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STATUTORY INSTRUMENTS

2021 No. 1347

EXITING THE EUROPEAN UNION

CUSTOMS

EXCISE

The Customs and Excise Border Procedures (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2021

Made - - - - 30th November 2021

Laid before the House of Commons 1st December 2021

Coming into force in accordance with regulation 1

The Commissioners of Her Majesty's Revenue and Customs, in exercise of the powers conferred by sections 32(7), (8), 34(5), 35(2), (3), (4), 45(1) and (2) of, and paragraphs 1(7) and (8) and 3(1), (5) and (6) of Schedule 1 to, the Taxation (Cross-border Trade) Act 2018^(a), and the Treasury, in exercise of the power conferred by section 26(1) of the Finance Act 2003^(b) make these Regulations.

Citation and commencement

1.—(1) These Regulations may be cited as the Customs and Excise Border Procedures (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2021.

(2) Regulation 2 comes into force on 22nd December 2021.

(3) Paragraph (6) of regulation 3 and paragraphs (2) to (6) of regulation 4 come into force immediately after regulation 2 comes into force.

(4) The remainder of these Regulations come into force on 1st January 2022.

Revocation of the Customs and Excise Border Procedures (Miscellaneous Amendments) (EU Exit) Regulations 2021

2. The Customs and Excise Border Procedures (Miscellaneous Amendments) (EU Exit) Regulations 2021^(c) are revoked.

(a) 2018 c. 22. Relevant amendments were made by Schedule 1 to the Taxation (Post-transition Period) Act 2020 (c. 26).
(b) 2003 c. 14. Relevant amendments were made by Schedule 7 to the Taxation (Cross-border Trade) Act 2018.
(c) S.I. 2021/830.

PART 1

Amendments relating to Border Procedures

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

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

(2) In regulation 4 (notification of importation)—

- (a) omit paragraphs (3A)(aa), (3AC)(b), (3C) and (3D)(b);
- (b) in paragraph (3AC)(a) after “applies;” insert “and”.

(3) In regulation 12 (handling of goods in temporary storage)—

(a) for paragraph (1) substitute—

“(1) A person who holds the approval to operate a temporary storage facility (“the approved person”) may only carry out, in relation to goods that are in temporary storage, the type of activity described in paragraph (2).”;

(b) in paragraph (2)—

- (i) in subparagraph (a) after “temporary storage facility” insert “in relation to which the person holds the approval”;
- (ii) in subparagraph (b) before “other premises” insert “a temporary storage facility or”;

(c) after paragraph (2) insert—

“(2A) If—

- (a) there is no temporary storage facility at the place of importation, approved wharf or examination station at which the goods are located;
- (b) the goods are subject to regulation 131(2) (chargeable goods carried by RoRo vehicles destined for RoRo listed locations: making of declarations), or 131F(3) (chargeable goods carried by relevant vehicles destined for other listed locations: making of declarations); and
- (c) a temporary storage declaration has been made in accordance with regulation 8(3) and (5) (temporary storage declarations),

the approval of an HMRC officer for the transport of the goods to the temporary storage facility listed in the declaration, by the person approved to operate that facility is to be treated as given.”;

(d) for paragraph (3) substitute—

“(3) The approved person must keep a record of any handling of the goods—

- (a) whilst the goods are in the temporary storage facility, whether the handling falls within paragraph (2)(a) or otherwise; or
- (b) whilst the goods are being moved pursuant to paragraph (2)(b).”;

(e) after paragraph (5) insert—

“(6) In this regulation—

goods are in temporary storage if they—

- (a) are, or have been, subject to the requirement in regulation 8(2); and
- (b) have not been released to a Customs procedure;

“approved wharf” has the meaning given by section 20A CEMA 1979;

(a) S.I. 2018/1248; amended by S.I. 2019/326, S.I. 2019/486, S.I. 2019/1215, S.I. 2019/1346, S.I. 2020/967, S.I. 2020/1088, S.I. 2020/1234, S.I. 2020/1449, S.I. 2020/1552, S.I. 2020/1605, S.I. 2021/478, S.I. 2020/697, S.I. 2020/1431, S.I. 2021/1205, S.I. 2021/1156.

(b) Paragraphs (3A) to (3D) of regulation 4 were inserted by S.I. 2019/326.

“examination station” has the meaning given by section 22A CEMA 1979.”.

