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STATUTORY INSTRUMENTS

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**2018 No. 1248**

**EXITING THE EUROPEAN UNION  
CUSTOMS**

**The Customs (Import Duty) (EU Exit) Regulations 2018**

*Made - - - - 29th November 2018*  
*Laid before the House of*  
*Commons - - - - 30th November 2018*  
*Coming into force in accordance with regulation 1(2),*  
*(3) and (4)*

The Treasury, in exercise of the powers conferred by sections 16, 21(2) and (7), 22, 23(3), (6) and (7), 27(1), 32(7), (8), (10) and (13), 33(5) and (8), 34(5), 51, 52 and 56(1) and (3) of, and paragraphs 1(7), 2(2), 3(1) and (5), 5(1), 6(1) and (2), 9(1) and 19(2) of Schedule 1, paragraphs 3(1)(b), 5, 6, 10 and 11 of Schedule 6 and paragraph 1(3)(c) of Schedule 7 to, the Taxation (Cross-border Trade) Act 2018<sup>(1)</sup>, make the following Regulations.

Further to section 27(2) of that Act, the Treasury consider that—

- (a) the provisions made by Part 14 (fees) of the following Regulations are consistent with arrangements between Her Majesty's government in the United Kingdom and any other government or any international organisation or authority; and
- (b) the circumstances in which the functions specified in Part 14 are, or are likely to be, exercised are such that it is fair and reasonable for the charge to be made.

Further to section 28 of that Act, the Treasury in exercising the function of making the following Regulations have had regard to international agreements to which Her Majesty's government in the United Kingdom is a party which are relevant to the exercise of that function.

The Treasury considers 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

### Introductory provisions

#### Citation and commencement

1.—(1) These Regulations may be cited as the Customs (Import Duty) (EU Exit) Regulations 2018.

(2) Subject to paragraphs (3) and (4), 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 comes into force on 2nd January 2019.

(4) The following provisions come into force on 2nd January 2019 for the purposes of any approval or authorisation required by or under these Regulations—

- (a) regulations 2 and 3;
- (b) regulations 14, 30, 31, 36 and 37 (simplified Customs declarations and the EIDR procedure) of Part 4 (declarations);
- (c) Part 9 (approvals and authorisations and authorised economic operators), except for regulation 92;
- (d) Part 10 (guarantees), except for regulation 100.

#### Interpretation

2. In these Regulations—

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

“accompanied baggage” means baggage which—

- (a) accompanies an individual when arriving in the United Kingdom; or
- (b) would have so accompanied an individual had the baggage not been delayed in transit to the United Kingdom;

“the ATA Convention” means the Customs Convention on the “A.T.A. Carnet” for the Temporary Admission of Goods, (Brussels, December 6, 1961)(2);

“Customs obligation” means any obligation or requirement imposed by or under—

- (a) Part 1 of the Act;
- (b) CEMA 1979(3);
- (c) the EU Customs Code as it had effect before exit day; or
- (d) after exit day—
  - (i) the EU Customs Code except the EUCL; or
  - (ii) the EUCL insofar as it continues to have effect as provided by Part 15 of these Regulations;

“the Delegated Regulation” means the 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;

“entry summary declaration” has the same meaning as it has in Article 5(9) of the UCC;

(2) Command paper 2226. Available electronically from: [http://www.wcoomd.org/-/media/wco/public/global/pdf/about-us/legal-instruments/conventions-and-agreements/ata/pf\\_ata\\_conv\\_text.pdf?la=en](http://www.wcoomd.org/-/media/wco/public/global/pdf/about-us/legal-instruments/conventions-and-agreements/ata/pf_ata_conv_text.pdf?la=en). A hard copy is available for inspection free of charge at the offices of HMRC at 100 Parliament Street, London, SW1A 2BQ.

(3) “CEMA 1979” is defined in section 37(1) of the Act as the Customs and Excise Management Act 1979 (c. 2).

“EUCL” means the direct EU legislation referred to in paragraph 1(1) of Schedule 7 to the Act;

“EU Customs Code” means—

- (a) the UCC;
- (b) the Delegated Regulation; and
- (c) Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of [Regulation \(EU\) No 952/2013](#) of the European Parliament and of the Council laying down the Union Customs Code;

“the Istanbul Convention” means the Convention on Temporary Admission (Istanbul, 26 June 1990)(4);

“MRN” means a master reference number issued by HMRC in respect of goods further to any of the following being provided to HMRC—

- (a) an entry summary declaration;
- (b) a temporary storage declaration; or
- (c) a Customs declaration;

“non-commercial goods” means goods—

- (a) which are provided by one individual to another;
- (b) where no payment is made, directly or indirectly, for the goods by the recipient;
- (c) which are for the personal use of the recipient; and
- (d) which do not form part of a series of consignments of goods made between the individuals;

“personal gifts” means goods contained within accompanied baggage of a qualifying traveller which—

- (a) are intended for an individual’s personal use;
- (b) are not imported for commercial purposes; and
- (c) do not form part of a series of consignments of goods imported by the qualifying traveller;

“qualifying traveller” means an individual who—

- (a) is not resident in the United Kingdom and is arriving in the United Kingdom for a temporary stay; or
- (b) is resident in the United Kingdom and is returning after a temporary stay outside the United Kingdom;

“single guarantee” has the meaning given by regulation 97(1);

“temporary storage declaration”, except in Part 15, has the meaning given by regulation 8(2);

“temporary storage facility”, except in Part 15, has the same meaning as it has under section 25 of CEMA 1979(5);

“the TIR Convention” means the Customs Convention on the International Transport of Goods under cover of TIR Carnets (Geneva, 14 November 1975)(6);

“the UCC” means [Regulation \(EU\) No 952/2013](#) of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code;

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(4) Available electronically from [http://www.wcoomd.org/-/media/wco/public/global/pdf/about-us/legal-instruments/conventions-and-agreements/istanbul/istanbul\\_legal\\_text\\_eng.pdf?la=en](http://www.wcoomd.org/-/media/wco/public/global/pdf/about-us/legal-instruments/conventions-and-agreements/istanbul/istanbul_legal_text_eng.pdf?la=en). A hard copy is available for inspection free of charge at the offices of HMRC at 100 Parliament Street, London, SW1A 2BQ.

(5) Section 25 was substituted by [S.I. 1991/2724](#) and is amended by paragraph 16 of Schedule 7 to the Act (which, inter alia, substituted “temporary storage facilities” for “transit sheds”) and [S.I. 1992/3095](#) and [1993/3014](#).

(6) Available electronically from [https://www.unece.org/fileadmin/DAM/tir/handbook/english/newtirhand/TIR-6Rev10\\_En.pdf](https://www.unece.org/fileadmin/DAM/tir/handbook/english/newtirhand/TIR-6Rev10_En.pdf). A hard copy is available for inspection free of charge at the offices of HMRC at 100 Parliament Street, London, SW1A 2BQ.

“working day” means any day except—

- (a) a Saturday or Sunday;
- (b) Good Friday or Christmas day; or
- (c) a bank holiday within the meaning of section 1 of the Banking and Financial Dealings Act 1971<sup>(7)</sup>, including those bank holidays in part only of the United Kingdom.

### **Establishment and notices and notifications**

**3.—**(1) In these Regulations, 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.

(2) In these Regulations, a notice or notification means one made in writing and a requirement to notify is to be read accordingly.

(3) A notice published by HMRC under these Regulations may make different provision for different cases or different purposes.

## **PART 2**

### **Presentation of goods to Customs**

#### **Notification of importation**

**4.—**(1) Subject to paragraph (2) and regulations 5 and 6, a notification of the importation of goods<sup>(8)</sup> into the United Kingdom must be given to HMRC by one of the following—

- (a) the person who imports the goods;
- (b) a person on whose behalf another person imports the goods;
- (c) a person who is responsible for the carriage of the goods when they are imported;
- (d) a person who makes a Customs declaration<sup>(9)</sup> in respect of the goods; or
- (e) a person approved by HMRC in relation to premises where goods are kept for a storage procedure<sup>(10)</sup> where the goods are declared for a storage procedure.

(2) Where regulation 131 (chargeable goods carried by RoRo vehicles destined for RoRo listed locations: making of declarations) applies, notification must be given by the person who makes a Customs declaration in respect of the goods.

(3) The notification must—

- (a) contain the matters specified, and be accompanied by the documents specified, in a notice published by HMRC Commissioners;
- (b) be made in the form and manner specified in that notice; and
- (c) subject to paragraph (5), be given within—

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<sup>(7)</sup> 1971 c. 80.

<sup>(8)</sup> See paragraphs 1 and 2 of Schedule 6 to the Act on notification of importation.

<sup>(9)</sup> Section 37(8) of the Act explains references to a person who makes a Customs declaration.

<sup>(10)</sup> “A storage procedure” is defined in paragraph 2 of Schedule 2 to the Act.

- (i) three hours from the time of arrival of the goods at a place specified in that notice, or
- (ii) if that place is closed on the expiry of three hours from the time of arrival of the goods, one hour of that place next opening.

(4) HMRC Commissioners must publish a notice specifying the matters referred to in paragraph (3) and may, for example, specify that details of the following be included in a notification of importation—

- (a) the person making the notification;
- (b) the goods; or
- (c) any entry summary declaration, Customs declaration or temporary storage declaration made in respect of the goods.

(5) A qualifying traveller may give a notice of importation before importation in relation to non-commercial goods contained within accompanied baggage if—

- (a) a Customs declaration for the free-circulation procedure<sup>(11)</sup> is made in respect of the goods before importation; and
- (b) at the time of importation, no relief from import duty is available in respect of the goods to that individual.

#### **No requirement to present on import: force majeure**

5.—(1) There is no requirement for a person to present goods<sup>(12)</sup> to Customs on import if in the opinion of an HMRC officer<sup>(13)</sup> the importation was not intended and was caused by abnormal and unforeseeable circumstances beyond that person's control.

(2) In considering whether an importation was not intended and was caused by abnormal and unforeseeable circumstances beyond a person's control, an HMRC officer must consider the following criteria—

- (a) whether or not the goods are salvage;
- (b) the location of the goods;
- (c) whether or not the owner of the goods can be identified; and
- (d) whether or not the person who would otherwise be required to present the goods acted reasonably in all the circumstances.

#### **No requirement to present on import: temporary unloading**

6. There is no requirement to present the goods to Customs on import where—

- (a) goods are unloaded from a vessel or aircraft solely to enable other goods on that vessel or aircraft to be unloaded or other goods to be loaded;
- (b) the goods are reloaded onto the vessel or aircraft as soon as practicable after the other goods have been unloaded or loaded; and
- (c) the vessel or aircraft proceeds on its journey with the goods on board.

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<sup>(11)</sup> "The free-circulation procedure" is defined in section 3 of the Act.

<sup>(12)</sup> See section 34 of the Act on presentation of goods.

<sup>(13)</sup> "HMRC officer" is defined in section 37(1) of the Act.

## PART 3

### Temporary storage

#### Interpretation

7. In this Part—

- (a) “approved person” has the meaning given by regulation 12(1);
- (b) “TS declarant” has the meaning given by regulation 8(4).

#### Temporary storage declarations

8.—(1) This regulation applies to goods which are subject to paragraph 1(2) of Schedule 1 to the Act<sup>(14)</sup>.

(2) Except where paragraph (7) applies, a declaration (“a temporary storage declaration”) must be made in accordance with paragraphs (3) and (5) in respect of the goods.

(3) The temporary storage declaration may be made by one of the following—

- (a) the person who imports the goods;
- (b) a person on whose behalf another person imports the goods; or
- (c) a person who is responsible for the carriage of the goods when they are imported.

(4) A person who makes a temporary storage declaration is a “TS declarant”.

(5) A temporary storage declaration must—

- (a) contain the matters specified in a notice (“a temporary storage declaration notice”) published by HMRC;
- (b) be made in the form and manner specified in that notice; and
- (c) be made to HMRC by no later than the time at which the goods are presented to Customs.

(6) HMRC must publish a temporary storage declaration notice and may, for example, specify that details of any of the following be included in a temporary storage declaration—

- (a) the person making the temporary storage declaration;
- (b) the goods;
- (c) any temporary storage facility where the goods are stored; or
- (d) the MRN.

(7) No temporary storage declaration is required in respect of goods if a Customs declaration is made in respect of the goods by no later than the time that the goods are presented to Customs.

#### Amendment of temporary storage declarations

9.—(1) Subject to paragraphs (2) and (3), a TS declarant may amend a temporary storage declaration made by the TS declarant.

(2) No amendment may be made—

- (a) after the time when the goods are released to a Customs procedure<sup>(15)</sup>;
- (b) which adds further goods to the declaration; or

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<sup>(14)</sup> Paragraph 1(2) of Schedule 1 to the Act provides that goods are subject to the control of any HMRC officer as soon as they are imported into the United Kingdom.

<sup>(15)</sup> “Customs procedures” is defined in section 3 of the Act.

(c) which removes any goods from the declaration.

(3) Subject to paragraph (4), no amendment may be made after the time when an HMRC officer notifies the TS declarant that the officer—

(a) intends to examine the goods; or

(b) has established that the contents of the temporary storage declaration are incorrect.

(4) Paragraph (3) does not apply in relation to an amendment required under regulation 83(2) (Customs agents: disclosure of withdrawal of an appointment).

### **Withdrawal of temporary storage declarations**

**10.** A temporary storage declaration is treated as withdrawn if the goods in respect of which the declaration is made are not presented to Customs within 30 days of the date on which the declaration is made.

### **Temporary storage declarations: failure to make and withdrawal**

**11.—**(1) Paragraph (2) applies to goods imported into the United Kingdom in respect of which a temporary storage declaration—

(a) is not made as required by regulation 8(2); or

(b) is treated as withdrawn as provided by regulation 10.

(2) The goods are to be treated—

(a) as imported but not presented to Customs on import; and

(b) in consequence as goods to which section 5(1) of the Act<sup>(16)</sup> applies.

### **Handling of goods in temporary storage**

**12.—**(1) The person (“the approved person”) who holds the approval to operate a temporary storage facility where goods are in temporary storage may only carry out the type of activity described in paragraph (2) in relation to the goods.

(2) The approved person may handle the goods—

(a) whilst the goods are in the temporary storage facility where that is necessary—

(i) to preserve the goods in the state they were in at the time of their import, excluding any handling which modifies the appearance or technical characteristics of the goods; or

(ii) to examine or take samples of the goods in order to determine the classification of the goods for the purposes of the customs tariff<sup>(17)</sup>, their value for customs purposes or the Customs procedure which should apply to the goods; or

(b) in order to transport the goods to other premises, where that is required or approved by an HMRC officer.

(3) The approved person must keep a record of any handling of the goods whilst the goods are in the temporary storage facility, whether the handling falls within paragraph (2) or otherwise.

(4) The approved person must—

(a) keep the record in such form, if any, as specified in a notice published by HMRC; and

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<sup>(16)</sup> Section 5(1) provides that such goods are liable to forfeiture and by section 5(2), a liability to import duty is incurred at the time at which the goods become liable to forfeiture.

<sup>(17)</sup> “Customs tariff” is defined in section 8 of the Act.

- (b) preserve the record for the period of three years beginning with the date on which the handling occurred.
- (5) For the purposes of section 25A of CEMA 1979<sup>(18)</sup>—
  - (a) the restriction provided by paragraph (1) is to be treated as a restriction attaching to the approval of the approved person; and
  - (b) the matters provided by paragraphs (3) and (4) are to be treated as conditions attaching to the approval of the approved person.

### **Breach of handling requirement**

#### **13. Where—**

- (a) goods are in a temporary storage facility operated by an approved person; and
- (b) the approved person fails to comply with paragraph (1), (3) or (4) of regulation 12 in respect of the goods,

the temporary storage declaration in respect of the goods is to be treated as withdrawn and regulation 11(2) applies.

## **PART 4**

### **Declarations**

#### **CHAPTER 1**

##### **Preliminary**

### **Interpretation**

#### **14. In this Part—**

- “authorised declarant” has the meaning given by regulation 31(1);
- “Customs office” means premises used by HMRC for the purposes of exercising its functions under the Act;
- “EIDR procedure” has the meaning given by regulation 36(1);
- “EIDR electronic system” has the meaning given by regulation 36(3);
- “EIDR records” has the meaning given by regulation 36(3)(b);
- “Oral or By conduct list” means the document entitled “List of Goods Applicable to Oral and By Conduct Declarations, version 1, dated 27 November 2018”<sup>(19)</sup>;
- “simplified Customs declaration” and “supplementary Customs declaration” mean the two parts of a Customs declaration identified as such in a public notice given by HMRC Commissioners under paragraph 7(1) of Schedule 1 to the Act which notice specifies the information to be contained in, and the documents to accompany, the respective parts;
- “simplified Customs declaration process” has the meaning given by regulation 30(1).

<sup>(18)</sup> Section 25A was inserted by [S.I. 1991/2724](#) and is amended by paragraph 17 of Schedule 7 to the Act and [S.I. 1993/3014](#) and [2011/1043](#). Section 25A(2) provides that any person contravening or failing to comply with any condition or restriction attaching to an approval by virtue of which a place is a temporary storage facility is liable on summary conviction to a penalty.

<sup>(19)</sup> Available electronically from: <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal>. A hard copy is available for inspection free of charge at the offices of HMRC at 100 Parliament Street, London, SW1A 2BQ.



## CHAPTER 2

### Customs declarations

#### SECTION 1

##### *UK establishment and goods excluded from sections 2 to 4 of this chapter*

#### **Eligibility of persons to make Customs declarations: UK establishment**

**15.**—(1) Subject to paragraph (2), a person eligible<sup>(20)</sup> to make a Customs declaration in respect of chargeable goods<sup>(21)</sup> may not do so unless the person is established in the United Kingdom.

(2) The requirement provided by paragraph (1) does not apply to—

- (a) a person who declares chargeable goods for a special Customs procedure<sup>(22)</sup> except a storage procedure;
- (b) a Customs agent<sup>(23)</sup> acting in that capacity; or
- (c) a person who makes a Customs declaration of a type described in sections 2 to 4 of this chapter.

