraph (6) for “43(3)(b)(ii)” substitute “43(3)(b)”.

(10) In regulation 98 (specified amount)—

- (a) in paragraph (1) at the beginning insert “Subject to paragraph (1A)”;
- (b) after paragraph (1) insert—

“(1A) Where a person is approved to defer payment of liability to import duty under regulation 43(5) or (8) the specified amount is reduced by the amount of liability to import duty to which the approval relates.

(1B) In paragraph (1A) reference to duty to which the approval relates has the same meaning as in regulation 43(15)(b).”

Amendment of the Customs (Export) (EU Exit) Regulations 2019

8.—(1) The Customs (Export) (EU Exit) Regulations 2019(b) are amended as follows.

(2) In regulation 32(2)(a) (persons authorised to use the simplified export declaration process) after “to be approved as an authorised economic operator” insert “in regulation 93(1)(c) and (d) of CIDEER 2018”.

(3) In regulation 37(3) (authorisations to use the EIDR export process) after “to be approved as an authorised economic operator” insert “in regulation 93(1)(c), (d), (e) and (g) of CIDEER 2018”.

(a) Section 16 is prospectively substituted by paragraph 13 of Schedule 8 to the Act.

(b) S.I. 2019/108. Relevant amending instrument is S.I. 2019/486.

Amendment of the Customs (Crown Dependencies Customs Union) (EU Exit) Regulations 2019

9.—(1) The Customs (Crown Dependencies Customs Union) (EU Exit) Regulations 2019(a) are amended as follows.

(2) In regulation 5(9) (amendment of regulation 43 of the import duty regulations) for “(3A)” substitute “(10)”.

Amendment of the Taxation (Cross-border Trade) (Miscellaneous Provisions) (EU Exit) Regulations 2019

10.—(1) The Taxation (Cross-border Trade) (Miscellaneous Provisions) (EU Exit) Regulations 2019(b) are amended as follows.

(2) In regulation 6 (declarations, trade remedies, cessation of EU customs law) omit paragraph (23).

Amendment of the Taxation (Cross-border Trade) (Miscellaneous Provisions) (EU Exit) (No. 2) Regulations 2019

11.—(1) The Taxation (Cross-border Trade) (Miscellaneous Provisions) (EU Exit) (No. 2) Regulations 2019(c) are amended as follows.

(2) In regulation 2(4), in the text inserted as regulation 6A of the Customs (Import Duty) (EU Exit) Regulations 2018, after “vessel” insert “, train”.

*David Rutley
Rebecca Harris*

9th September 2020 Two of the Lords Commissioners of Her Majesty’s Treasury

*Penny Ciniewicz
Justin Holliday*

9th September 2020 Two of the Commissioners for Her Majesty’s Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations are made by HMRC Commissioners under the Customs and Excise Management Act 1979 (c. 2) and the Treasury further to Part 1 of the Taxation (Cross-border Trade) Act 2018 (c. 22) (“the Act”). This is an EU Exit statutory instrument.

Part 1 provides for citation and commencement. The Regulations will largely be brought into force by way of a separate statutory instrument made under section 52 of the Act, but certain provisions will be brought into force on 1 October 2020 and the 31 October 2020 in order to allow authorisations to be granted in advance of IP completion day.

Part 2 makes provision to authorise persons to make bulk Customs declarations for goods contained in postal packets.

Part 3 makes amendments to a number of customs EU Exit instruments.

Regulation 6 makes a minor amendment the Customs (Temporary Storage Facilities Approval Conditions and Miscellaneous Amendments) (EU Exit) Regulations 2018 (S.I. 2018/1247) to ensure the definition of UK Establishment is consistent with other customs EU Exit instruments.

(a) S.I. 2019/385.

(b) S.I. 2019/486. There are amending instruments, but none are relevant.

(c) S.I. 2019/1346.

Regulations 7 and 11 make a number of amendments to the Customs (Import Duty) (EU Exit) Regulations 2018 (S.I. 2018/1248) (“the import duty regulations”). These amendments include: regulations 7(6) which amends the import duty regulations to ensure the UK can comply with its obligations under the Customs Convention on the “A.T.A. Carnet” for the temporary admission of goods done at Brussels on 6 December 1961 and the Convention on Temporary Admission done at Istanbul on 26 June 1990; regulations 7(3) and 11(2) which amend the import duty regulations to extend the same treatment to trains as that received by ships and aircraft, and regulation 7(7) which substitutes a new regulation 43 of the import duty regulations which sets out the time by which import duty must be paid and the circumstances in which payment may be deferred. The changes resulting from the substitution provide for HMRC to approve persons to defer payment of import duty without a guarantee in certain circumstances. Consequential amendments are also made to regulations 40, 97 and 98 of the import duty regulations (regulation 7(5), (9) and (10)) and regulation 5 of the Customs (Crown Dependencies Customs Union) (EU Exit) Regulations 2019 (S.I. 2019/385).

The notices referred to in regulations 4 and 5 and the amendment made by regulation 7(7) will be published <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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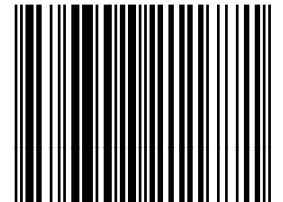
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