(4) In regulation 13(a) (breach of handling requirement) for “a temporary storage facility operated by” substitute “the possession or control of”.

(5) For regulation 17(5) (customs declarations made orally: general) substitute—

“(5) A Customs declaration may not be made orally where the goods—

- (a) are imported at a RoRo listed location and are carried by a RoRo vehicle; or
- (b) are goods to which regulation 131F(3) applies (chargeable goods carried by relevant vehicles destined for other listed locations: making of declarations).”.

(6) In regulations 130(5) (RoRo listed locations) and 131E(5) (other listed locations) at the end insert “and paragraphs (3) and (4) shall apply to such variation or cancellation as if it were a listing”.

(7) In regulations 130(6) and 131E(6)—

- (a) at the end of subparagraph (a) insert “and”;
- (b) in subparagraph (b) omit “and”;
- (c) omit subparagraph (c).

(8) In regulation 131F (chargeable goods carried by relevant vehicles destined for other listed locations: making of declarations), for paragraph (3) substitute—

“(3) A Customs declaration or a temporary storage declaration must be made in respect of the goods—

- (a) by the time the goods are boarded or loaded onto the relevant vehicle; or
- (b) if the place at which the goods are boarded or loaded is not the final place of departure of the relevant vehicle for an other listed location, by the time of arrival at that final place.

(3A) The Customs declaration or temporary storage declaration must not be amended or withdrawn by the declarant after that time, other than to substitute information of a description specified in a notice published by HMRC, without the consent of an HMRC officer(a).”.

(9) After regulation 131H (goods intended to be carried in a shuttle train: making of declarations)(b) insert—

“PART 13E

Notification of embarkation requirements for chargeable goods destined for RoRo listed locations or other listed locations

131I—(1) Carriers of chargeable goods destined for a RoRo listed location or an other listed location must provide a notification to HMRC immediately after the relevant vehicle on which the goods have been boarded or loaded has departed for the United Kingdom (a “notification of embarkation”).

(2) Paragraph (1) does not apply in relation to—

- (a) goods in respect of which a Customs declaration by conduct may be made under regulation 25(1B) or (1BB)(c);
- (b) goods in respect of which a voluntary Customs declaration may be made under regulation 39B(3)(d);

(a) Paragraph 16A of Schedule 1 to the TCTA inserted by regulation 5(2) of S.I. 2020/1439 provides that paragraphs 15 and 16 are subject to provision made under paragraph 3(5) about customs declarations.

(b) Regulation 131H was inserted by S.I. 2020/1552.

(c) Paragraph (1B) of regulation 25 was inserted by S.I. 2019/486 and paragraph (1BB) of regulation 25 by S.I. 2020/1234.

(d) Regulations 39A and 39B were inserted by S.I. 2019/486.

- (c) goods described in regulation 39(1), 39A(1), 131(1)(b) or 131F(1)(b);
 - (d) goods in respect of which a simplified Customs declaration has been made using the EIDR procedure.
- (3) The notification of embarkation must be made in the form and manner, and contain such information, as is specified in a notice published by HMRC Commissioners.
- (4) A notification of embarkation that has been made may not be amended or withdrawn without the consent of an HMRC officer.
- (5) In this regulation—
- “carrier” means a person who provides the service of transport for goods being transported to the United Kingdom;
 - “RoRo listed location” has the meaning given by regulation 130(1);
 - “other listed location” has the meaning given by regulation 131E(1);
 - “relevant vehicle” has the meaning given by regulation 131D.”.

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

- 4.—(1) The Customs (Export) (EU Exit) Regulations 2019(a) are amended as follows.
- (2) In regulation 40(8) (obligation to make goods available for examination) after “RoRo listed locations” insert “or specified export locations”.
- (3) In the heading to Part 6 after “RoRo listed locations” insert “or specified export locations”.
- (4) In regulation 52 (interpretation of Part)—
- (a) before the definition of “RoRo listed location” insert—
 - ““export location” means a RoRo listed location or a specified export location;”;
 - (b) after the definition of “RoRo vehicle” insert—
 - ““specified export location” means a location in the United Kingdom listed in a notice published by HMRC.”.
- (5) In the heading to regulation 53 (RoRo listed locations for export), after “export” insert “and specified export locations”.
- (6) In regulation 53 (RoRo listed locations for export)—
- (a) after paragraph (2) insert—
 - “(2A) In relation to the export of goods a location may be a “specified export location” if—
 - (a) it is not a RoRo listed location;
 - (b) it is an airport, port or railway terminal; and
 - (c) HMRC considers that a common export procedure at the location would be significantly impeded due to limited storage capacity if the modifications in regulation 54 did not apply.”;
 - (b) in paragraph (3) for the words after “CIDEER 2018 apply” substitute—
 - “to the listing of—
 - (a) a RoRo listed location; or
 - (b) a specified export location (as if it were a RoRo location).”.
- (7) In regulation 54 (goods carried by RoRo vehicles to and from RoRo listed locations: modifications in relation to export declarations)—