#### **Goods excluded from sections 2 to 4**

**16.** None of the provisions in sections 2 to 4 of this chapter apply to chargeable goods which are the subject of—

- (a) an application for repayment or remission of import duty which has not been rejected or determined;
- (b) a tariff suspension further to any regulations made under section 12 of the Act; or
- (c) a restriction on import imposed under an enactment, except that regulation 22(4) applies notwithstanding that the chargeable goods are the subject of such a restriction.

#### SECTION 2

##### *Customs declarations made orally*

#### **Customs declarations made orally: general**

**17.**—(1) The following regulations of this section are subject to paragraphs (2) and (3).

(2) A Customs declaration which would, by virtue of provision made by this section, be a Customs declaration made orally in respect of chargeable goods, is not such a declaration where another form of Customs declaration is made in respect of the goods before the oral declaration is made.

(3) An individual makes a Customs declaration orally only if—

- (a) the individual—
  - (i) makes the declaration to an HMRC officer at a Customs office;
  - (ii) identifies the goods in respect of which the declaration is being made; and
  - (iii) where paragraph (4) applies, identifies the person on whose behalf the goods are imported; and

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<sup>(20)</sup> Persons eligible are set out at paragraph 2(1) of Schedule 1 to the Act.

<sup>(21)</sup> “Chargeable goods” is defined in section 2 of the Act.

<sup>(22)</sup> “Special Customs procedure” is defined in section 3(4) of the Act.

<sup>(23)</sup> Requirements of establishment in respect of Customs agents are imposed by regulation 80(1).

- (b) the officer informs the individual that the officer is satisfied that a declaration is being made.
- (4) An individual may make a Customs declaration orally on behalf of another person (“P”) where—
  - (a) the individual is an employee or officer of P;
  - (b) the goods in respect of which the Customs declaration is made are imported by P; and
  - (c) the individual has the authority of P to make the declaration.

**Free-circulation procedure: non-commercial goods, personal gifts and goods in baggage**

**18.** An individual may make a Customs declaration for the free-circulation procedure(24) orally in respect of the following chargeable goods—

- (a) non-commercial goods;
- (b) personal gifts; or
- (c) goods contained within accompanied baggage if—
  - (i) the individual is a qualifying traveller;
  - (ii) the value of the goods does not exceed £900; and
  - (iii) the weight of the goods does not exceed 1000kg.

**Free-circulation procedure: miscellaneous goods**

**19.** An individual may make a Customs declaration for the free-circulation procedure orally in respect of the goods listed in Part A (miscellaneous goods) of the Oral or By conduct list, if at the time of import a relief from import duty is available in respect of the goods to that individual or the person on whose behalf the declaration is made.

**Temporary admission procedure: musical instruments, packaging, broadcast equipment and disaster relief material**

**20.—(1)** An individual may make a Customs declaration for a temporary admission procedure(25) orally in respect of goods which are portable musical instruments where the individual—

- (a) is a qualifying traveller; and
- (b) the instruments are intended to be used for professional purposes in the United Kingdom.

(2) An individual may make a Customs declaration for a temporary admission procedure orally in respect of goods which are—

- (a) packaging used to contain goods which are being imported, where the packaging—
  - (i) is intended for export on completion of that use in accordance with the applicable export provisions(26); and
  - (ii) has a permanent, indelible marking showing the name and address of the person who is established outside of the United Kingdom to whom the packaging is to be exported;

(24) “The free-circulation procedure” is defined in section 3 of the Act.

(25) “A temporary admission procedure” is defined in paragraph 15 of Schedule 2 to the Act.

(26) Section 35 defines for the purposes of Part 1 of the Act what is meant by an export of goods from the United Kingdom being in accordance with the applicable export provisions.

- (b) radio or television broadcasting equipment, including a vehicle adapted for use in the production of such broadcasts made by such equipment, if the individual is established outside of the United Kingdom; or
- (c) intended to be used to relieve the effects of a disaster affecting the United Kingdom.

### **Temporary admission procedure: miscellaneous goods**

**21.** An individual may make a Customs declaration for the temporary admission procedure orally in respect of the goods listed in Part B (miscellaneous goods) of the Oral or By conduct list, if at the time of import a relief from import duty is available in respect of the goods to that individual or the person on whose behalf the declaration is made.

## *SECTION 3*

### *Customs declarations made in paper form*

### **Customs declarations made in paper form**

**22.—**(1) An individual who is a qualifying traveller may make a Customs declaration in an appropriate paper form in respect of goods carried at the time of import by the individual.

(2) In paragraph (1), “appropriate paper form” means the form provided by a notice published by HMRC.

(3) HMRC must publish such notice.

(4) A person may make a Customs declaration for a transit procedure<sup>(27)</sup> or a temporary admission procedure by means of—

- (a) a carnet;
- (b) in cases of import by rail, a consignment note; or
- (c) in cases of import by air, a manifest,

as appropriate to the procedure and the goods.

(5) In paragraph (4)—

- (a) “carnet” means a document as so described in—
  - (i) the ATA Convention;
  - (ii) the Istanbul Convention; or
  - (iii) the TIR Convention,

where the form of the carnet is that provided by the version of the relevant convention which is current at the time the declaration is made;

- (b) “consignment note” means a document as so described in Annex B (Uniform Rules concerning the Contract of International Carriage of Goods by Rail) to the Convention concerning International Carriage by Rail (9 May 1980) and where the form of the note is that provided by the version of Annex B<sup>(28)</sup> which is current at the time the declaration is made;
- (c) “manifest” means a document as so referred to in Chapter VII of Annex I to the Convention on a Common Transit Procedure (Interlaken, 20 May 1987) and where the form of the

<sup>(27)</sup> “A transit procedure” is defined in paragraph 5 of Schedule 2 to the Act.

<sup>(28)</sup> The current edition of the Convention is dated 1 December 2010 and the current edition of Annex B is dated 1 May 2016. The Convention and Annex are available from: <https://cit-rail.org/en/rail-transport-law/cotif/>. Available in hard copy from the International Rail Transport Committee, General Secretariat, Weltpoststrasse 20, CH-3015 Bern, Switzerland. A hard copy is available for inspection free of charge at the offices of HMRC at 100 Parliament Street, London, SW1A 2BQ.

manifest is that provided by the version of the Convention<sup>(29)</sup> which is current at the time the declaration is made.

## *SECTION 4*

### *Customs declarations made by conduct*

#### **Customs declarations made by conduct: general**

**23.**—(1) The following regulations of this section are subject to paragraph (2).

(2) A Customs declaration which would, by virtue of provision made by this section, be a Customs declaration made by conduct in respect of chargeable goods, is not such a declaration where another form of Customs declaration is made in respect of the goods before the conduct occurs.

(3) An individual may make a Customs declaration by conduct on behalf of another person (“P”) where—

- (a) the individual is an employee or officer of P;
- (b) the goods in respect of which the Customs declaration is made are imported by P; and
- (c) the individual has the authority of P to make the declaration.

#### **Free-circulation procedure: baggage, musical instruments and other goods**

**24.**—(1) An individual who is a qualifying traveller may make a Customs declaration for the free-circulation procedure by the conduct described in paragraph (2) in respect of the goods listed in Part C (baggage, musical instruments and other goods) of the Oral or By conduct list, if at the time of import a relief from import duty is available in respect of the goods to that individual or the person on whose behalf the declaration is made.

(2) The conduct referred to in paragraph (1) is where the individual as a pedestrian enters a channel of a Customs office whilst taking the goods with the individual.

(3) For the purposes of paragraph (2), the channel must be—

- (a) the first such channel available to the individual to make a Customs declaration after arrival in the United Kingdom; and
- (b) either—
  - (i) signed as “Green” or “Nothing to declare”; or
  - (ii) the only channel which exists or is operating.

#### **Free-circulation procedure: miscellaneous goods**

**25.**—(1) Subject to paragraph (4), an individual who is a qualifying traveller may make a Customs declaration for the free-circulation procedure by the conduct described in paragraph (2) in respect of the goods listed in Part D (miscellaneous goods) of the Oral or By conduct list, if at the time of import a relief from import duty is available in respect of the goods to that individual or the person on whose behalf the declaration is made.

(2) The conduct referred to in paragraph (1) is where—

- (a) the individual drives a vehicle in a lane past a Customs office or the individual allows himself or herself to be carried in a vehicle which is so driven; and

<sup>(29)</sup> Available electronically from [https://www.unece.org/fileadmin/DAM/tir/handbook/english/newtirhand/TIR-6Rev10\\_En.pdf](https://www.unece.org/fileadmin/DAM/tir/handbook/english/newtirhand/TIR-6Rev10_En.pdf).  
A hard copy is available for inspection free of charge at the offices of HMRC at 100 Parliament Street, London, SW1A 2BQ.

(b) the vehicle has prominently displayed on its windscreen a sticker stating “Nothing to declare”.

(3) For the purposes of paragraph (2)(a), the Customs office must be the first such office available to the individual to make a Customs declaration after arrival in the United Kingdom and the lane must be designated as a lane to be used for the purpose of making a Customs declaration by conduct as provided by this regulation.

(4) The goods to which paragraph (1) applies must be, as appropriate, the vehicle or carried in the vehicle.

#### **Free-circulation procedure: posted goods**

26.—(1) Subject to paragraph (3), a person may make a Customs declaration for the free-circulation procedure by the conduct described in paragraph (2) in respect of goods which are to be delivered by the postal system and consist of goods in respect of which, at the time of import, a relief from import duty is available to the addressee of the goods.

(2) The conduct referred to in paragraph (1) is where the person allows the goods to be imported into the United Kingdom by submitting them to the postal system.

(3) But such a declaration is to be treated as withdrawn if the goods are not delivered by the postal system in the normal course of post.

#### **Temporary admission procedure: miscellaneous goods**

27.—(1) An individual may make a Customs declaration for a temporary admission procedure by the conduct described in paragraph (2) in respect of goods which are—

(a) portable musical instruments where the individual—

(i) is a qualifying traveller; and

(ii) the instruments are intended to be used for professional purposes in the United Kingdom;

(b) intended to be used to relieve the effects of a disaster affecting the United Kingdom; or

(c) listed in Part E (miscellaneous goods) of the Oral or By conduct list, if at the time of import a relief from import duty is available in respect of the goods to that individual or the person on whose behalf the declaration is made.

(2) The conduct referred to in paragraph (1) is that described in regulation 24(2) or 25(2).

(3) An individual may make a Customs declaration for a temporary admission procedure by the conduct described in regulation 25(2) in respect of goods which are listed in Part F (means of transport, pallets and containers) of the Oral or By conduct list, if at the time of import a relief from import duty is available in respect of the goods to that individual or the person on whose behalf the declaration is made.

### **SECTION 5**

#### *Customs declarations: consequential provision*

#### **Customs declarations made orally: notification and acceptance**

28.—(1) This regulation applies in respect of chargeable goods where a Customs declaration is made orally as provided by section 2 of this chapter.

(2) The following are treated as occurring when an HMRC officer gives the information described in regulation 17(3)(b)—

- (a) notification of importation of the goods; and
- (b) acceptance<sup>(30)</sup> of the Customs declaration and notification of its acceptance to the declarant.

### **Customs declarations made by conduct: notification, acceptance and discharge**

**29.**—(1) Paragraphs (2) to (4) apply in respect of chargeable goods where a Customs declaration for the free-circulation procedure is made by conduct as provided by section 4 of this chapter.

(2) In relation to regulations 24 and 25—

- (a) notification of importation of the goods is to be treated as occurring on entering the channel of a Customs office or the lane past a Customs office, as the case may be; and
- (b) acceptance of the Customs declaration and discharge of the goods from the free-circulation procedure are to be treated as occurring on exiting the channel or the lane, as the case may be.

(3) In relation to regulation 26, the following are treated as occurring when the goods are delivered by the postal system to the addressee in the United Kingdom in the normal course of post—

- (a) notification of importation of the goods;
- (b) acceptance of the Customs declaration; and
- (c) discharge<sup>(31)</sup> of the goods from the free-circulation procedure.

(4) Where paragraph (2) or (3) applies, no notification of the acceptance or discharge is required to be made to the declarant.

(5) Where a Customs declaration for a temporary admission procedure is made by conduct as provided by regulation 27—

- (a) notification of importation of the goods is to be treated as occurring on undertaking the conduct; and
- (b) acceptance of the Customs declaration is to be treated as occurring on completing the conduct.

(6) Where paragraph (5) applies, no notification of the acceptance is required to be made to the declarant.

## **CHAPTER 3**

### **Simplified Customs declaration process**

#### *SECTION 1*

##### *General*

### **Definition: simplified Customs declaration process**

**30.**—(1) “Simplified Customs declaration process” means the process in relation to Customs declarations provided by regulation 32 such that the requirements made by or under Part 1 of the Act in relation to Customs declarations which would otherwise apply are disapplied or simplified.

(2) The simplified Customs declaration process does not apply to a Customs declaration made for a transit procedure<sup>(32)</sup>.

<sup>(30)</sup> See paragraphs 10 and 12 of Schedule 1 to the Act on acceptance of Customs declarations.

<sup>(31)</sup> See paragraph 17 of Schedule 1 to the Act on discharge of goods from a Customs procedure.

<sup>(32)</sup> See Part 3 of Schedule 2 to the Act concerning a declaration of goods for a transit procedure.

### **Persons authorised to use the simplified Customs declaration process**

**31.**—(1) A person (“an authorised declarant”) may use the simplified Customs declaration process if authorised to do so by HMRC.

(2) Subject to paragraph (4), the eligibility criteria to be so authorised are that the person—

- (a) meets the criteria which apply to be approved as an authorised economic operator as provided by regulation 93(1)(b) and (c), as if reference to suitability to be an authorised economic operator were a reference to suitability to be an authorised declarant;
- (b) demonstrates to an HMRC officer that appropriate procedures are in place such that the person can use the simplified Customs declaration process competently; and
- (c) has in place, as appropriate to the authorisation sought, a single guarantee or comprehensive guarantee<sup>(33)</sup>.

(3) HMRC may publish a notice setting out appropriate procedures for the purposes of paragraph (2)(b).

(4) A person who is an authorised economic operator may be authorised as an authorised declarant even if the person does not meet the eligibility criterion in paragraph (2)(b).

(5) An authorisation may be given in respect of—

- (a) a Customs declaration to be made which is identified in the authorisation; or
- (b) Customs declarations of a type, and to be made within a period, which are identified in the authorisation.

(6) The simplified Customs declaration process must be used in compliance with any conditions contained in the authorisation.

(7) The simplified Customs declaration process may not be used by a Customs agent<sup>(34)</sup> in respect of a Customs declaration where—

- (a) the principal of the agent is an authorised declarant;
- (b) the agent is not an authorised declarant; and
- (c) the agent intends to act as an indirect agent on behalf of the principal in making the Customs declaration.

### **Simplified Customs declaration process**

**32.**—(1) To comply with the simplified Customs declaration process, an authorised declarant must make the type of Customs declaration which applies in respect of the chargeable goods<sup>(35)</sup> in two parts, comprising—

- (a) a simplified Customs declaration, which must be made by no later than the end of the period which applies to making the Customs declaration in respect of the goods; and
- (b) except as provided by regulation 35, a supplementary Customs declaration which must be made by no later than the end of the applicable period set out in regulation 33.

(2) Subject to regulation 34, by the end of the period which respectively applies to the making of the simplified Customs declaration or the supplementary Customs declaration, the authorised declarant must make available for inspection by an HMRC officer any documents required to accompany the respective declarations.

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<sup>(33)</sup> “Comprehensive guarantee” is defined in paragraph 8(1)(b) of Schedule 6 to the Act.

<sup>(34)</sup> For Customs agents and indirect agents, see section 21 of the Act.

<sup>(35)</sup> “Chargeable goods” is defined in section 2 of the Act.

(3) Notification by HMRC to the authorised declarant that the part of the Customs declaration which is the simplified Customs declaration is accepted, is notification of acceptance of the Customs declaration.

(4) Subject to paragraph (6), a supplementary Customs declaration may only be made in respect of goods imported during the calendar month immediately before it is made.

(5) Paragraph (6) applies where—

- (a) a supplementary Customs declaration is required to be made by an authorised declarant for the period beginning on exit day and ending immediately before 1st April 2019 (“the residual period”); and
- (b) on or before the date on which the declaration is required to be made for the residual period, the authorised declarant is aware that a supplementary customs declaration will be required by the declarant for April 2019.

(6) The authorised declarant may include the matters required to be included in the supplementary Customs declaration for the residual period with the supplementary Customs declaration for April 2019.

(7) Where the authorised declarant makes the inclusion provided by paragraph (6), the requirement to make the supplementary Customs declaration in respect of the residual period by no later than the end of the applicable period set out in regulation 33 does not apply.

### **Periods to make supplementary Customs declarations**

**33.**—(1) Paragraph (2) applies where—

- (a) further to the acceptance of a Customs declaration, HMRC is required to calculate the amount of import duty; and
- (b) the Customs declaration—
  - (i) is not a declaration which applies to different consignments of chargeable goods imported over a period; and
  - (ii) is not a declaration for a temporary admission procedure<sup>(36)</sup> where a partial relief from import duty applies.

(2) Where this paragraph applies, the period for the purposes of regulation 32(1)(b) is 10 days beginning with the date of release of the chargeable goods to the applicable Customs procedure.

(3) In any other case, the period for the purposes of regulation 32(1)(b) ends with the fourth working day after the end of the calendar month to which the declaration applies.

(4) Paragraphs (2) and (3) are subject to regulation 32(7).

### **Extended periods to make available documents for inspection**

**34.**—(1) In a particular case, an HMRC officer may extend the period required by regulation 32(2) to make available for inspection by an HMRC officer documents required to accompany a supplementary Customs declaration.

(2) But any such extended period must not exceed—

- (a) except in respect of documents which concern the value of the chargeable goods, the period of 120 days beginning with the date of release of the chargeable goods to the applicable Customs procedure; and

(36) “A temporary admission procedure” is defined in paragraph 15 of Schedule 2 to the Act.



- (b) in respect of documents which concern the value of the chargeable goods, the period of three years beginning with the date of release of the chargeable goods to the applicable Customs procedure.

### **Exceptions to requirement to make a supplementary Customs declaration**

**35.**—(1) A supplementary Customs declaration is not required in respect of chargeable goods where the Customs procedure for which the goods are declared by the authorised declarant is a storage procedure<sup>(37)</sup>.

(2) A supplementary Customs declaration is not required in respect of chargeable goods where—

- (a) the Customs procedure for which the goods are declared (“the current declaration”) by the authorised declarant is a special Customs procedure<sup>(38)</sup>, except a storage procedure;
- (b) the goods were discharged to the current procedure by reason of previously being declared (“the previous declaration”) by the authorised declarant for a special Customs procedure;
- (c) the previous declaration—
  - (i) was not made using the simplified Customs declaration process or, if it was so made, the declaration included making a supplementary Customs declaration; or
  - (ii) was made by the EIDR procedure; and
- (d) the current declaration is made by the EIDR procedure.

(3) A supplementary Customs declaration is not required in respect of chargeable goods where—

- (a) the value of the goods does not exceed £900 and the weight of the goods does not exceed 1000kg;
- (b) an HMRC officer considers that all the information required to discharge the goods from the Customs procedure has been provided by or with the simplified Customs declaration without the need for a supplementary Customs declaration; and
- (c) the simplified Customs declaration is not made by the EIDR procedure.

(4) Paragraphs (1) to (3) do not apply where—

- (a) the chargeable goods are subject to a quota;
- (b) the amount of import duty is dependent on whether or not the quota has been exceeded;
- (c) whether or not the quota has been exceeded is determined by reference to the time when a Customs declaration is accepted; and
- (d) to enable an HMRC officer to determine the amount of import duty, the information provided in, or accompanying, a supplementary Customs declaration is required.

(5) In a case to which paragraph (4) applies—

- (a) a request that HMRC apply the tariff which applies if the quota is not exceeded must be included in the supplementary Customs declaration; and
- (b) where the simplified Customs declaration is made using the EIDR procedure, the time when the declaration is entered into the EIDR electronic system is the time by reference to which it is determined whether or not the quota has been exceeded.

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<sup>(37)</sup> “A storage procedure” is defined in paragraph 2 of Schedule 2 to the Act.

<sup>(38)</sup> “Special Customs procedure” is defined in section 3(4) of the Act.

**SECTION 2***Simplified Customs declarations using the EIDR procedure***EIDR procedure**

**36.**—(1) “EIDR procedure” means to make a simplified Customs declaration by way of entering into an EIDR electronic system—

- (a) the declaration;
  - (b) the information required to be contained in the declaration; and
  - (c) the documents required to accompany the declaration.
- (2) But no simplified Customs declaration may be made using the EIDR procedure in respect of—
- (a) a declaration for a storage procedure;
  - (b) a declaration for a transit procedure;
  - (c) a declaration for the free-circulation procedure<sup>(39)</sup> where, were the declaration made and the goods to which it would have related were discharged from the procedure, the goods would be subject to the suspension of excise duty; or
  - (d) a Customs declaration which also is required to constitute an entry summary declaration.
- (3) In paragraph (1), “EIDR electronic system” means an electronic system which is—
- (a) operated by the person making the Customs declaration; and
  - (b) used for keeping and maintaining records (“EIDR records”) of the matters in sub-paragraphs (a) to (c) of paragraph (1).

**Persons authorised to use the EIDR procedure**

- 37.**—(1) A person may only use the EIDR procedure if authorised to do so by HMRC.
- (2) A person to whom paragraph (1) applies is “an authorised EIDR declarant”.
- (3) The eligibility criteria to be so authorised are that the person—
- (a) meets the criteria which apply to be approved as an authorised economic operator as provided by regulation 93(1)(c), (d), (e) and (g), as if reference to suitability to be an authorised economic operator were a reference to suitability to be an authorised EIDR declarant; and
  - (b) has in place, as appropriate to the authorisation sought, a single guarantee or comprehensive guarantee.
- (4) The authorisation as an authorised EIDR declarant must identify any conditions which apply in respect of using the EIDR procedure, which may include—
- (a) whether or not notification to HMRC is required when a Customs declaration has been made using the procedure; or
  - (b) a requirement to provide information to the operator of a temporary storage facility such that the operator can determine when the chargeable goods which are the subject of a Customs declaration cease to be subject to the control of an HMRC officer under paragraph 1(2) of Schedule 1 to the Act.
- (5) An authorised EIDR declarant must, when required to do so by an HMRC officer—
- (a) allow access by the officer to the EIDR electronic system operated by the declarant; or
  - (b) provide to the officer from that system such information,

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(39) See section 3(3)(a) of the Act.

as the officer reasonably requires in order to verify EIDR records or records showing whether or not any goods have been imported which are subject to a prohibition or restriction on import imposed under an enactment.

(6) Where paragraph (5) applies, the chargeable goods to which the records relate are not discharged from the Customs procedure until—

- (a) the verification has occurred to the officer's satisfaction; or
- (b) the officer confirms the goods are discharged notwithstanding that such verification has not occurred.

## CHAPTER 4

### Customs declarations: different types of goods in consignments

#### **Different types of goods in a consignment**

**38.**—(1) This regulation applies where a consignment is imported which comprises different types of chargeable goods.

(2) In particular, goods which are subject to—

- (a) a restriction on import imposed under an enactment;
- (b) excise duty; or
- (c) different Customs procedures,

are goods of a different type to other goods in the consignment which are not so subject.

(3) If only one Customs declaration is made in respect of the consignment, there is to be treated as made by the declarant a separate declaration in respect of each different type of goods in the consignment.

(4) For the purposes of paragraph (3), and subject to paragraph (2), one declaration is to be treated as made in respect of those goods in the consignment which—

- (a) are equivalently classified under the customs tariff<sup>(40)</sup> with other goods in the consignment; or
- (b) are subject to an application to HMRC for a ruling further to section 24 of the Act to be treated as equivalently classified with other goods in the consignment, which application has not been determined or refused.

(5) Paragraph (6) applies where—

- (a) a declaration is treated as made in respect of goods by virtue of paragraph (4); and
- (b) but for paragraph (6), different rates of import duty would apply to the goods.

(6) Where this paragraph applies, the declaration is to be treated as declaring the goods for, as applicable, the higher or highest rate of import duty which applies to the goods.

## CHAPTER 5

### Advance electronic declarations by qualifying travellers

#### **Advance electronic declarations by qualifying travellers**

**39.**—(1) Paragraphs (2) and (3) apply in respect of goods imported by an individual who is a qualifying traveller which are personal gifts or non-commercial goods contained within the individual's accompanied baggage where—

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<sup>(40)</sup> "Customs tariff" is defined in section 8 of the Act.

- (a) a Customs declaration is made for the free-circulation procedure in respect of the goods;
  - (b) the declaration is made in accordance with the electronic form specified in a public notice made under paragraph 4(a) of Schedule 1 to the Act;
  - (c) the declaration is complete; and
  - (d) a relief from import duty is not available in respect of the goods to the individual at the time of import.
- (2) Notification of acceptance of the declaration is to be treated as occurring at the time that an HMRC officer is satisfied that the goods have been presented<sup>(41)</sup> to Customs on import.
- (3) Notification of discharge of the goods from the free-circulation procedure is to be treated as occurring—
- (a) subject to paragraph (5), at the time when the individual as a pedestrian exits a channel of a Customs office whilst taking the goods with the individual; or
  - (b) where the individual is driving, or being driven in, a vehicle carrying the goods which has prominently displayed on its windscreen a sticker stating “Nothing to declare”, at the time when the vehicle exits a lane past a Customs office.
- (4) Paragraph (5) applies where—
- (a) the goods are delayed in transit to the United Kingdom;
  - (b) in consequence, the individual as a pedestrian exits a channel of a Customs office without taking the goods with the individual; and
  - (c) subsequently, the goods arrive in the United Kingdom.
- (5) Notification of discharge of the goods from the free-circulation procedure is to be treated as occurring at the time an HMRC officer is satisfied that the goods have been presented to Customs on import.
- (6) For the purposes of paragraph (3)(a), the channel must be—
- (a) the first such channel available to the individual to make a Customs declaration after arrival in the United Kingdom; and
  - (b) either—
    - (i) signed as “Green” or “Nothing to declare”; or
    - (ii) the only channel which exists or is operating.
- (7) For the purposes of paragraph (3)(b), the Customs office must be the first such office available to the individual to make a Customs declaration after arrival in the United Kingdom and the lane must be designated as a lane to be used for the purpose of making a Customs declaration.

## PART 5

### Notification and discharge of liability

#### **Notification of liability to pay import duty by release to the free-circulation, temporary admission or authorised use procedure**

**40.**—(1) Where a person makes a Customs declaration for the free-circulation procedure<sup>(42)</sup>, a temporary admission procedure<sup>(43)</sup> or an authorised use procedure<sup>(44)</sup> which is required to state

<sup>(41)</sup> See section 34 of the Act on presentation of goods.

<sup>(42)</sup> “The free-circulation procedure” is defined in section 3 of the Act.

<sup>(43)</sup> “A temporary admission procedure” is defined in paragraph 15 of Schedule 2 to the Act.

<sup>(44)</sup> “An authorised use procedure” is defined in paragraph 13 of Schedule 2 to the Act.

the amount of import duty on the chargeable goods<sup>(45)</sup> to which the declaration relates and the declaration states the amount, the release to the relevant procedure is to be taken to be the notification of liability to pay the import duty stated in the Customs declaration.

(2) Paragraph (1) does not apply if a comprehensive guarantee<sup>(46)</sup> is given in relation to the goods declared for a Customs procedure.

### **Discharge of liability to import duty**

**41.**—(1) A liability to import duty incurred in respect of goods is discharged—

- (a) to the extent of any payment accepted by HMRC made in respect of that liability;
- (b) if the Customs declaration made in respect of the goods is withdrawn in accordance with paragraph 16 of Schedule 1 to the Act;
- (c) if the goods in respect of which the liability arises are destroyed—
  - (i) subject to paragraph (2), whilst subject to the control of, and with the consent of, an HMRC officer;
  - (ii) in accordance with paragraph 16(b) of Schedule 3 to CEMA; or
  - (iii) by abnormal and unforeseeable circumstances beyond the control of any person liable to the import duty; or
- (d) where the goods are declared for an authorised use procedure, if the goods are exported from the United Kingdom in accordance with the applicable export provisions<sup>(47)</sup>.

(2) Paragraph (1)(c)(i) does not apply if an application for remission or repayment of duty has been made under Part 7 of these Regulations in relation to the liability and HMRC has consented to the destruction of the goods under regulation 62(6)(a) in relation to which the liability arises.

(3) HMRC must publish a notice specifying the forms of payment that will be accepted to discharge a liability to pay import duty.

## **PART 6**

### **Payment**

#### **Interpretation**

**42.** For the purposes of this Part, a person is “involved in a breach of a relevant Customs obligation” if that person is within one of paragraphs (a) to (d) of section 6(4) of the Act.

#### **Payment of import duty**

**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 (5).

(2) If—

- (a) a single guarantee is given in relation to the payment of the liability to import duty; and
- (b) a deferral of the payment has been approved in respect of that liability,

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<sup>(45)</sup> “Chargeable goods” is defined in section 2 of the Act.

<sup>(46)</sup> “Comprehensive guarantee” is defined in paragraph 8(1)(b) of Schedule 6 to the Act.

<sup>(47)</sup> Section 35 defines for the purposes of Part 1 of the Act what is meant by an export of goods from the United Kingdom being in accordance with the applicable export provisions.

a person who is liable to pay import duty must pay the duty before the end of the period of 30 days beginning with the date following the date on which the person is notified of the liability.

(3) If—

- (a) a comprehensive guarantee is given in relation to the payment of the liability to import duty; and
- (b) a deferral of the payment has been approved in respect of that liability,

a person who is liable to pay import duty 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) 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 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.

(5) In a case within paragraph (4), 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 (4) only applies in relation to any additional import duty arising as a result of the correction.

### **Suspension of period for payment**

**44.—**(1) The period for discharging a liability to pay import duty incurred in respect of goods is suspended in the cases set out in paragraphs (2), (3), (5) and (6).

(2) If an application for remission of the liability is made where regulation 48 (incorrect amount of import duty), 50 (lower rate of import duty available), 51 (defective and non-compliant chargeable goods) or 52 (just and equitable reduction) applies, the period for discharging the liability is suspended until the application is rejected under regulation 63 (acceptance and rejection) or determined under regulation 64 (determinations).

(3) If—

- (a) two or more persons have been notified of a liability to pay import duty incurred in respect of goods; and
- (b) one or more of those persons is involved in a breach of a relevant Customs obligation in respect of those goods,

in relation to any person who is not involved in the breach, the period for discharging the liability is suspended for one year if that person gives or has given a guarantee in respect of that liability.

(4) In a case within paragraph (3)—

- (a) no guarantee is required if in the opinion of an HMRC officer the requirement of a guarantee would be likely to cause serious economic or social difficulties to the person; and
- (b) the duration of the suspension may be extended if an HMRC officer thinks an extension is just and reasonable in the circumstances.

(5) If a liability to import duty relates to—

(a) a relevant decision falling within paragraph (a) or (h) of section 13A(2) of the Finance Act 1994<sup>(48)</sup>, or

(b) a decision on a review of such a relevant decision,

which is the subject of an appeal under section 16 of that Act where paragraphs (a) or (b) of subsection (3) of that section applies, the period for discharging the liability in respect of that duty is suspended until the appeal is determined.

(6) If notice of seizure has been given in relation to goods under paragraph 1(1) of Schedule 3 to CEMA 1979<sup>(49)</sup> or goods have been seized in a case within paragraph 1(2) of that Schedule, the period for discharging a liability to import duty incurred in respect of the goods is suspended until the goods are condemned as forfeited under paragraph 5, 6 or 7 of that Schedule or determined by a court as not liable for forfeiture in proceedings for condemnation.

### **Interest on late payment of import duty**

**45.—**(1) Import duty payable carries interest at the late payment interest rate from the late payment interest start date until the date of payment.

(2) The late payment interest start date is the date following the date on or before which a liability to pay import duty must be discharged.

(3) But where a person is liable to import duty in respect of goods because the person was involved in a breach of a relevant Customs obligation in relation to the goods, the late payment interest start date is the date which would have applied had the breach not occurred and a Customs declaration had been made as required.

(4) The late payment interest rate is the percentage per annum given by the formula—

$$BR + 2$$

where BR is the official Bank rate determined by the Bank of England Monetary Policy Committee at the operative meeting.

(5) For the purposes of paragraph (4), “the operative meeting”, in relation to the late payment interest rate applicable in respect of any day, means the most recent meeting of the Bank of England Monetary Policy Committee apart from any meeting later than the 13th working day before that day.

(6) HMRC Commissioners may waive a charge to interest under this regulation where they think that the charge would cause serious economic or social difficulties to the person liable to the charge.

(7) No interest arises under this regulation if the amount of import duty is less than £9.

(8) Any interest determined under this regulation is recoverable as if it were an amount of import duty.

(9) Paragraph (1) applies even if the late payment interest start date is a non-business day within the meaning of section 92 of the Bills of Exchange Act 1882<sup>(50)</sup>.

(10) Late payment interest is not payable on late payment interest.

(11) For the purposes of this regulation, a reference to import duty being paid includes a reference to its being set off against an amount payable by HMRC (and, accordingly, the reference to the date of payment includes a reference to the date from which the set-off takes effect).

<sup>(48)</sup> 1994 c. 9; section 13A was inserted by S.I. 2009/56 and relevantly amended by S.I. 2011/1043, section 16 was relevantly amended by S.I. 2009/56.

<sup>(49)</sup> Paragraph 1(2) of Schedule 3 was amended by section 175(5) of the Finance Act 2016 (c. 24).

<sup>(50)</sup> 1882 c. 61; amended by sections 3(1) and 4(4) of the Banking and Financial Dealings Act 1971 (c. 80).

## PART 7

### Remission and repayment of import duty

#### CHAPTER 1

##### Preliminary

#### Interpretation

**46.** In this Part—

- “application for remission of duty” has the meaning given by regulation 54(3);
- “application for repayment of duty” has the meaning given by regulation 55(3);
- “reduced duty case” has the meaning given by regulation 47; and
- “remit” means to discharge a liability to import duty.

#### CHAPTER 2

##### Reduced duty cases

#### Reduced duty cases

**47.** In this Part, a “reduced duty case” is a case described in this chapter and the amount of import duty in respect of which a remission or repayment may be made further to an application under chapter 3 is the amount stated in each case.

#### Incorrect amount of import duty

**48.—**(1) Paragraph (3) applies where—

- (a) a notification of liability to pay import duty states an amount of duty in respect of goods which is lower than the amount correctly due;
- (b) the incorrect amount arose by virtue of a mistake made by HMRC or the customs authorities of the territory from which the goods were exported;
- (c) that mistake could not reasonably have been detected by the applicant making the application under chapter 3;
- (d) the applicant has taken all reasonable steps to ensure compliance with—
  - (i) the Customs procedures relevant to the goods; and
  - (ii) any requirements imposed by an HMRC officer concerning control of the goods<sup>(51)</sup>;and
- (e) the goods are not, and have not been, liable to forfeiture.

(2) A mistake under paragraph (1) does not include a mistake by HMRC which gives rise to a reduced duty case under regulation 50.

(3) The difference between the correct and incorrect amount of duty is the amount which may be remitted or repaid.

#### Lower rate of import duty applied incorrectly

**49.—**(1) Subject to paragraph (2), paragraph (3) applies where—

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(51) For goods being subject to the control of an HMRC officer, see section 37(7) of the Act.



- (a) a Customs declaration for the free-circulation procedure<sup>(52)</sup> is accepted in respect of chargeable goods<sup>(53)</sup>;
  - (b) at the time of the acceptance, a lower rate of import duty was applied to the goods by virtue of provision made under any of sections 9 to 12 of the Act;
  - (c) that lower rate was applied because of information provided by the customs authorities (“the exporting authorities”) of the territory from which the goods were exported;
  - (d) that information was inaccurate;
  - (e) any conditions relevant to the application of the lower rate of import duty have been complied with; and
  - (f) had the lower rate not been applied, the liability to pay import duty in respect of the goods would have been for an amount (“the higher amount”) more than that stated (“the stated amount”) in the declaration or, where it is given, in the notification of liability.
- (2) Paragraph (3) does not apply where the inaccuracy arose by virtue of inaccurate information provided to the exporting authorities by the exporter unless—
- (a) the exporter reasonably believed the information to be true and accurate; and
  - (b) the exporting authority acted reasonably in failing to correct the inaccuracy.
- (3) The difference between the higher amount and the stated amount is the amount which may be remitted or repaid.