(a) S.I. 2019/108; amended by S.I. 2019/486, S.I. 2019/1215, S.I. 2019/1346, S.I. 2020/967, S.I. 2020/1234, S.I. 2020/1449, S.I. 2020/1552, S.I. 2020/1605, S.I. 2021/478, S.I. 2021/697, S.I. 2021/1205 and S.I. 2021/1156.

- (a) in the heading for “Goods carried by RoRo vehicles to and from” substitute “Specified export locations and”;
- (b) for paragraph (1) substitute—
 - “(1) This regulation applies to an export declaration in respect of goods which are—
 - (a) carried by a RoRo vehicle to, and are exported on a RoRo vehicle from, a RoRo listed location; or
 - (b) transported to and exported from a specified export location.”.
- (c) in paragraph (6)—
 - (i) after “in respect of goods” insert “to which this regulation applies and which have been”;
 - (ii) omit the words after “common export procedure”.
- (d) after paragraph (7) insert—
 - “(7A) If required to do so by an HMRC officer, evidence of compliance with regulation 10(1) of these Regulations in relation to goods to which this regulation applies must be produced to an HMRC officer, by a person—
 - (a) in possession or control of a vehicle in which the goods are being or have been transported to the export location; or
 - (b) who has made an export declaration in relation to the goods.
 - (7B) For the purposes of paragraph (7A)—
 - (a) a “person in possession or control of a vehicle” includes the driver or the haulier;
 - (b) HMRC Commissioners may list the types of evidence that they will accept in a public notice.”.
- (8) After regulation 54 insert—

“Control of goods carried to and from RoRo listed locations or specified export locations

54A.—(1) Paragraph (2) applies for the purposes of enabling an HMRC officer to exercise control of goods under regulation 41 in respect of goods which are being transported to, or have arrived at, an export location.

(2) Where an export declaration has been made in respect of the goods, an HMRC officer may issue a notice to the person who has made the export declaration stating that the goods have permission to progress to the export location (a “P2P notice”) if the officer is satisfied that the conditions in regulation 43(1) have been met.

(3) An operator of a relevant vehicle at an export location must take reasonable steps to ensure that P2P notices have been issued in respect of the goods in paragraph (2) prior to those goods being boarded or loaded onto the vehicle.

(4) HMRC Commissioners may specify details of how a vehicle operator may demonstrate compliance with the obligation in paragraph (3) in a public notice.

(5) For the purposes of this regulation a “relevant vehicle” means a ship, aircraft or railway vehicle.

Export declarations: extension of modifications for RoRo listed locations to other locations

54B.—(1) HMRC Commissioners may specify in a notice that one or more of the provisions in paragraph (2) relating to RoRo listed locations shall apply to any other location where they consider that a common export procedure would otherwise be significantly impeded at that location.

(2) The provisions referred to in paragraph (1) are—

- (a) regulation 22(4) and (5) (export declarations by conduct: certain goods in vehicles);
- (b) regulation 24(3) (export declarations by conduct: certain goods subject to temporary admission procedure);
- (c) regulation 29A(1) and (2)(c) (export declarations: miscellaneous consequential provisions);
- (d) regulation 47(3)(d) and (4) (amendment or withdrawal of export declarations).

(3) A notice made under paragraph (1) must set out the location and the provisions applying to that location.”.

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

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

(a) under the heading “Report”—

(i) in the entry relating to the Report, Importation and Exportation by Sea Regulations 1981(b) after the entry for regulation 5 insert—

“Regulation 8A(2)(c) Goods subject to regulation 131(2) or 131F(3) of the Customs (Import Duty) (EU Exit) Regulations 2018 which have been imported by sea must not be removed from an approved wharf other than in accordance with regulation 8A.	The person in possession or control of the goods.	£2,500.
The Customs Importation (Miscellaneous Provisions and Amendment) (EU Exit) Regulations 2021(d) Regulation 2 Goods subject to regulation 131(2) of the Customs (Import Duty) (EU Exit) Regulations 2018 must not be removed from the terminal control area located in Folkestone, in Kent other than in accordance with the regulation.	The person in possession or control of the goods.	£2,500.”.