### **Lower rate of import duty available**

**50.**—(1) Paragraph (2) applies where a notification of liability to pay import duty states an amount of duty in respect of goods which is greater than the amount correctly due because by mistake an incorrect rate of import duty was applied.

(2) The difference between the correct and incorrect amount of duty is the amount which may be remitted or repaid.

### **Defective and non-compliant chargeable goods**

**51.**—(1) Subject to paragraph (3), paragraph (4) applies where—

- (a) chargeable goods are released<sup>(54)</sup> to a Customs procedure;
  - (b) a contract was entered into for the sale and purchase of the goods before that release; and
  - (c) the buyer notified the seller that the goods were rejected as not being in compliance with the contract as soon as practicable after the grounds for rejection became known to the buyer.
- (2) In paragraph (1)(c)—
- (a) grounds for rejection include where the goods are defective or damaged; and
  - (b) the rejection may occur after the goods cease to be chargeable goods.
- (3) Paragraph (4) does not apply where—
- (a) the goods have been used or processed, other than that which was necessary to determine if the goods were in compliance with the contract; or
  - (b) before the goods were released to a Customs procedure, the goods were declared for a special Customs procedure<sup>(55)</sup> in order to be tested to determine if the goods were in

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<sup>(52)</sup> “The free-circulation procedure” is defined in section 3(3)(a) of the Act.

<sup>(53)</sup> “Chargeable goods” is defined in section 2 of the Act.

<sup>(54)</sup> See paragraph 17 of Schedule 1 to the Act on release of goods to a Customs procedure.

<sup>(55)</sup> “Special Customs procedure” is defined in section 3(4) of the Act.

compliance with the contract, unless such testing would not normally have revealed such compliance.

(4) The amount of import duty in respect of the rejected goods is the amount which may be remitted or repaid.

### **Just and equitable reduction**

**52.**—(1) Paragraph (2) applies where—

- (a) a person (“P”) making the application under chapter 3 incurs a liability to import duty in respect of the goods stated in the application in the course of a business carried on by P;
- (b) P has taken all reasonable steps to ensure compliance with—
  - (i) the Customs procedures relevant to the goods; and
  - (ii) any requirements imposed by an HMRC officer concerning control of the goods; and
- (c) HMRC consider that by reason of exceptional circumstances which apply to that business, were HMRC to enforce some or all of the liability against P, P would suffer a disadvantage in carrying on that business compared to other persons carrying on a similar business.

(2) The amount of import duty which HMRC considers is just and equitable to reduce having regard to the exceptional circumstances is the amount which may be remitted or repaid.

### **Withdrawal of a Customs declaration**

**53.**—(1) Paragraph (2) applies where a Customs declaration is withdrawn in accordance with paragraph 16 of Schedule 1 to the Act and before the withdrawal a payment is made in respect of the liability to import duty incurred under that declaration.

(2) The amount paid is the amount which may be repaid.

## **CHAPTER 3**

### **Applications for remission and repayment**

#### **Remission**

**54.**—(1) Paragraph (2) applies in relation to a liability to import duty in respect of which no payment has been made.

(2) An application may be made to HMRC to remit the liability (in whole or part) by virtue that a reduced duty case applies, other than the reduced duty case described in regulation 53.

(3) An application described in paragraph (2) is an application for remission of duty.

(4) Where a determination to grant an application has effect under regulation 64(3), the liability is remitted to the extent stated in the determination.

(5) Paragraph (4) is subject to regulation 69.

#### **Repayment**

**55.**—(1) Paragraph (2) applies in relation to a liability to import duty in respect of which a payment has been made.

(2) An application may be made to HMRC to repay (in whole or part) the payment by virtue that a reduced duty case applies.

(3) An application described in paragraph (2) is an application for repayment of duty.

(4) A determination to grant an application for repayment of duty which has effect under regulation 64(3) is subject to regulation 69.

### **Applications for remission and repayment of duty**

**56.**—(1) An application for remission or repayment of duty may be made notwithstanding that the goods stated in the application cease to be chargeable goods.

(2) Paragraph (3) applies where—

- (a) an application for remission of duty has been made which is not withdrawn, rejected or determined; and
- (b) a payment is made in respect of the liability which is the subject of the application.

(3) Where—

- (a) the applicant makes the payment, the application is to be treated as an application for repayment of duty; or
- (b) a person other than the applicant makes the payment, the application is to be treated as withdrawn,

and HMRC must notify the applicant of that fact as soon as practicable after the payment is made.

(4) No application may be made where—

- (a) an appeal has been made in respect of the amount of the liability to import duty to which the application would apply; and
- (b) the appeal has not been determined.

### **Applicants**

**57.**—(1) An application for remission of duty may be made by a person who is liable to pay the import duty.

(2) An application for repayment of duty may be made by a person who has paid some or all of the payment to which the application relates.

### **Content of applications**

**58.**—(1) An application must state—

- (a) the goods to which the application relates;
- (b) the reduced duty case which applies;
- (c) whether it is an application for remission or repayment of duty, or both;
- (d) the amount of the liability to import duty;
- (e) the amount which the applicant claims should be remitted or repaid;
- (f) where payment has been made in respect of the liability, the amount paid and the person who paid it; and
- (g) the location of the goods.

(2) An application must—

- (a) include such details identifying each person making the application;
- (b) be made to the place;
- (c) be made in the form and manner, including electronic; and
- (d) be accompanied by such information,

as specified in a notice published by HMRC.

(3) HMRC must publish a notice specifying the matters referred to in paragraph (2).

### **Time periods for applications**

**59.**—(1) Subject to paragraphs (2) to (4), an application for remission or repayment of duty must be made by no later than the end of the following periods beginning with the day after the date of the notification of liability to pay import duty in respect of the goods—

- (a) except where sub-paragraph (b) applies, three years;
- (b) where the application concerns the reduced duty case described in regulation 51, one year.

(2) Where an appeal was made in respect of the amount of import duty to which the application relates and the appeal has been determined, the period between the commencement and determination of the appeal is to be disregarded for the purposes of determining the periods in paragraph (1).

(3) Where the application concerns the reduced duty case described in regulation 53, the application must be made by no later than the date required to notify the withdrawal of the Customs declaration as provided by public notice made under paragraph 16(a) of Schedule 1 to the Act.

(4) Where by virtue of force majeure or unforeseeable circumstances it would be unreasonable to expect a person to make an application in time, HMRC may, on written request by the person which gives reasons for the request, allow the person to make the application out of time.

## **CHAPTER 4**

### **Post-application**

#### **Meaning of “application”**

**60.** In this chapter and the following chapters of this Part, “application” means an application for remission or repayment of duty, or both, as the case may be.

#### **Inspection of goods**

**61.**—(1) Subject to paragraphs (2) and (3), in respect of the goods stated in the application, the applicant must—

- (a) ensure that the goods are available for inspection by an HMRC officer on reasonable notice; and
- (b) except where the goods have been inspected by an HMRC officer and no further inspection is required, notify HMRC in advance if the applicant intends to move the location of the goods and notify the intended new location.

(2) Where the goods stated in the application are destroyed or dismantled further to a consent given under regulation 62(6)(a), paragraph (1) applies instead to any remains or components of the goods.

(3) Paragraph (1) does not apply where—

- (a) the goods, or the remains or components of the goods, are removed from the United Kingdom further to a consent given under regulation 62(6)(b) or (7); or
- (b) the goods are declared for an inward processing or storage procedure further to a consent given under regulation 62(6)(c).

## Determinations to grant applications

- 62.**—(1) HMRC may determine to grant an application if it is satisfied that—
- (a) the application has been made in compliance with chapter 3;
  - (b) the reduced duty case stated in the application applies; and
  - (c) incorrect or incomplete information which was deliberately misleading such as to enable the application to be made was not provided to HMRC by a person responsible for complying with the Customs procedures relevant to the goods stated in the application.
- (2) In the case of an application for remission, the grant of the application does not, unless the determination provides otherwise, discharge the liability of a person who was not an applicant.
- (3) An application may be granted—
- (a) in the case of a joint application, other than to all the applicants;
  - (b) to remit a liability or to make a repayment of an amount different to that stated in the application, so long as the amount does not exceed that provided by the applicable reduced duty case;
  - (c) in respect of—
    - (i) fewer goods than stated in the application; or
    - (ii) remains or components of the goods stated in the application, in cases where the goods are, or are to be, destroyed or dismantled; or
  - (d) subject to the compliance with conditions, including that any of the goods stated in the application, or components of them, must be destroyed or dismantled.
- (4) Except for the conditions set out in regulation 67, where an application is granted subject to compliance with conditions, they may be varied or waived by HMRC.
- (5) Paragraph (6) applies—
- (a) where an application concerns the reduced duty case described in regulation 51; and
  - (b) before HMRC—
    - (i) accepts or rejects the application under regulation 63; or
    - (ii) determines the application under regulation 64.
- (6) HMRC may consent on request by the applicant to the goods stated in the application being—
- (a) destroyed or dismantled;
  - (b) removed from the United Kingdom in accordance with the applicable export provisions<sup>(56)</sup>; or
  - (c) declared for an inward processing or storage procedure but such a consent is not an authorisation to make the declaration.
- (7) Where HMRC consents to the destruction or dismantling of the goods it may also consent to the removal from the United Kingdom of any remains or components of the goods in accordance with the applicable export provisions.

## Acceptance and rejection

- 63.**—(1) By no later than 30 days after the date on which an application is received by HMRC, HMRC must notify the applicant that the application—
- (a) has been made in accordance with chapter 3 and is accepted; or

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<sup>(56)</sup> Section 35 defines for the purposes of Part 1 of the Act what is meant by an export of goods from the United Kingdom being in accordance with the applicable export provisions.

- (b) is rejected for the reasons set out in the notification.
- (2) If an acceptance or rejection is not made as required by paragraph (1), the application is deemed to be rejected.

### **Determinations**

**64.**—(1) Where an application is accepted under regulation 63(1)(a), HMRC must notify the applicant that it has—

- (a) determined to grant the application (in whole or part); or
  - (b) determined to refuse the application.
- (2) Where—
- (a) paragraph (1)(a) applies, the notification must include details of—
    - (i) how the amount of reduced duty has been calculated; and
    - (ii) such of the matters, if any, set out in regulation 62(3) as are applicable to the case;
  - (b) paragraph (1)(b) applies, the notification must state the reasons for the refusal.
- (3) A determination to grant the application (in whole or part)—
- (a) which is not made subject to compliance with conditions, has effect on the date of the determination;
  - (b) which is made subject to compliance with conditions, has effect once HMRC is satisfied that the conditions have been complied with.
- (4) Where paragraph (3)(b) applies and HMRC is not so satisfied—
- (a) HMRC must as soon as practicable notify the applicant that the application is treated as withdrawn; and
  - (b) no further application may be made in relation to the goods to which the withdrawn application applied.
- (5) A notification of determination under paragraph (1) must be made by no later than the expiry of—
- (a) the period of 120 days beginning with the day after the date of the acceptance of the application; or
  - (b) an extended period, not exceeding 30 days, beginning with the day when the period of 120 days expires, where HMRC needs an extension in order to reach a determination.
- (6) HMRC must notify the applicant within the period of 120 days of any such extended period which it needs.
- (7) Where HMRC fails to reach a determination in accordance with paragraph (5), the application is deemed to be refused.
- (8) Where the application is an application for repayment of duty, HMRC must pay to the applicant the amount it has determined as a repayment as soon as practicable after the determination has effect.

### **Where rejection or refusal is required**

**65.**—(1) Paragraph (4) applies where—

- (a) the applicant has failed without reasonable excuse to comply with regulation 61(1);
- (b) HMRC is not satisfied that the goods which are the subject of the application are the same as those in respect of which the liability to import duty was incurred; or

- (c) except where paragraph (3) applies, in the reduced duty case described in regulation 51, the goods are sold after the application is made.
- (2) It is not a reasonable excuse to fail to comply with regulation 61(1) by virtue that the goods or the remains or components of the goods are—
  - (a) except as provided by regulation 61(2), destroyed or dismantled; or
  - (b) removed from the United Kingdom.
- (3) Paragraph (1)(c) does not apply where the goods are sold after the goods are removed from the United Kingdom or declared for an inward processing or storage procedure, further to consent given under regulation 62(6)(c).
- (4) HMRC must reject the application under regulation 63(1)(b) or refuse the application under regulation 64(1)(b) as soon as practicable after it becomes aware of the occurrence of a matter in paragraph (1).

**Lower rate of import duty available: required rejection**

- 66.**—(1) This regulation applies where—
- (a) an application concerns the reduced duty case described in regulation 50;
  - (b) a Customs declaration for the free-circulation procedure was made in respect of the goods stated in the application; and
  - (c) a lower rate of duty was available by virtue of provision made under any of sections 9 to 12 of the Act.
- (2) Except where paragraph (3) applies, the application must be rejected where, at the date the application is made, a lower rate of import duty can no longer be applied to the goods by virtue of provision made under any of sections 9 to 12 of the Act.
- (3) Where the reason that such a lower rate of import duty was not applied at the time the declaration for free-circulation of the goods was accepted was because of a failure by HMRC, the application is not required to be rejected if the Customs declaration which was accepted contained all the information necessary to have enabled HMRC to apply the lower rate of duty.

**Defective and non-compliant chargeable goods: required conditions**

- 67.**—(1) This regulation applies where—
- (a) an application concerns the reduced duty case described in regulation 51; and
  - (b) a determination is made to grant the application (in whole or part).
- (2) Subject to paragraph (3), the determination must—
- (a) impose a condition that the goods—
    - (i) are destroyed or dismantled;
    - (ii) are removed from the United Kingdom in accordance with the applicable export provisions; or
    - (iii) are placed under an inward processing or storage procedure but such a condition is not an authorisation to make a declaration for the procedure; and
  - (b) state a period for compliance with the condition imposed, being a period of no longer than 60 days beginning with the date of the determination.
- (3) Paragraph (2) does not apply if one of the matters in paragraph (2)(a) has occurred before the time of the determination further to a consent given under regulation 62(6).

**Interest payable by HMRC**

68.—(1) Paragraph (2) applies where—

- (a) an application for repayment of duty is made;
- (b) a period of 30 working days has expired since the date that a determination to grant the application has effect as provided by regulation 64(3);
- (c) HMRC has failed to pay some or all of the repayment; and
- (d) that failure is substantially the fault of HMRC.

(2) HMRC must pay interest at the applicable rate on the amount of the unpaid repayment for the period—

- (a) beginning with the day after the date on which the 30 working days period described in paragraph (1)(b) expires; and
- (b) ending with the date on which the amount is paid in full.

(3) In paragraph (2), “the applicable rate” means the rate of interest provided by regulations for the purposes of section 197(2)(f) of the Finance Act 1996<sup>(57)</sup>.

**CHAPTER 5****Remission or repayment made in error****Remission or repayment made in error**

69.—(1) Paragraph (2) applies where—

- (a) a determination to grant an application has effect as provided by regulation 64(3);
- (b) HMRC finds that the determination was made in error; and
- (c) that finding is made before the expiry of the period of X days beginning immediately after the expiry of the period within which a notification of liability to import duty may be given in respect of the goods stated in the application.

(2) The determination is to be treated as null and void.

(3) Where paragraph (2) applies, HMRC must give notification of that fact as soon as practicable to the applicant and such other persons as HMRC considers are likely to be affected by the matter.

(4) If a repayment was made to a person to whom notification is given, that person must pay that repayment to HMRC, together with any interest paid by HMRC under regulation 68, before the expiry of the period of 10 days beginning with the date following the date on which the notification is given.

(5) In paragraph (1)(c), “X days” means the number of days in the period beginning with the date on which the application referred to in paragraph (1)(a) was made and ending with the date on which the application was determined.

**CHAPTER 6****Remission or repayment without an application****Remission or repayment without an application**

70.—(1) Paragraph (2) applies where—

<sup>(57)</sup> 1996 c. 8. 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. 2001/631 and regulation 5(1)(e) amended by S.I. 2003/230.



- (a) HMRC is satisfied that, had an application been made in accordance with chapter 3, HMRC would have determined to grant the application; and
  - (b) HMRC is aware of a person (“a relevant person”) it considers would have been entitled to make the application.
- (2) Where this paragraph applies, HMRC may make a determination to remit a liability or make a repayment as it would have done had the application been made.
- (3) Where such a determination is made, HMRC must give notification of the determination as it would have done had the application been made.
- (4) HMRC may treat the relevant person as the person to whom notification is to be given or any repayment is to be paid.

## CHAPTER 7

### Remission in cases of relevant breaches and in cases of minimal liability

#### **Interpretation applicable to chapter 7**

**71.** For the purposes of this chapter—

- “no significant effect”, on the occurrence of a relevant breach or failure in relation to a Customs procedure or an outward processing procedure<sup>(58)</sup>, has the meaning given by regulation 73;
- “relevant breach or failure” has the meaning given by regulation 72.

#### **Relevant breaches or failures**

**72.—**(1) “A relevant breach or failure” means any relevant breach or failure described in this regulation.

(2) A relevant breach is where a person—

- (a) makes a Customs declaration for a special procedure<sup>(59)</sup> but the person has no entitlement to make it; or
- (b) breaches any requirement relating to the procedure.

(3) A relevant breach is where a person—

- (a) breaches the terms of the declaration for an outward processing procedure;
- (b) breaches any other requirement in relation to the procedure; or
- (c) in the case of goods being processed for any other purpose except for their repair without charge, imports the goods not in accordance with the procedure.

(4) A relevant breach is where a person is in breach of—

- (a) section 5(1)(b) of the Act (presentation of goods to Customs on import where required); or
- (b) section 35(2) of the Act (export of goods in accordance with the applicable export provisions).

(5) A relevant failure occurs where any of the following apply—

- (a) paragraph 1(5) of Schedule 1 to the Act (Customs declaration not made within the 90 day period);
- (b) paragraph 3(4) of Schedule 1 to the Act (Customs declaration not made before goods are imported); or

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<sup>(58)</sup> See section 36 of the Act.

<sup>(59)</sup> See section 3(4) of the Act.

- (c) regulation 11(2) (goods treated as not presented and to which section 5(1) of the Act applies).

### **No significant effect on procedures**

**73.**—(1) This regulation provides for the purposes of regulation 75(1)(c) for cases where the occurrence of a relevant breach or failure has no significant effect on a Customs procedure or an outward processing procedure, as the case may be.

(2) There is no significant effect on the procedure where—

- (a) the relevant breach or failure concerns a person exceeding by a period (“the exceeded period”) the time limit within which the person is required to comply with a requirement in relation to the procedure; and
- (b) had an application to extend the time limit been made, HMRC would have been likely to grant an extension of time for compliance by a period no shorter than the exceeded period.

(3) There is no significant effect on the procedure where subsequent to the relevant breach—

- (a) the goods are declared for the free-circulation procedure; and
- (b) accepted for that procedure.

(4) There is no significant effect on the procedure where—

- (a) the relevant breach consists of a movement of goods other than as agreed by an HMRC officer; but
- (b) subsequent to the breach, HMRC agrees to the location of the goods.

(5) Paragraph (6) applies where—

- (a) the relevant breach consists of making a Customs declaration containing an error;
- (b) the goods have been released to a special Customs procedure<sup>(60)</sup>, except a transit procedure<sup>(61)</sup>, or are held in a temporary storage facility; and
- (c) the error was unknown to HMRC when the declaration was accepted.

(6) There is no significant effect on a Customs procedure if, had the error been known to HMRC before the acceptance, HMRC would have been likely not to have delayed or prevented the acceptance.

(7) There is no significant effect on the Customs procedure if the person who causes the relevant breach or failure to occur notifies full details of the breach to HMRC before—

- (a) a person is notified of a liability to import duty in respect of the goods; or
- (b) HMRC takes any steps in relation to the goods which would likely lead HMRC to discover that the relevant breach or failure has occurred.

### **No applications for remission of duty**

**74.** No application for remission of duty is to be made in respect of the cases described in regulations 75 to 78.

### **No avoidance of liability**

**75.**—(1) Paragraph (2) applies where—

- (a) a relevant breach or failure occurs;

<sup>(60)</sup> “Special Customs procedure” is defined in section 3(4) of the Act.

<sup>(61)</sup> “A transit procedure” is defined in paragraph 5 of Schedule 2 to the Act.

- (b) a liability to import duty in respect of chargeable goods<sup>(62)</sup> is incurred in consequence;
- (c) for a case to which regulation 73 applies, the relevant breach or failure has no significant effect on a Customs procedure or an outward processing procedure, as applicable to the breach or failure;
- (d) none of the persons who caused the relevant breach or failure to occur did so for the purposes of avoiding any or all of the liability; and
- (e) a person liable to the import duty—
  - (i) notifies HMRC of the relevant breach or failure as soon as practicable after it occurred;
  - (ii) takes all steps which can reasonably be taken to rectify the consequences of the breach or failure; and
  - (iii) is not in breach of, as the case may be, a Customs procedure or an outward processing procedure in relation to the goods, other than in respect of the relevant breach or failure.

(2) HMRC must remit the liability to import duty incurred in consequence of the relevant breach or failure in respect of each person liable to pay the duty.

### **Goods leaving the United Kingdom**

**76.**—(1) Paragraph (2) applies where—

- (a) a relevant breach or failure occurs;
- (b) a liability to import duty in respect of chargeable goods is incurred in consequence; and
- (c) a person liable to the import duty—
  - (i) notifies HMRC of the relevant breach or failure as soon as practicable after it occurs and before HMRC discovers it; and
  - (ii) provides to HMRC sufficient evidence to show that the goods were not used or consumed in the United Kingdom and have permanently left the United Kingdom.

(2) Subject to paragraph (3), HMRC must remit the liability to import duty incurred in consequence of the relevant breach or failure in respect of each person liable to pay the duty.

(3) No remission may be made in respect of a person who, whether alone or with another person, caused the relevant breach or failure to occur for the purposes of avoiding any or all of the liability.

### **Assistance to HMRC**

**77.**—(1) Paragraph (2) applies where—

- (a) a relevant breach or failure occurs;
- (b) a liability to import duty in respect of chargeable goods is incurred in consequence;
- (c) any of the persons responsible for causing the relevant breach or failure to occur did so for the purposes of avoiding any or all of the liability; and
- (d) a person (“P”) who did not cause, alone or with another person, the relevant breach or failure to occur provides assistance to HMRC which enables HMRC to identify the relevant breach or failure.

(2) HMRC must remit the liability of P to the import duty incurred in consequence of the relevant breach or failure.

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(62) “Chargeable goods” is defined in section 2 of the Act.

**Minimal liability to import duty**

**78.**—(1) Paragraph (3) applies where—

- (a) a liability to import duty is incurred;
- (b) no notification of the liability is made further to paragraph 2 of Schedule 6 to the Act (notification of liability to pay import duty); and
- (c) the amount of the liability does not exceed £9.

(2) For the purposes of paragraph (1)(b), a notification of liability includes cases where notification is presumed, taken as met by some specified act or not required further to regulations made under paragraph 3 of Schedule 6 to the Act.

(3) HMRC must remit the liability to import duty in respect of each person liable to pay the duty.

**Time periods**

**79.**—(1) This regulation has effect for the purposes of regulations 75 to 78.

(2) Except where paragraph (4) applies, any remission must be made as soon as practicable and in any event before the expiry of the period of three years beginning with the date on which the liability to import duty was incurred.

(3) Paragraph (4) applies where—

- (a) an HMRC officer considers that a criminal offence may have been committed in relation to the relevant breach or failure; and
- (b) the period required to determine that an offence has not been committed is longer than the period provided by paragraph (2).

(4) Any remission must be made on the earlier of—

- (a) the determination that no such offence has been committed; and
- (b) the expiry of the period of 20 years beginning with the date on which the liability to import duty was incurred.

## PART 8

### Customs agents

**Residence or establishment in the United Kingdom**

**80.**—(1) Except as provided by paragraphs (2) and (3) and regulation 81(3), a person may not act as a Customs agent unless the person is established in the United Kingdom.

(2) Where a person (“P”) acting as principal is not required to be established in the United Kingdom in order to carry out a matter concerning a Customs procedure, a person may act as a Customs agent on behalf of P to carry out the matter and not be established in the United Kingdom.

(3) A person may act as a Customs agent on behalf of a person acting as principal to make a temporary storage declaration and not be established in the United Kingdom.

**Transitional provision – declarations made before exit day**

**81.**—(1) Paragraphs (2) and (3) apply where—

- (a) chargeable goods are subject to a Customs procedure<sup>(63)</sup> on or after exit day and before exit day a declaration was lodged in respect of the goods under Article 171 of the UCC;
  - (b) that declaration was lodged by a person (“A”) acting in the capacity of a customs representative as described by Article 5(6) of the UCC on behalf of another person (“B”);
  - (c) on or after exit day, the goods are presented to Customs on import; and
  - (d) no notification was received by HMRC before exit day that A’s appointment as the customs representative was withdrawn.
- (2) Where this paragraph applies—
- (a) the disclosure of the appointment to HMRC of A as a customs representative of B is to be treated as the disclosure to HMRC on exit day of A as a Customs agent of B in respect of the goods; and
  - (b) the extent of A’s authority to act as a customs representative of B, so far as relevant to the import of the goods, is to be treated as the extent of A’s authority to act as a Customs agent of B in relation to those goods.
- (3) Where this paragraph applies, regulation 80(1) does not apply to A to the extent that A acts as a Customs agent in relation to the goods.
- (4) Paragraphs (2) and (3) also apply in a case to which paragraph (1) applies but where subparagraph (a) instead provides—
- “(a) before exit day a temporary storage declaration was lodged in respect of goods under Article 145 of the UCC;”.

### **Disclosure of an appointment**

**82.**—(1) Where a person (“P”) appoints another person (“A”) to act on P’s behalf as a Customs agent, A must disclose that agency in each temporary storage declaration and Customs declaration<sup>(64)</sup> which is made by A as agent for P.

- (2) Paragraph (1) does not apply—
- (a) to an appointment of a person as a Customs agent which is treated as disclosed by regulation 81(2)(a); or
  - (b) where a Customs declaration is made by conduct as provided by section 4 of chapter 2 of Part 4 of these Regulations.

### **Disclosure of withdrawal of an appointment**

**83.**—(1) This regulation applies where disclosure of a person’s appointment as a Customs agent is required to be disclosed in a temporary storage declaration or Customs declaration by regulation 82(1).

(2) Where the appointment is withdrawn, subject to paragraphs (4)(a) and (6)(b)(i), the principal must disclose the withdrawal by amending each temporary storage declaration or Customs declaration in which disclosure of the appointment was required to be given.

- (3) Paragraph (4) applies where—
- (a) an appointment in respect of a temporary storage declaration or Customs declaration is withdrawn; and

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<sup>(63)</sup> See section 3 of the Act.

<sup>(64)</sup> The information to be contained in a Customs declaration, in addition to the Customs procedure, is provided by public notice made under paragraph 7(1)(a) of Schedule 1 to the Act.

- (b) the principal appoints another person (“C”) as a Customs agent in respect of the declaration.
- (4) Where this paragraph applies, in respect of the temporary storage declaration or Customs declaration C must—
  - (a) comply with paragraph (2) instead of the principal; and
  - (b) disclose with the amendment to the declaration that C is acting as Customs agent in relation to the declaration.
- (5) Paragraph (6) applies where, in respect of a Customs declaration, a Customs agent originally acting in the capacity of—
  - (a) a direct agent becomes an agent acting in the capacity of an indirect agent<sup>(65)</sup>; or
  - (b) an indirect agent becomes an agent acting in the capacity of a direct agent.
- (6) Where this paragraph applies, in respect of the Customs declaration—
  - (a) the original appointment is treated as withdrawn; and
  - (b) the Customs agent must—
    - (i) comply with paragraph (2) instead of the principal; and
    - (ii) disclose with the amendment to the declaration the agent’s new capacity.
- (7) Paragraph (8) applies where a requirement to make a disclosure is required by this regulation and the requirement—
  - (a) applies once a relevant event occurs<sup>(66)</sup>; and
  - (b) in consequence, can be complied with only if the consent of an HMRC officer is given further to paragraph 16(b) of Schedule 1 to the Act.
- (8) The consent of an HMRC officer is to be treated as given in relation to the making of the disclosure.

## PART 9

### Approvals and authorisations and authorised economic operators

#### Interpretation

**84.** In this Part, references to an approval include an authorisation.

#### Application for approval

**85.**—(1) Any matter requiring approval under these Regulations requires an application which must—

- (a) include details identifying the applicant;
- (b) be made to the place;
- (c) be made in the form and manner, including electronic; and
- (d) be accompanied by such information,

as specified in a notice published by HMRC.

(2) HMRC must publish a notice specifying the matters referred to in paragraph (1).

<sup>(65)</sup> See section 21(1) of the Act concerning the meanings of “direct agent” and “indirect agent”.

<sup>(66)</sup> “A relevant event occurs” is defined in paragraph 15(2) of Schedule 1 to the Act.

### **Cases in which an application for approval may not be made**

- 86.**—(1) A person may not make an application for approval if—
- (a) the application is in respect of the same matter as a previous approval;
  - (b) notice was given as provided by section 23(5)(d) of the Act that the previous approval was treated as if it had never been granted; and
  - (c) the application is made within a period of three years of the date the notice.
- (2) Except as provided by paragraph (3), a person may not make an application for approval if—
- (a) the application is in respect of the same matter as a previous approval;
  - (b) the previous approval was revoked for failure to comply with the conditions of the approval; and
  - (c) the application is made within a period of one year of the date of the revocation.
- (3) A person may not make an application for authorisation as an authorised economic operator if—
- (a) a previous authorisation as an authorised economic operator was revoked for failure to comply with the conditions of the authorisation; and
  - (b) the application is made within a period of three years of the date of the revocation
- (4) For the purposes of this regulation—
- (a) references to an approval or authorisation include an approval or authorisation—
    - (i) granted before exit day under the EU Customs Code; or
    - (ii) treated as valid under Article 251 of the Delegated Regulation,which corresponds to an approval which may be granted under these Regulations and, in relation to such an approval or authorisation, references to conditions of the approval or the authorisation includes conditions specified in the EU Customs Code or in the Regulations referred to in Article 251 of the Delegated Regulation; and
  - (b) a reference to a notice given under section 23(5)(d) of the Act includes a reference to a notification of an annulment of a decision under Article 27 of the UCC.

### **HMRC to consider whether an approval falls to be determined**

**87.** By no later than 30 days after the date on which an application, or purported application, for approval is received by HMRC, HMRC must notify the person making the application or purported application that —

- (a) the application is one that falls to be determined; or
- (b) the purported application does not fall to be determined because, for the reasons set out in the notification,—
  - (i) the purported application is not made in accordance with regulation 85; or
  - (ii) the purported application is made contrary to regulation 86.

### **Appeal where HMRC fail to consider an application**

**88.**—(1) An applicant or purported applicant may appeal to an appeal tribunal in a case where HMRC have failed to comply with regulation 87.

(2) The power of the appeal tribunal is limited to the power to direct HMRC, in a case where it is satisfied that HMRC have acted unreasonably, to consider the application, or purported application, as mentioned in regulation 87 within such further period as is specified by the tribunal.

(3) The appeal must be made within 30 days following the expiry of the 30 day period referred to in regulation 87.

### **Grant or refusal of an application for approval**

**89.**—(1) Within the specified period, HMRC must notify an applicant that an application for approval which falls to be determined—

- (a) is granted, or
  - (b) is refused for the reasons set out in the notification.
- (2) The specified period is—
- (a) in relation to an application for approval to declare goods for—
    - (i) an outward processing procedure<sup>(67)</sup>;
    - (ii) an inward processing procedure<sup>(68)</sup>;
    - (iii) an authorised use procedure<sup>(69)</sup>; or
    - (iv) a temporary admission procedure<sup>(70)</sup>,
 30 days after the date on which the application was received by HMRC;
  - (b) in relation to an application for approval to operate premises as a place for keeping goods declared for a storage procedure<sup>(71)</sup>, 60 days after the date on which the application was received by HMRC; and
  - (c) in any other case, 120 days after the date on which the application was received by HMRC.
- (3) The specified period may be extended in the following cases—
- (a) where HMRC notify the applicant stating the reason for the extension, the specified period may be extended by a further period of up to 30 days;
  - (b) where HMRC suspect the applicant has been involved in a breach of a Customs obligation and are conducting an investigation in relation to that breach, the specified period may be extended by a further period of up to nine months on notification to the applicant (unless such notification would be likely to jeopardise the investigation);
  - (c) where the applicant makes a request in writing, stating the reasons for the request, HMRC may agree to extend the specified period by such further period as an HMRC officer considers reasonable in the circumstances; and
  - (d) in relation to an application for authorisation as an authorised economic operator, the specified period may be extended on notification to the applicant by—
    - (i) a further period of up to 60 days; or
    - (ii) where the applicant is subject to criminal proceedings relevant to the application, such further period as an HMRC officer considers reasonable in the circumstances.
- (4) Where an application for approval is granted, the notification of the approval must specify—
- (a) the date from which the approval has effect;
  - (b) the date, if any, on which the approval will cease to have effect; and
  - (c) any conditions to which the approval is subject.

<sup>(67)</sup> “An outward processing procedure” is defined in section 36(2) of the Act.

<sup>(68)</sup> “An inward processing procedure” is defined in paragraph 8 of Schedule 2 to the Act.

<sup>(69)</sup> “An authorised use procedure” is defined in paragraph 13 of Schedule 2 to the Act.

<sup>(70)</sup> “A temporary admission procedure” is defined in paragraph 15 of Schedule 2 to the Act.

<sup>(71)</sup> “A storage procedure” is defined in paragraph 2 of Schedule 2 to the Act.



(5) An approval is subject to compliance with conditions specified in or under the regulations relating to the approval or in the notification of the approval.

(6) If an application for approval is not granted or refused as required by this regulation, the application is treated as refused.

#### **Notification of HMRC of change of circumstances relating to an approval**

**90.** An approved person must notify HMRC as soon as reasonably practicable if—

- (a) that person fails to meet any condition to which the approval is subject;
- (b) that person ceases to satisfy any eligibility criteria which applied when the approval was granted; or
- (c) there are any material changes since the application was made concerning—
  - (i) the details relating to the applicant; or
  - (ii) the information required to accompany the application.

#### **Amendment, suspension or revocation of approval**

**91.**—(1) An approval may be suspended or revoked, as appropriate in the opinion of an HMRC officer, if—

- (a) the approved person fails to meet any condition to which the approval is subject; or
- (b) the approved person ceases to satisfy any eligibility criteria which applied when the approval was granted.

(2) An approval may be amended, suspended or revoked, as appropriate in the opinion of an HMRC officer, if—

- (a) the approved person makes an application in writing to HMRC for the approval to be amended, suspended or revoked;
- (b) the approved person has been involved in a breach of a Customs obligation;
- (c) it is necessary in consequence of an enactment, or a determination of a court or tribunal in relation to an enactment, relevant to the activities carried on pursuant to the approval; or
- (d) it is necessary in consequence of a change of circumstances of the approved person relevant to the activities carried on pursuant to the approval.

(3) An approval may be suspended if an HMRC officer has reasonable grounds for believing that the case is within section 23(5) of the Act.

(4) Subject to paragraph (5), an approval may be suspended under this regulation for such period as an HMRC officer thinks reasonable in the circumstances but must not exceed 60 days unless the approved person agrees to a longer period.

(5) Where HMRC suspect an approved person has been involved in a breach of a Customs obligation and are conducting an investigation in relation to that breach, the approval may be suspended for a period of up to nine months.

#### **Transitional provision – approval or authorisation granted before exit day**

**92.**—(1) Any application for approval—

- (a) made under the EU Customs Code before exit day;
- (b) which corresponds to an approval which may be granted under these Regulations; and
- (c) which has not been determined before exit day,

is to be treated as an application for approval made on exit day under these Regulations.

(2) Any approval (“the original approval”) granted by HMRC before exit day under the EU Customs Code, or treated as valid immediately prior to exit day under Article 251 of the Delegated Regulation, which corresponds to an approval which may be granted under these Regulations and is still subsisting immediately before exit day is to be treated as an approval granted by HMRC under these Regulations.