(ii) after the entry for the “Control of Movement of Goods Regulations 1984” insert—

- (a) S.I. 2003/3113; amended by S.I. 2009/3164, S.I. 2011/1043, S.I. 2011/2085, S.I. 2011/2534, S.I. 2015/636, S.I. 2018/483, S.I. 2018/1260, S.I. 2019/148, S.I. 2019/326, S.I. 2019/486, S.I. 2019/487, S.I. 2019/1215, S.I. 2020/1088, S.I. 2020/1234, S.I. 2020/1431, S.I. 2020/1552, S.I. 2020/1605, S.I. 2020/1629 and S.I. 2021/1156.
- (b) S.I. 1981/1260. Relevant amending instruments are S.I. 2018/1247, S.I. 2019/326, and 2019/486.
- (c) Reg 8A was inserted by S.I. 2021/1312.
- (d) S.I. 2021/1312.

<p>“Section 37(7) of the 2018 Act and paragraph 1(2) of Schedule 1 to the 2018 Act Requiring the goods to be handled, or otherwise dealt with, in accordance with instructions given by an HMRC officer.</p>	<p>The person instructed by an HMRC officer.</p>	<p>£2,500.”.</p>
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- (b) under the heading “Chargeable goods destined for other listed locations”, in the entry relating to the Customs (Import Duty) (EU Exit) Regulations 2018, for the entry for regulation 131F(3) substitute—

<p>“Regulation 131F(3) Chargeable goods carried by relevant vehicles destined for an other listed location: requirement to make a Customs declaration or temporary storage declaration within the time stipulated in subparagraph (a) or (b).</p>	<p>Person responsible for making the declaration.</p>	<p>£1,000.</p>
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<p>Regulation 131F(3A) Customs declaration or temporary storage declaration made under regulation 131F(3) must not be amended or withdrawn by the declarant without the consent of an HMRC officer.</p>	<p>The declarant.</p>	<p>£1,000.”.</p>
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- (c) after the entries under the heading “chargeable goods destined for other listed locations” insert—

<p>“Notification of embarkation requirement</p> <p>The Customs (Import Duty) (EU Exit) Regulations 2018 Regulation 131I(1) and (3) Carriers of chargeable goods destined for a RoRo listed location or an other listed location must provide a notification to HMRC immediately after the relevant vehicle on which goods have been boarded or loaded has departed for the UK, such notification to be made in the form and</p>	<p>The carrier.</p>	<p>£1,000.</p>
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manner and contain such information as is specified in a notice published by HMRC Commissioners in accordance with paragraph (3).

Regulation 131I(4) A notification of embarkation that has been made must not be amended or withdrawn without the consent of an HMRC officer.	The carrier	£1,000.”.
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- (d) in the heading “goods exported from RoRo listed locations”, after “RoRo listed” insert “or specified export”;
- (e) under the heading referred to in subparagraph (d), after the entry for regulation 54(2) of the Customs (Export) (EU Exit) Regulations 2019 insert—

“Regulation 54(7A) Where regulation 54 applies evidence of compliance with regulation 10(1) must be produced to an HMRC officer by a person specified in subparagraph (a) or (b) of regulation 54(7A) when required.	The person in subparagraph (a) or (b) of regulation 54(7A) who has been required to produce the evidence.	£1,000.
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Regulation 54A(3) An operator of a relevant vehicle at a RoRo listed location or a specified export location must take reasonable steps to ensure that P2P notices have been issued in respect of goods prior to the goods being boarded or loaded onto the vehicle.	The operator of the relevant vehicle	£1,000.”.
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PART 2

Consequential Customs amendments

Amendment of the Customs (Declarations) (Amendment and Modification) (EU Exit) Regulations 2020

6.—(1) The Customs (Declarations) (Amendment and Modification) (EU Exit) Regulations 2020(a) are amended as follows.

(2) Omit regulation 2 (modified export controls).

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

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

(2) In regulation 13A(1)(c) (declarations for an outward processing procedure: further provisions) after “RoRo listed” insert “or specified export”.