(3) But paragraph (2) does not apply—

- (a) if the person to whom the original approval was granted does not satisfy the eligibility criteria which must be met by applicants for the corresponding approval; or
- (b) in relation to Part 15 of these Regulations.

(4) In relation to an approval treated as granted, for the purposes of Part 1 of the Act and these Regulations, references to conditions of the approval includes conditions (“the original conditions”) to which the original approval was subject to immediately prior to exit day.

(5) HMRC may amend the original conditions to which an approval treated as granted is subject by notification to the person to whom the approval was granted as soon as reasonably practicable after exit day.

### **Eligibility criteria for authorised economic operators**

**93.**—(1) A person may only be an authorised economic operator if—

- (a) the person is established in the United Kingdom;
- (b) the person is registered as an economic operator under Article 9 of the UCC;
- (c) the person, and any directors or senior employees of that person, have not been involved in a breach of an obligation relating to tax or a Customs obligation, which in the opinion of an HMRC officer is—
  - (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 that person to be an authorised economic operator;
- (d) the person, and any directors or senior employees of that person, have no criminal convictions which in the opinion of an HMRC officer are—
  - (i) serious having regard to the type of conviction; and
  - (ii) relevant to the suitability of that person to be an authorised economic operator;
- (e) the person maintains a logistical system and records that identify the movement of, and transactions in, chargeable goods<sup>(72)</sup> and domestic goods<sup>(73)</sup> and facilitates compliance with Customs obligations;
- (f) in the opinion of an HMRC officer, the person’s financial standing makes that person suitable to be an authorised economic operator; and
- (g) the person meets any professional standards of competence specified in a notice published by HMRC or, in the opinion of an HMRC officer, the person’s practical experience makes that person suitable to be an authorised economic operator.

(2) HMRC may publish a notice specifying professional standards of competence.

<sup>(72)</sup> “Chargeable goods” is defined in section 2 of the Act.

<sup>(73)</sup> “Domestic goods” is defined in section 33 of the Act.

## PART 10

### Guarantees

#### Interpretation

**94.** In this Part—

“charges” means fees under Part 14 of these Regulations, interest payable for late payment of import duty and penalties under Part 3 of the Finance Act 2003<sup>(74)</sup>;

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

“specified amount” has the meaning given in regulation 98.

#### Guarantee

**95.—**(1) A guarantee in respect of a liability or potential liability to pay import duty required by or under these Regulations must—

- (a) guarantee the payment of the specified amount in respect of a liability to which the guarantee applies within the applicable period required for discharge of the liability provided by regulation 43;
- (b) be in a form specified in a notice published by HMRC; and
- (c) be for a period approved by HMRC.

(2) HMRC may require that a guarantee extends to the payment of any charges in relation to the specified amount.

(3) HMRC must publish a notice specifying the forms of guarantee that may be approved.

(4) A guarantor may cancel a guarantee by notice to HMRC specifying the date on which the guarantee will cease to have effect which must be at least 15 days after the date on which the notice is received by HMRC.

#### Guarantors

**96.—**(1) A guarantor must be—

- (a) approved by HMRC; or
- (b) a guaranteeing association.

(2) An applicant for approval to act as a guarantor must be established in the United Kingdom.

(3) A guarantor may only guarantee the liability to import duty of another person.

(4) If a guarantor’s approval is revoked, HMRC must give notice of the revocation to any person whose payment in relation to a liability or potential liability to pay import duty is guaranteed by that guarantor.

(5) HMRC may publish a notice specifying persons treated as approved as a guarantor under this regulation.

#### Single and comprehensive guarantees

**97.—**(1) In respect of a liability or potential liability to import duty—

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<sup>(74)</sup> 2003 c. 14.

- (a) a guarantee (a “single guarantee”) may be given in respect of particular goods declared for a Customs procedure, or
  - (b) a comprehensive guarantee<sup>(75)</sup> may be given in respect of all goods declared for special Customs procedures<sup>(76)</sup> in one or more calendar months.
- (2) A comprehensive guarantee extends also to any liability or potential liability to import duty in respect of any goods declared for the free-circulation procedure<sup>(77)</sup> in a calendar month to which the guarantee relates.
- (3) A person may give a comprehensive guarantee in respect of a liability to import duty only if authorised to do so by HMRC.
- (4) A person may only be authorised to give a comprehensive guarantee if—
- (a) the person is established in the United Kingdom;
  - (b) the person, and any directors or senior employees of that person, have not been involved in a breach of an obligation relating to tax or a Customs obligation, which in the opinion of an HMRC officer is—
    - (i) a serious breach having regard to the circumstances, nature and number of breaches; and
    - (ii) relevant to the suitability of that person to give a comprehensive guarantee;
  - (c) the person, and any directors or senior employees of that person, have no criminal conviction which in the opinion of an HMRC officer is—
    - (i) serious having regard to the type of conviction; and
    - (ii) relevant to the suitability of that person to give a comprehensive guarantee; and
  - (d) the person is—
    - (i) a regular user of the Customs procedure in relation to which the comprehensive guarantee will be used;
    - (ii) in the opinion of an HMRC officer, a suitable person to give a comprehensive guarantee taking account of that person’s financial standing and practical experience; or
    - (iii) approved as an operator of a temporary storage facility.
- (5) For the purposes of paragraph (5)(d)(i), a person is a regular user of a Customs procedure if that person has used that procedure on at least three occasions in the 12 month period preceding the application for authorisation.

### **Specified amount**

**98.—**(1) The specified amount is—

- (a) in relation to a single guarantee, the maximum amount of import duty that is likely to be payable in respect of the particular goods declared for a Customs procedure; or
- (b) in relation to a comprehensive guarantee, the maximum amount of import duty that is likely to be payable in any calendar month for which the guarantee subsists, having regard to the business of the person authorised to give the guarantee, in particular in relation to goods imported into the United Kingdom in the previous 12 months and proposed importations in the next 12 months.

<sup>(75)</sup> “Comprehensive guarantee” is defined in paragraph 8(1)(b) of Schedule 6 to the Act.

<sup>(76)</sup> “Special Customs procedure” is defined in section 3 of the Act.

<sup>(77)</sup> “The free-circulation procedure” is defined in section 3 of the Act.

(2) If the amount of the liability or potential liability to import duty exceeds the specified amount of the guarantee, the person liable or potentially liable to that import duty must notify HMRC as soon as practicable on becoming aware of the shortfall.

(3) HMRC may by notice to the person required to give the guarantee in respect of a liability to import duty, amend the specified amount with effect from a date specified in the notice but not less than 15 days from the date the notice is given.

**Specified amount: reduced amounts and waivers in relation to comprehensive guarantees**

**99.**—(1) HMRC must approve a reduction in the specified amount in relation to a comprehensive guarantee to 50% of the amount determined under regulation 98(1)(b) if satisfied that the person authorised to give the comprehensive guarantee—

- (a) draws up accounts in accordance with generally accepted accounting practice;
- (b) maintains reliable business records;
- (c) is solvent;
- (d) has in the preceding three years discharged any liability to pay—
  - (i) import duty; and
  - (ii) EU customs duty under the EU Customs Code as it had effect before exit day; and
- (e) has sufficient financial resources to meet the liability or potential liability not guaranteed by the reduced comprehensive guarantee.

(2) HMRC must approve a reduction in the specified amount in relation to a comprehensive guarantee to 30% of the amount determined under regulation 98(1)(b) if satisfied that the person authorised to give the comprehensive guarantee—

- (a) meets the conditions in paragraph (1); and
- (b) maintains procedures to ensure that HMRC are notified of any breach of any Customs obligation.

(3) HMRC must approve a waiver to the requirement for a comprehensive guarantee in relation to a potential liability to pay import duty if satisfied that the person authorised to give the comprehensive guarantee—

- (a) meets the conditions in paragraphs (1) and (2)(b);
- (b) allows HMRC officers access to all electronic and physical information systems maintained by that person;
- (c) maintains a logistical system that identifies chargeable goods and domestic goods and their location;
- (d) where the liability relates to agricultural goods, has satisfactory procedures to ensure compliance with any relevant regulatory obligation in relation to agricultural goods;
- (e) has satisfactory procedures in relation to archiving records; and
- (f) maintains satisfactory computer system security measures.

(4) A person authorised as an authorised economic operator is treated as meeting the conditions in paragraphs (2) and (3).

(5) In this regulation, “generally accepted accounting practice” has the meaning given in section 1127 of the Corporation Tax Act 2010(78).

**Discharge of guarantees**

**100.**—(1) A guarantee is regarded as discharged in full—

- (a) if all the liability to which the guarantee relates and, where regulation 95(2) (guarantee in relation to charges) applies, any charges in relation to that liability, is paid in full;
- (b) where the potential liability to which the guarantee relates has been extinguished on the discharge of a special Customs procedure;
- (c) where—
  - (i) an application for remission of the duty in respect of the liability covered by the guarantee is made where regulation 48 (incorrect amount of import duty), 50 (lower rate of import duty available), 51 (defective and non-compliant chargeable goods) or 52 (just and equitable reduction) applies;
  - (ii) the goods in relation to which the duty has arisen have been released to the free-circulation procedure; and
  - (iii) in the opinion of an HMRC officer the requirement of a guarantee would be likely to cause serious economic or social difficulties to the person required to give the guarantee; or
- (d) where the potential liability to which the guarantee relates has been extinguished on the transfer of rights and obligations under regulation 42 (transfer of rights and obligations) of the Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018(79).

(2) A person required to give a guarantee or a guarantor may apply to HMRC to discharge a guarantee in part where part of the liability to import duty to which the guarantee relates and, where regulation 95(2) applies, any charges, have been discharged.

(3) An application under paragraph (2) must state—

- (a) the goods to which the application relates;
- (b) the amount of the liability to import duty;
- (c) the amount which has been paid in respect of the liability; and
- (d) the location of the goods.

(4) An application must—

- (a) include details identifying the applicant;
- (b) be made to the place;
- (c) be made in the form and manner, including electronic; and
- (d) be accompanied by such information,

as specified in a notice published by HMRC.

(5) HMRC must publish a notice specifying the matters referred to in paragraph (4).

(6) By no later than 30 days after the date on which an application is received by HMRC, HMRC must notify the applicant that the application—

- (a) is accepted and the guarantee is discharged in part, specifying the amount of the liability discharged and the goods in respect of which the liability relates; or
- (b) is rejected for the reasons set out in the notification.

(7) If an acceptance or rejection is not made as required by paragraph (6), the application is deemed to be rejected.

(8) Where a guarantee is provided by a guaranteeing association, Article 6(3) and (4) of the ATA Convention, Article 8(3), (4) and (5) of Annex A of the Istanbul Convention or Article 10(2) of the TIR Convention, as the case may be, apply to determine the circumstances in which the guarantee is to be regarded as discharged.

### Cases where no guarantee is required

**101.**—(1) Notwithstanding any provision in these Regulations to the contrary, a person is not required to give a guarantee in respect of a liability to pay import duty if—

- (a) the person liable is a public authority or universal service provider and the liability or potential liability arose in the course of carrying out the duties or functions of that authority or provider;
- (b) the liability relates to goods imported into the United Kingdom via a pipe-line;
- (c) the liability relates to goods subject to an inward processing procedure where regulation 21(2) (authorisation to declare goods for an inward processing procedure) of the Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018 applies;
- (d) the liability relates to goods subject to an outward processing procedure where regulation 28(6) (authorisation to declare goods for an outward processing procedure) of the Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018 does not apply;
- (e) the liability relates to goods declared for a temporary admission procedure<sup>(80)</sup> and—
  - (i) the declaration is made under regulation 20, 21 or 27 (Customs declarations made orally or by conduct: musical instruments, packaging, broadcast equipment, disaster relief material and miscellaneous goods);
  - (ii) the goods comprise empty packaging and have permanent, indelible markings identifying that use;
  - (iii) the goods are used for transportation of imported goods and have permanent, indelible markings identifying that use; or
  - (iv) the goods have previously been discharged from a temporary admission procedure.

(2) For the purposes of this regulation—

“pipe-line” has the meaning given in section 1 of CEMA 1979;

“public authority” means a public authority as defined by the Freedom of Information Act 2000<sup>(81)</sup> or a Scottish public authority as defined by the Freedom of Information (Scotland) Act 2002<sup>(82)</sup>;

“universal service provider” means a postal operator designated as a universal service provider under section 35 of the Postal Services Act 2011<sup>(83)</sup>.

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<sup>(80)</sup> “A temporary admission procedure” is defined in paragraph 15 of Schedule 2 to the Act.

<sup>(81)</sup> 2000 c. 36; “public authority” is defined in section 3 of that Act.

<sup>(82)</sup> 2002 asp 13; “Scottish public authority” is defined in section 3 of that Act.

<sup>(83)</sup> 2011 c. 5.

## PART 11

### Domestic goods

#### Retention of domestic status

**102.** Goods exported from the United Kingdom in accordance with the applicable export provisions<sup>(84)</sup> retain their status as domestic goods<sup>(85)</sup> if the goods—

- (a) merely pass through places outside the United Kingdom before arriving at their ultimate destination in the United Kingdom, and
- (b) are itemised in a travel document issued in the United Kingdom by the person responsible for the carriage of the goods which specifies the destination and recipients of the goods.

#### Goods presumed not to be domestic goods

**103.**—(1) Goods that are in the United Kingdom because they have been imported are presumed not to be domestic goods unless the contrary is shown.

(2) Paragraph (1) does not apply where goods have been declared for an outward processing procedure<sup>(86)</sup>.

#### Goods not regarded as domestic goods: animals

**104.**—(1) For the purposes of Part 1 of the Act, an animal born in the United Kingdom is not to be regarded as a domestic good if—

- (a) the mother was part of a consignment of goods declared for a storage procedure<sup>(87)</sup>, a temporary admission procedure<sup>(88)</sup> or an inward processing procedure<sup>(89)</sup>; and
- (b) the animal was born before the procedure was discharged; and
- (c) the total market value of animals born to mothers in that consignment before the procedure was discharged is £90 or more (“the threshold”).

(2) An animal which is not to be regarded as a domestic good under paragraph (1) is treated as imported into the United Kingdom at the later of—

- (a) the date the threshold in paragraph (1)(c) is reached; and
- (b) the date the animal is born.

(3) A notification of importation is treated as having been given in relation to an animal not regarded as a domestic good under paragraph (1) on the date the animal is treated as imported under paragraph (2).

#### Goods regarded as domestic goods: fish

**105.**—(1) For the purposes of Part 1 of the Act, catch are to be regarded as domestic goods if caught by a British ship whilst fishing beyond territorial waters of a country or territory other than the United Kingdom and are brought to the United Kingdom—

- (a) directly by that or another ship; or

<sup>(84)</sup> Section 35 defines for the purposes of Part 1 of the Act what is meant by an export of goods from the United Kingdom being in accordance with the applicable export provisions.

<sup>(85)</sup> “Domestic goods” are defined in section 33 of the Act.

<sup>(86)</sup> Section 36(2) defines a declaration of goods for an outward processing procedure.

<sup>(87)</sup> “A storage procedure” is defined in paragraph 2 of Schedule 2 to the Act.

<sup>(88)</sup> “A temporary admission procedure” is defined in paragraph 15 of Schedule 2 to the Act.

<sup>(89)</sup> “An inward processing procedure” is defined in paragraph 8 of Schedule 2 to the Act.



(b) after merely landing at a port outside the United Kingdom and the catch are itemised in a travel document issued at that port by the person responsible for the carriage of the catch which specifies the destination and recipients of the catch.

(2) For the purposes of Part 1 of the Act, where a catch caught by a British ship whilst fishing beyond territorial waters of a country or territory other than the United Kingdom is processed on a factory ship which is a British ship operating beyond the territorial waters of a country or territory other than the United Kingdom, goods which are the products of the catch processed are to be regarded as domestic goods if brought to the United Kingdom—

(a) directly by that or another ship; or

(b) after merely landing at a port outside the United Kingdom and the goods are itemised in a travel document issued at that port by the person responsible for the carriage of the goods which specifies the destination and recipients of the goods in the United Kingdom.

(3) In this regulation—

“British ship” has the meaning given in section 1 of the Merchant Shipping Act 1995<sup>(90)</sup>;

“catch” means fish or any other aquatic life which is commonly fished or obtained in maritime waters or on the seabed;

“factory ship” means a vessel providing processing services for the fishing industry.

### **Evidence that goods are domestic goods**

**106.** HMRC must publish a notice specifying the evidence which is to be required, or is to be sufficient, for the purpose of showing that goods are domestic goods.

## **PART 12**

### **Valuation of chargeable goods**

#### **CHAPTER 1**

##### **Preliminary**

### **Interpretation**

**107.**—(1) In this Part—

“the 90 day period” means the period of up to 90 days ending immediately before the date on which the chargeable goods<sup>(91)</sup> are released for free-circulation<sup>(92)</sup> but that period does not include any period which is prior to the date on which the chargeable goods were imported into the United Kingdom;

“buying commission” means a commission paid by a buyer of goods to an agent of the buyer in respect of services provided by the agent to the buyer to enable the buyer to import chargeable goods;

“comparable goods” has the meaning given by regulation 127(1);

“full value” means the total amount which would be payable in an arm’s length transaction for, or in connection with the importation of, goods;

“identical goods” has the meaning given by regulation 127(1);

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<sup>(90)</sup> 1995 c. 21.

<sup>(91)</sup> “Chargeable goods” is defined in section 2 of the Act.

<sup>(92)</sup> See section 3(3)(a) of the Act on the free-circulation procedure.

“Method” means a method of valuation set out in chapter 5 of this Part; and “Method N valuation”, where N is a whole number between 1 and 6, is a Method so numbered;

“related persons” has the meaning given by regulation 128;

“similar goods” has the meaning given by regulation 127(1);

“specified matters” has the meaning given by regulation 108(7) in respect of items to be included as elements of a transaction value and by regulation 108(8) in respect of items to be excluded as elements of a transaction value;

“time the goods are imported” is to be construed in accordance with section 5 of CEMA 1979(93).

(2) In chapters 2 to 5 of this Part in relation to a transaction value of goods, “seller” means the person who in the transaction sells the goods for export to the United Kingdom and “buyer” means the person who in the transaction buys the goods from the seller.

## CHAPTER 2

### Use of Methods of valuation

#### Use of Methods of valuation

**108.**—(1) To determine the value of chargeable goods presented to Customs on import(94) which value is to be included in the Customs declaration, follow steps 1 and 2.

(2) Step 1: apply in the following sequence—

- (a) Method 1 valuation;
- (b) Method 2 valuation; and
- (c) Method 3 valuation,

until a Method is found by which the full value of the goods can be readily determined and if none is found, proceed to step 2.

(3) Step 2: apply in the following sequence—

- (a) Method 4 valuation then Method 5 valuation, or in reverse order as the person who makes the Customs declaration elects; and
- (b) Method 6 valuation,

until the full value of the goods can be readily determined.

(4) But steps 1 and 2 are subject to regulation 109.

(5) A transaction value(95) must be adjusted as necessary to include and exclude as elements of the value such of the specified matters which are not already taken into account as elements of the value.

(6) Where—

- (a) a Method is being applied which uses a transaction value;
- (b) the value of a specified matter cannot be readily determined;
- (c) regulation 109 does not apply; and
- (d) HMRC consider that the value would be a significant element of the value of the goods,

that Method is not to be used in the valuation of the goods.

(7) The specified matters to be included as elements of a transaction value are—

(93) Section 5 is amended by paragraph 6 of Schedule 7 to the Act.

(94) See section 34 of the Act on the presentation of goods to Customs on import.

(95) See section 16(3) of the Act for the definition of “transaction value”.

- (a) the value of each item set out in regulations 111 to 113 but taking into account any depreciation for an item which is a re-used item;
  - (b) where applicable, any adjusted amount described in regulation 114; and
  - (c) any amount which is payable in respect of the goods or their importation at a time other than the time when the goods are sold for export to the United Kingdom.
- (8) The specified matters to be excluded as elements from a transaction value are the value of each item set out in regulations in chapter 4.
- (9) HMRC may presume that where the buyer and seller of chargeable goods are related persons, in the application of Method 1 valuation, the transaction value of the goods is not the full value unless HMRC are satisfied to the contrary.

### **Values undetermined when Customs declaration would otherwise be accepted**

**109.**—(1) This regulation applies where, in the application of Method 1 valuation, a transaction value cannot be determined by the time the Customs declaration in respect of the goods would, if the value were determined, be accepted.

(2) A Customs declaration in respect of the goods may be made in which the value of the goods is in whole or part still to be determined, if conditions 1 to 3 are satisfied.

(3) Condition 1: the declarant must—

- (a) be authorised by HMRC for the purposes of this regulation; and
- (b) provide a draft of the intended contents of the declaration to HMRC which—
  - (i) identifies those parts of the value which cannot be determined and why;
  - (ii) sets out the basis on which the value can later be determined; and
  - (iii) states the date by which the valuation will be provided to HMRC.

(4) Condition 2: HMRC must notify the declarant—

- (a) that it is satisfied that a declaration may be so made; and
- (b) of the date by which the declaration must be made.

(5) Condition 3: the Customs declaration is made accordingly.

### **Provision of evidence**

**110.** HMRC may publish a notice specifying the type of evidence to be provided to an HMRC officer which supports—

- (a) the use of one Method instead of another; or
- (b) the determination of a valuation.

## **CHAPTER 3**

### **Transaction value: specified matters – included elements**

#### **Transaction value: included items**

**111.**—(1) The items referred to in regulation 108(7)(a) as specified matters to be included as elements of a transaction value are the following—

- (a) the container of the goods;
- (b) the packaging of the goods;
- (c) transport and insurance of the goods, up to the time the goods are imported into the United Kingdom;

- (d) loading and handling of the goods, up to the time the goods are imported into the United Kingdom;
  - (e) commission, except buying commission, and brokerage fees paid by the buyer of the goods; and
  - (f) export duty charged in the place of origin.
- (2) The value of the items in paragraph (1) is—
- (a) in respect of sub-paragraphs (a) to (d), subject to paragraph (3), the cost of the item;
  - (b) in respect of sub-paragraph (e), the amount of the commission and fees paid; and
  - (c) in respect of sub-paragraph (f), the amount of the duty.
- (3) Where goods are transported by air, the cost of the air transport is the percentage of that cost as set out in the document, “Air Transport Costs to be included in the customs value, version 1, dated 27 November 2018<sup>(96)</sup>”.

#### **Transaction value: further included items – partial value**

**112.**—(1) The items referred to in regulation 108(7)(a) as specified matters to be included as elements of a transaction value further include the following, where the buyer of the goods provides them to the seller other than for full valuable consideration—

- (a) materials, components or parts of the goods;
  - (b) materials consumed in the production of the goods;
  - (c) dies, moulds or tools used in the production of the goods; and
  - (d) each item listed in paragraph (2) which is provided outside of the United Kingdom in relation to the production or development of the goods.
- (2) The items referred to in paragraph (1)(d) are—
- (a) artwork;
  - (b) designs;
  - (c) development services;
  - (d) engineering work or services; and
  - (e) plans or drawings.
- (3) Paragraph (1)(d) applies to an item even if it is not intended to be used by the buyer in the processing, use or disposal of the goods.
- (4) Subject to paragraphs (5) and (6), the value of an item in paragraph (1) is—
- (a) if it can be readily determined—
    - (i) where the buyer or a related person of the buyer did not produce the item, the price paid by the buyer for the item; or
    - (ii) where the buyer or a related person of the buyer produced the item, the cost to the buyer or related person of producing the item; or
  - (b) otherwise, a value determined in accordance with the principles adopted by the WTO<sup>(97)</sup> in the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994<sup>(98)</sup>.

<sup>(96)</sup> Available from: <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal>. A hard copy is available for inspection free of charge at the offices of HMRC at 100 Parliament Street, London, SW1A 2BQ.

<sup>(97)</sup> Defined in section 37(1) of the Act as “the World Trade Organisation”.

(5) In respect of an item to which paragraph (1)(c) or (d) applies, where the item is used or provided in relation to other goods as well as the goods to be valued, the value is to be apportioned proportionately between the other goods and the goods to be valued.

(6) The total value of the items to which paragraph (1) applies is to be reduced by the amount of the value of the consideration provided by the seller.

#### **Transaction value: further included items - royalties**

**113.**—(1) The items referred to in regulation 108(7)(a) as specified matters to be included as elements of a transaction value further include a royalty or licence fee payable by the buyer to the seller where—

- (a) the royalty or licence fee is payable when the buyer sells the goods; and
  - (b) such payment forms part of the agreement between the buyer and seller for the import of the goods into the United Kingdom.
- (2) The value of the royalty or licence fee is, if it can be readily determined, the amount payable.

#### **Transaction value: adjusted amounts**

**114.**—(1) Where an HMRC officer is satisfied—

- (a) that a transaction value used in Method 1 valuation is substantially lower than the full value of the goods; and
- (b) as to the amount (“the adjusted amount”) which, if included in the value, would be the full value,

the officer must consider the transaction value as inaccurate and accordingly give a notification or make a correction to the Customs declaration under paragraph 14 of Schedule 1 to the Act, such that the transaction value is treated so as to include the adjusted amount.

(2) In particular, an HMRC officer must have regard to the following in order to be satisfied as to the matters in paragraph (1), namely if—

- (a) the buyer and seller of the goods have agreed any restriction on the use or disposal of the goods, other than a restriction—
  - (i) imposed further to an enactment; or
  - (ii) as to the geographic area in which the goods may be re-sold;
- (b) the seller is entitled to any of the proceeds of any disposal of the goods made by the buyer; or
- (c) the goods are to be processed by the buyer or a related person of the buyer and the seller is entitled to any of the goods as processed.

### **CHAPTER 4**

#### **Transaction value: specified matters – excluded elements**

#### **Transaction value: excluded items**

**115.**—(1) The items referred to in regulation 108(8) as specified matters to be excluded as elements from a transaction value are the following—

- (a) import duty in respect of the goods;

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(98) Available from: [http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/valuation/instruments-and-tools/gatt/arti7\\_gen\\_agreement.pdf?db=web](http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/valuation/instruments-and-tools/gatt/arti7_gen_agreement.pdf?db=web). A hard copy is available for inspection free of charge at the offices of HMRC at 100 Parliament Street, London, SW1A 2BQ.

- (b) buying commission in respect of the goods;
  - (c) the right to reproduce the goods in the United Kingdom;
  - (d) transport and insurance of the goods, after the time the goods are imported into the United Kingdom; and
  - (e) the assembly, construction, erection or maintenance of the goods or the provision of technical assistance in relation to the goods, to the extent such an activity applies after the time the goods are imported into the United Kingdom.
- (2) The value of an item in paragraph (1) is—
- (a) in respect of sub-paragraph (a), the amount of the import duty;
  - (b) in respect of sub-paragraphs (b) to (e)—
    - (i) if it can be readily determined, the amount payable for the item by the buyer of the goods; or
    - (ii) otherwise, a value determined in accordance with the principles adopted by the WTO in the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994.

**Transaction value: further excluded items - royalties**

**116.**—(1) The items referred to in regulation 108(8) as specified matters to be excluded as elements from a transaction value further include a royalty or licence fee agreed to be paid by the buyer to the seller where—

- (a) the royalty or licence fee is payable when the buyer sells the goods; and
  - (b) the agreement to pay the royalty or licence fee is a separate agreement to that entered into between the buyer and seller for the import of the goods into the United Kingdom.
- (2) The value of the royalty or licence fee is, if it can be readily determined, the amount agreed to be paid.

**Transaction value: further excluded items – finance interest**

**117.**—(1) The items referred to in regulation 108(8) as specified matters to be excluded as elements of a transaction value further include finance interest.

(2) “Finance interest” means the interest charged under a relevant finance agreement which is attributable to the finance used to purchase the goods.

(3) “Relevant finance agreement” means a written finance agreement between the buyer and seller of the goods entered into to enable the buyer to buy the goods and where—

- (a) the rate of interest payable under the finance agreement does not exceed that usually payable under similar agreements in the territory where the finance agreement was entered into; and
- (b) in cases where the buyer sells the goods within a period of 30 days beginning with the day after the date of their release to free-circulation, they are sold at no less than the value declared in the Customs declaration.

(4) The value of the finance interest is, if it can be readily determined, the amount of the interest.

**Transaction value: further excluded items – costs during storage and increase in value**

**118.**—(1) The items referred to in regulation 108(8) as specified matters to be excluded as elements from a transaction value further include in respect of the goods—

- (a) costs incurred for storage of the goods whilst they are held in a temporary storage facility or held in storage further to a special Customs procedure<sup>(99)</sup>; and
  - (b) any increase in value which occurs after the goods are imported into the United Kingdom.
- (2) Paragraph (3) applies where—
- (a) the goods are declared for a special Customs procedure and are subject to operations described in sub-paragraph (b) of paragraph 11 of Schedule 2 to the Act; and
  - (b) costs are incurred, or any increase in value occurs, by virtue of those operations (“operations costs or increase in value”).
- (3) Operations costs or increase in value only fall within paragraph (1) if they derive from those operations specified in a notice published by HMRC as operations constituting usual forms of handling of goods.
- (4) The value is, if it can be readily determined, the amount of the costs or increase in value.

## CHAPTER 5

### Methods of valuation

#### Method 1 valuation

**119.** The general rule of valuation provided by section 16(2) of the Act is the “Method 1 valuation”.

#### Method 2 valuation

**120.**—(1) “Method 2 valuation” means the valuation of chargeable goods<sup>(100)</sup> presented to Customs on import determined by the valuation method in paragraph (2).

- (2) The valuation method is—
- (a) identify the transaction value of identical goods sold for export to the United Kingdom within the 90 day period; and
  - (b) apply that value to the chargeable goods as the value of the goods which applies immediately before they are released for free-circulation<sup>(101)</sup>.
- (3) The identification is to be made in accordance with regulation 122.

#### Method 3 valuation

**121.**—(1) “Method 3 valuation” means the valuation of chargeable goods presented to Customs on import determined by the valuation method in paragraph (2).

- (2) The valuation method is—
- (a) identify the transaction value of similar goods sold for export to the United Kingdom within the 90 day period; and
  - (b) apply that value to the chargeable goods as the value of the goods which applies immediately before they are released for free-circulation.
- (3) The identification is to be made in accordance with regulation 122.

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<sup>(99)</sup> “Special Customs procedure” is defined in section 3(4) of the Act.

<sup>(100)</sup> “Chargeable goods” is defined in section 2 of the Act.

<sup>(101)</sup> See section 3(3)(a) of the Act on the free-circulation procedure.

**Method 2 and Method 3 valuation: identification of transaction values**

**122.**—(1) The identification of the transaction value of identical goods or similar goods sold for export to the United Kingdom within the 90 day period must be based on a sale of such goods which—

- (a) is made by the same seller as the seller of the chargeable goods or, where no such sale exists in the 90 day period, is made by a seller who is in the equivalent position in the supply chain as the seller of the chargeable goods;
- (b) is made to the same buyer as the buyer of the chargeable goods or, where no such sale exists in the 90 day period, is made to a buyer who is in an equivalent position in the supply chain as the buyer of the chargeable goods;
- (c) is the nearest in time to the time the chargeable goods are imported; and
- (d) is of an equivalent quantity as the sale of the chargeable goods.

(2) If more than one such sale is identified, the sale which produces the lower or lowest valuation is the transaction value to be applied.

**Method 4 valuation – other than goods to which regulation 124 applies**

**123.**—(1) “Method 4 valuation” means, subject to paragraph (2), the valuation of chargeable goods presented to Customs on import which is determined by the following steps.

(2) Paragraph (1) does not apply to goods to which regulation 124 applies.

(3) Step 1: identify whether or not there is a sale of the chargeable goods which occurs within the period of 90 days which begins immediately after the date on which the chargeable goods are imported into the United Kingdom and proceed to step 2.

(4) Step 2: if—

- (a) there is a sale, proceed to step 3; or
- (b) there is no sale and—
  - (i) step 7 has not already been applied, proceed to step 7;
  - (ii) step 7 has been applied, proceed to step 8, unless step 8 has already been applied;
  - (iii) step 8 has already been applied, cease to use Method 4 valuation.

(5) Step 3: identify the earliest sale and exclude any sale where the buyer and seller of the goods are related persons and—

- (a) if that leaves no sale, repeat step 2, beginning at paragraph (b); or
- (b) otherwise, proceed to step 4.

(6) Step 4: exclude any sale where the quantity sold is insufficient to give a representative quantity in order to determine a unit price and—

- (a) if that leaves no sale, repeat step 2, beginning at paragraph (b); or
- (b) otherwise, proceed to step 5.

(7) Step 5: include and exclude, as the case may be, as elements of the sale such of the specified matters which are not already taken into account as elements of the sale and proceed to step 6.

(8) Step 6: use the total sale value obtained by step 5 to determine the unit price of the goods and apply that unit price to all of the chargeable goods as the value of the goods which applies immediately before they are released for free-circulation.

(9) Step 7: repeat step 1 but as if the reference to “chargeable goods” were instead a reference to “similar goods which have not been processed”.



(10) Step 8: repeat step 1 but as if the reference to “chargeable goods” were instead a reference to “similar goods which have been processed” but only if the amount of the value of the processing carried out to the goods can be determined.

(11) Where step 5 applies after the application of step 8, the amount of the value of the processing carried out to the goods is to be deducted in identifying the unit price of the sold goods.

#### **Method 4 valuation – fresh fruit and vegetables**

**124.**—(1) This regulation applies to chargeable goods presented to Customs on import which are fresh fruit and vegetables meeting the description and with the commodity codes set out in the document, “Fresh fruit and vegetables under Method 4 valuation, version 1, dated 27 November 2018(102)”.

(2) The valuation of the goods is to be determined by reference to the wholesale price of the goods at the date of import, being the price as set out in a notice published by HMRC.

(3) The notice must set out the wholesale price as a unit price for 100 kg of the goods and the period to which the price applies.

(4) For the purposes of setting out wholesale prices in the notice, regard must be taken of wholesale prices from a representative sample of wholesale markets operating in the United Kingdom and the prices set out in the notice must be kept up to date.

#### **Method 5 valuation**

**125.**—(1) “Method 5 valuation” means the valuation of chargeable goods presented to Customs on import which is determined by the valuation method in paragraph (2).

(2) The valuation method is—

(a) identify—

- (i) the cost of producing the goods and the cost of the container and packaging of the goods;
- (ii) the costs of transport and insurance of the goods, up to the time the goods are imported into the United Kingdom;
- (iii) loading and handling charges of the goods, up to the time the goods are imported into the United Kingdom;
- (iv) the amount of expenses usually incurred in enabling comparable goods to be sold in the place of export of the goods; and
- (v) the amount of profit usually arising on a sale of comparable goods in the place of export of the goods;

(b) total the costs, charges and amounts in sub-paragraph (a); and

(c) apply that total as the value of the chargeable goods which applies immediately before they are released for free-circulation.

(3) The cost of producing the goods must include the cost of each item listed in paragraph (4) which is provided outside of the United Kingdom in relation to the production or development of the goods, if the cost of the item is charged to the buyer.

(4) The items referred to are—

(a) artwork;

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(102) Available from: <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal>. A hard copy is available for inspection free of charge at the offices of HMRC at 100 Parliament Street, London, SW1A 2BQ.

- (b) designs;
- (c) development services;
- (d) engineering work or services; and
- (e) plans or drawings.

(5) Paragraph (3) applies to an item even if it is not intended to be used by the buyer in the processing, use or disposal of the goods.

(6) Where goods are transported by air, the cost of the air transport is the percentage of that cost as set out in the document, “Air Transport Costs to be included in the customs value, version 1, dated 27 November 2018(103)”.

### **Method 6 valuation**

**126.** “Method 6 valuation” means the valuation of chargeable goods presented to Customs on import which is the value determined by applying—

- (a) such of the elements of valuation used in any other method of valuation in this chapter; and
- (b) the principles for the valuation of goods adopted by the WTO in the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994(104),

as are reasonable to apply in order to determine the value of the chargeable goods immediately before they are released for free-circulation.