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

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

(2) In regulation 32 (application of the Customs (Import Duty) (EU Exit) Regulations 2018) after “Parts 1 to 10, 12, 13,” insert “13C, 13E”.

PART 3

Consequential excise amendments

Amendment of the Excise Duties (Miscellaneous Amendments) (EU Exit) (No.3) Regulations 2019

9. Omit Chapter 2 (importation – transitional provisions) of Part 4 of the Excise Duties (Miscellaneous Amendments) (EU Exit) (No. 3) Regulations 2019(d).

Amendment of the Customs and Excise (Miscellaneous Amendments) (EU Exit) Regulations 2019

10. Omit regulation 16 (amendment of the Excise Duties (Miscellaneous Amendments) (EU Exit) (No. 3) Regulations 2019) of the Customs and Excise (Miscellaneous Provisions and Amendments) (EU Exit) Regulations 2019(e).

30th November 2021

Two of the Commissioners for Her Majesty’s Revenue and Customs

Jim Harra
Angela MacDonald

30th November 2021

Two of the Lords Commissioners of Her Majesty’s Treasury

Rebecca Harris
Michael Tomlinson

(a) S.I. 2020/1234.

(b) S.I. 2018/1249. Relevant amending instruments are S.I. 2019/108 and S.I. 2019/486.

(c) S.I. 2020/1605; there are amendments but none are relevant.

(d) S.I. 2019/474; amended by S.I. 2019/1215, S.I. 2020/1494 and S.I. 2020/1640. Part 4 provides for modifications of the Excise Goods (Holding, Movement and Duty Point) Regulations 2010 (S.I. 2010/593).

(e) S.I. 2019/1215.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in order to deal with an error in the Customs and Excise Border Procedures (Miscellaneous Amendments) (EU Exit) Regulations 2021 (S.I. 2021/830) (“the first Regulations”). The first Regulations contained provisions providing for penalties but the correct vires (section 26 of the Finance Act 2003 (c. 14)) were not cited in the preamble. The text of the first Regulations is replicated in these Regulations subject to correction of four minor errors noted below. In addition, three new related penalties are introduced.

Regulation 1 provides for citation and commencement. All the regulations in this instrument will come into force on 1 January 2022 apart from regulation 2 (revocation of the first Regulations), regulation 3(6) (amendment to regulations 130(5) and 131E(5) of the Customs (Import Duty) (EU Exit) Regulations 2018) (S.I. 2018/1248) (“the Import Regulations”) and regulation 4(2) to (6) (amendments to regulations 40, 52, and 53 of the Customs (Export) (EU Exit) Regulations 2019 (S.I. 2019/108)) which will come into force on 22 December 2021.

Regulation 2 revokes the first Regulations.

Regulations 3 to 10 replicate the provisions of the first Regulations with the following changes:

- (a) in regulation 3(3)(c) (previously regulation 2(3)(c) of the first Regulations), the inserted paragraph (2A)(b) is amended to add the words “: making of declarations” to the description of regulation 131 of the Import Regulations;
- (b) in regulation 3(3)(e) (previously regulation 2(3)(e) of the first Regulations) the definition of “approved wharf” in the inserted paragraph (6) is amended so it refers to section “20A” of CEMA rather than section “20(A)” which was incorrect;
- (c) regulations 5(a) inserts the three new penalties into the Customs (Contravention of a Relevant Rule) Regulations 2003 (S.I. 2003/3113). The penalties are for removing goods from an approved wharf or from the Cheriton Channel Tunnel location without being discharged from a free-circulation procedure or approval having been given by an HMRC officer and failing to comply with instructions given by an HMRC officer;
- (d) in regulation 5(e) (previously regulation 4(d) in the first Regulations) the incorrect reference to “subparagraph (b)” is changed to subparagraph (d). This will not affect any of the inserted text but the error was picked up by the Select Committee on Statutory Instruments so the opportunity is being taken to correct it;
- (e) in regulation 8 (previously regulation 7 of the first Regulations), the consequential amendment to regulation 32 of the Customs (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1605) is corrected so it will now read “13C” rather than “3C” which was incorrect. A stray comma is also removed after the inserted “13E”.

Any notices that are made under powers created or amended by these Regulations 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>.

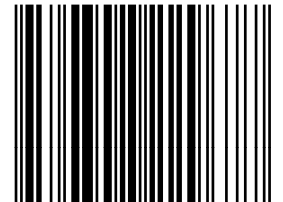
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