## **CHAPTER 6**

### **Comparable, identical and similar goods and related persons**

#### **Comparable, identical and similar goods**

**127.—**(1) In this Part—

“comparable goods” means—

- (a) goods which are identical to the chargeable goods presented to Customs on import; or
- (b) where there are no such identical goods, similar goods;

“identical goods” means those goods which are—

- (a) identical in all relevant characteristics to the chargeable goods presented to Customs on import; and
- (b) produced in the same territory as those chargeable goods;

“similar goods” means goods which in comparison with the chargeable goods presented to Customs on import—

- (a) have similar characteristics and contain similar materials; and
- (b) perform the same or a similar function and are regarded as commercially interchangeable.

(2) HMRC may publish a notice specifying—

- (a) generally or in relation to particular goods the matters to be taken into account in determining whether or not goods are similar to each other; or

(103) Available from: <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal>. A hard copy is available for inspection free of charge at the offices of HMRC at 100 Parliament Street, London, SW1A 2BQ.

(104) Available from: [http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/valuation/instruments-and-tools/gatt/arti7\\_gen\\_agreemt.pdf?db=web](http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/valuation/instruments-and-tools/gatt/arti7_gen_agreemt.pdf?db=web). A hard copy is available for inspection free of charge at the offices of HMRC at 100 Parliament Street, London, SW1A 2BQ.

- (b) those goods which are similar to other goods.

### **Related persons**

**128.**—(1) Persons A and B are related persons for the purposes of this Part in the following cases—

- (a) where B is a body corporate, A is an officer of B;
- (b) A and B are partners in the same business;
- (c) A is an employee of B;
- (d) the same person controls a business carried on by A and a business carried on by B;
- (e) A controls a business carried on by B;
- (f) A and B jointly control the business of another person; or
- (g) A is a member of the same family as B.

(2) For the purposes of paragraph (1)—

- (a) a person controls a business carried on by another person where the latter is accustomed to conduct the business in accordance with the directions of the former;
- (b) a person also controls a business carried on by another person where the control is exercised through a third person who acts on that person's direction;
- (c) where a business is carried on by a company, a person controls that business where that person holds 5% or more of the voting rights in the company; and
- (d) a business referred to is not limited to a business involved in the importation of the chargeable goods presented to Customs.

(3) In paragraph (1)(g), “A is a member of the same family as B” where a relationship exists directly or indirectly between A and B which arises through blood, adoption, marriage, civil partnership or co-habitation.

(4) HMRC must publish a notice as to the relationships HMRC consider fall within paragraph (3).

## **PART 13**

### **Chargeable goods destined for RoRo listed locations**

#### **Interpretation**

**129.** In this Part—

“RoRo listed location” has the meaning given by regulation 130(1);

“RoRo vehicle” means a wheeled motorised vehicle or a non-motorised wheeled trailer which may be attached to such a vehicle, which is driven onto, and off, a train or vessel which conveys the vehicle or trailer on board and where the vehicle or trailer is used for the purposes of freight transport.

#### **RoRo listed locations**

**130.**—(1) “RoRo listed location” means a location in the United Kingdom listed in a notice published by HMRC.

(2) A location may be listed if—

- (a) the location is the Cheriton Channel Tunnel Terminal at Folkestone, Kent, or part of that location; or
- (b) it is another location where the following conditions are satisfied, namely—
  - (i) the location is only or predominantly used by RoRo vehicles as a place where goods carried by those vehicles are imported; and
  - (ii) HMRC consider that Customs procedures(105) at the location would be significantly impeded if, in respect of goods to be imported which are carried by RoRo vehicles arriving at the location, Customs declarations(106) or temporary storage declarations were not made before those goods are imported.
- (3) HMRC must state in the notice the date on which a listing is made and the date it has effect.
- (4) Except in cases of urgency, a listing must not have effect earlier than 30 days after the date on which the listing is made.
- (5) HMRC may vary or cancel any listing.
- (6) A notice must further—
  - (a) identify a location which is listed, including by reference to a postcode or a delineation on a map or plan; and
  - (b) be published as soon as practicable after it is made.
- (7) In paragraph (2)(b), “location” means a port or railway terminal or that part of a port or railway terminal in respect of which the conditions in paragraph (2)(b) are satisfied.

**Chargeable goods carried by RoRo vehicles destined for RoRo listed locations: making of declarations**

**131.**—(1) Paragraph (2) applies where chargeable goods to be imported are carried by a RoRo vehicle which is boarded onto a train or vessel destined for a RoRo listed location.

(2) A Customs declaration or a temporary storage declaration which includes a MRN must be made in respect of the goods—

- (a) by the time of boarding; or
- (b) if the place at which the vehicle is boarded is not the final place where RoRo vehicles are boarded before departure for the RoRo listed location, by the time of arrival at that final place.
- (3) The Customs declaration or temporary storage declaration must not be amended or withdrawn by the declarant after that time, other than to substitute one RoRo listed location for another, without the consent of an HMRC officer.
- (4) Where paragraph (2) applies in respect of chargeable goods carried by a RoRo vehicle, evidence of compliance must be produced to an HMRC officer, when required to do so, by a person in possession or control of the RoRo vehicle.
- (5) Paragraph (6) applies to a person who is responsible for providing the service of operating a train or vessel destined for a RoRo listed location on to which a RoRo vehicle carrying goods is boarded.
- (6) When required to do so by an HMRC officer, the person must produce to the officer evidence that the person reasonably believed that paragraph (2) had been complied with in respect of every RoRo vehicle carrying goods on board the train or vessel.

(105) See section 3(3) of the Act.

(106) See section 3 of the Act.

(7) A requirement to produce evidence may be made, and evidence may be required to be provided, before a train or vessel arrives at a RoRo listed location.

(8) The evidence provided must be of a type, and in a form, as specified in a notice published by HMRC.

## PART 14

### Fees

#### Interpretation

**132.** In this Part, “proper officer” means a person engaged by the orders or with the concurrence of the HMRC Commissioners who acts with, or in place of, an HMRC officer in the exercise of a function of HMRC described in regulation 139.

#### Fees authorised

**133.** The authority to charge a fee in the cases described in regulations 134 to 138 is subject to regulation 139.

#### Requested attendance at premises or vehicles on a Sunday or other non-working days

**134.—**(1) Where a person requests attendance by an HMRC officer or proper officer at premises or a vehicle because—

- (a) the person is required—
  - (i) to make a report in respect of a vehicle under section 35 of CEMA 1979(107); or
  - (ii) to deliver an account in respect of a ship under section 36 of CEMA 1979(108); or
- (b) the attendance is required in order that goods may be exported from the United Kingdom in accordance with the applicable export provisions(109),

HMRC may charge that person a fee in relation to the attendance but only where the attendance is requested to occur on a day which is not a working day but treating a Saturday as a working day for the these purposes.

(2) In this regulation, “vehicle” has the same meaning as it has in section 1(1) of CEMA 1979(110).

#### Requested attendance further to section 159(1) of CEMA 1979

**135.—**(1) Where a person requests attendance by an HMRC officer or proper officer at premises in order for the officer to examine and take account of goods under section 159(1) of CEMA 1979(111), HMRC may charge that person a fee in relation to the attendance.

(2) But a fee may be charged only if the premises attended—

(107) Section 35 of CEMA 1979 is amended by Schedule 1 to the Isle of Man Act 1979 (c. 58), sections 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48), Schedule 1 to the Territorial Sea Act 1987 (c. 49), section 35 of the Immigration, Asylum and Nationality Act 2006 (c. 13) and paragraph 27 of Schedule 7 to the Act and S.I. 1992/3095.

(108) Section 36 of CEMA 1979 is amended by Schedule 1 to the Isle of Man Act 1979 and sections 37, 38 and 46 of the Criminal Justice Act 1982.

(109) Section 35 of the Act defines for the purposes of Part 1 of the Act what is meant by an export of goods from the United Kingdom being in accordance with the applicable export provisions.

(110) The definition of “vehicle” is amended by paragraph 4(2)(l) of Schedule 7 to the Act.

(111) Section 159(1) of CEMA 1979 is amended by Schedule 1 to the Isle of Man Act 1979, Schedule 4 to the Finance Act 1984 (c. 43), section 117 of the Finance Act 2008 (c. 9) and paragraph 107 of Schedule 7 to the Act.

- (a) are operated for the purposes of a commercial activity; or
- (b) are a dwelling or form part of a dwelling.

### **Goods requiring special care or treatment**

**136.**—(1) Paragraph (2) applies where—

- (a) directions as to the movement or storage of goods are given further to section 30 of CEMA 1979<sup>(112)</sup>;
- (b) the goods are of a combustible or inflammable nature or otherwise of such a hazardous nature as to require special care or treatment; and
- (c) in consequence, HMRC must undertake special measures which would not otherwise be required—
  - (i) to store or transport the goods;
  - (ii) to examine and take account of the goods under section 159(1) of CEMA 1979; or
  - (iii) to take samples of the goods under section 160(1) of CEMA 1979.

(2) HMRC may charge the person in possession or control of the goods (other than an HMRC officer or proper officer) or the owner of the goods a fee in relation to the special measures.

### **Examination and taking samples of goods**

**137.**—(1) Paragraph (2) applies where a person makes a Customs declaration in respect of goods and a requirement exists—

- (a) to examine and take account of the goods under section 159(1) of CEMA 1979;
- (b) to take of samples of the goods under section 160(1) of CEMA 1979; or
- (c) to examine or take of samples of the goods in order that an HMRC officer may provide a ruling further to section 24 of the Act.

(2) HMRC may charge the person making the declaration a fee in relation to, as appropriate, the examination, account or taking of samples—

- (a) undertaken on behalf of HMRC by a person other than an HMRC officer or proper officer; or
- (b) undertaken by an HMRC officer or proper officer—
  - (i) in the case described in paragraph (1)(c); or
  - (ii) if the person has failed to comply with directions given further to section 30 of CEMA 1979 in relation to the goods which are the subject of the declaration.

### **Destruction of goods**

**138.**—(1) Paragraph (2) applies where goods seized by HMRC are destroyed.

(2) HMRC may charge the person who was in possession or control of the goods before they were seized (other than an HMRC officer or proper officer) or the owner of the goods a fee in relation to the destruction of the goods carried out on behalf of HMRC by a person other than an HMRC officer or proper officer.

<sup>(112)</sup> Section 30 of CEMA 1979 is amended by sections 37 and 46 of the Criminal Justice Act 1982 and paragraph 22 of Schedule 7 to the Act.

### **Fees authorised and functions**

**139.** In a case described in a preceding regulation of this Part, the authority to charge a fee exists only if, or to the extent that, the function or power in relation to which a fee may be charged is exercised—

- (a) for the purposes of, or otherwise in connection with, import duty; and
- (b) in relation to—
  - (i) the acceptance of a Customs declaration(**113**);
  - (ii) the verification of a Customs declaration(**114**); or
  - (iii) the release or discharge of goods to and from a Customs procedure(**115**).

### **Amount of fees**

**140.**—(1) In a case where a fee is authorised to be charged, the amount of the fee which is authorised is limited to the costs incurred, or to be incurred, by HMRC in exercising the function or power in relation to which a fee may be charged.

(2) The amount authorised may include—

- (a) either or both of the following—
  - (i) a fixed amount (“flat rate”) representing the costs usually incurred in a case mentioned in regulations 134 to 138; and
  - (ii) an amount calculated by reference to an hourly rate of an HMRC officer or proper officer; and
- (b) an amount in reimbursement of charges incurred by HMRC, including charges for the preparation of reports or for the transport or postage of goods or samples of goods.

(3) HMRC must publish a notice specifying a list of the flat rates and hourly rates which are authorised and which have effect from time to time and the date from which the rates have effect.

### **Discretion to reduce or waive fees**

**141.**—(1) If it is fair and reasonable to do so having regard to the circumstances in a particular matter, an HMRC officer may decide that a fee which would otherwise be charged be reduced or waived.

(2) In particular, where a fee is authorised to be charged by regulation 134 or 135, an HMRC officer may decide that the fee be waived if the attendance requested would usually have been carried out without the request.

### **Payment of fees**

**142.**—(1) HMRC must notify a fee to the person liable to pay it.

(2) A fee is payable within 30 days of the date on which it is so notified and must be paid in the form and manner provided by notice published by HMRC.

(3) Paragraphs (4) and (5) apply where a fee is authorised to be charged by regulation 134 or 135.

(4) HMRC may require a fee, or part of it, to be paid before making the attendance requested.

(5) Where—

- (a) HMRC makes arrangements to attend; and

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(113) For acceptance of Customs declarations, see paragraphs 10 to 12 of Schedule 1 to the Act.

(114) For verification of Customs declarations, see paragraph 13 of Schedule 1 to the Act.

(115) For release and discharge of goods to and from a Customs procedure, see paragraph 17 of Schedule 1 to the Act.

(b) the request is withdrawn before the attendance occurs,  
HMRC may charge so much as a fee as is reasonable in the circumstances, having regard to the costs incurred or to be incurred which cannot be avoided.

## PART 15

### Transitional and savings provisions

#### CHAPTER 1

##### Preliminary

#### Interpretation

**143.** In this Part, the following expressions<sup>(116)</sup> have the same meaning as they do for the purposes of the UCC—

- “Common Customs Tariff”<sup>(117)</sup>;
- “customs procedure”, and “accepted”, “discharged” and “released” and cognate expressions as used in relation to a customs procedure<sup>(118)</sup>;
- “customs declaration”, except where reference is made to such a declaration provided by or under the Act;
- “customs supervision”;
- “customs territory of the Union”;
- “decision taken upon application”<sup>(119)</sup>;
- “non-Union goods”;
- “special procedure” and the following types of special procedure: “end-use procedure”, “outward processing procedure”, “storage procedure” and “transit procedure”<sup>(120)</sup>;
- “temporary storage”;
- “temporary storage declaration”, except where reference is made to a such declaration provided under the Act;
- “temporary storage facility”<sup>(121)</sup>;
- “Union goods”; and
- “verification”<sup>(122)</sup>.

#### CHAPTER 2

##### Continued effect and cessation of effect of the EUCL and evidence

#### Continued effect and cessation of effect of the EUCL

**144.**—(1) Where as provided by this Part the EUCL continues to have effect in relation to goods on and after exit day, paragraph (2) applies to the following matters—

<sup>(116)</sup> The expressions are found in Article 5 of the UCC except where otherwise indicated.

<sup>(117)</sup> See also Article 56 of the UCC.

<sup>(118)</sup> The customs procedures are the release for free circulation procedure and the types of special procedure.

<sup>(119)</sup> See Article 22 of the UCC.

<sup>(120)</sup> See also Title VII of the UCC concerning special procedures.

<sup>(121)</sup> See Articles 147 and 148 of the UCC.

<sup>(122)</sup> See Article 188 of the UCC.



- (a) any approval or authorisation granted by, or on behalf of, HMRC or the equivalent competent authority of a member State under the EUCL or treated as valid immediately before exit day under Article 251 of the Delegated Regulation;
  - (b) a decision given by HMRC which is a decision taken upon application;
  - (c) any rates of currency exchange published by HMRC; or
  - (d) any guarantee provided in respect of any requirement under the EUCL.
- (2) Any of the matters listed in paragraph (1) which applies in relation to the goods immediately before exit day continues to apply for so long as the EUCL continues to have effect in relation to the goods, unless and until HMRC amends or revokes the same in any particular case.
- (3) For the purposes of the continued effect of the EUCL in relation to goods as provided by this Part, the following modifications of the EUCL apply—
- (a) non-Union goods are to be treated as goods in respect of which—
    - (i) a liability to import duty under the Act may be incurred as if they were chargeable goods<sup>(123)</sup>;
    - (ii) circumstances under the EUCL in which a liability to an EU customs duty applies to non-Union goods on import are to be treated as circumstances in which a liability to import duty under the Act is incurred;
    - (iii) except as provided by regulation 150(3), the rate of duty applicable to the goods is that determined by the Common Customs Tariff; and
  - (b) any reference in the EUCL to a relief from liability to an EU customs duty on import in respect of non-Union goods is to be treated as a relief from liability to import duty under the Act<sup>(124)</sup> in respect of such goods.
- (4) Except for those modifications, the continuation or cessation of effect of the EUCL in relation to goods as provided by this Part does not—
- (a) affect the operation of the EUCL or anything duly done or suffered under it;
  - (b) affect any right, privilege, obligation or liability acquired, accrued or incurred under the EUCL or any enactment in relation to the EUCL;
  - (c) affect any penalty, forfeiture or punishment incurred in respect of any offence under an enactment in relation to the EUCL; or
  - (d) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment.
- (5) Notwithstanding that the EUCL ceases to have effect in relation to goods, any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the EUCL had not ceased to have effect in relation to the goods.
- (6) When the EUCL ceases to have effect in relation to goods as provided by this Part, the Act and paragraphs (7) and (8) then apply in relation to the goods.
- (7) The goods are to be treated as chargeable goods imported into the United Kingdom, except where the goods are located outside of the United Kingdom other than in accordance with a customs procedure when the EUCL ceases to have effect.
- (8) Where a requirement of the EUCL has been met or not met in relation to the goods, any equivalent requirement imposed by or under the Act is also to be treated as having been met or not met, as the case may be, in relation to the goods.

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<sup>(123)</sup>“Chargeable goods” is defined in section 2 of the Act.

<sup>(124)</sup>See section 19 of the Act concerning a relief from a liability to import duty.

(9) Where the EUCL continues to have effect in relation to goods on or after exit day by virtue of this Part, the cessation of effect of the EUCL provided by paragraph 1(1) of Schedule 7 to the Act which would otherwise apply in relation to the goods does not apply.

#### **Evidence required by notice**

**145.**—(1) HMRC may notify a person to provide evidence to HMRC concerning any of the following in relation to goods to which this Part applies—

- (a) whether or not the goods are non-Union goods;
  - (b) when the goods are imported into the United Kingdom;
  - (c) which customs procedure applies to the goods;
  - (d) the stage of a customs procedure reached in relation to the goods; or
  - (e) any other matter which enables HMRC to determine whether or not the EUCL continues or ceases to have effect in relation to the goods on or after exit day.
- (2) HMRC must in, or with, the notification state by when compliance is required.
- (3) HMRC may publish a notice specifying—
- (a) the type of evidence which may be required when a notification is given; and
  - (b) the form and manner in which evidence is to be provided to HMRC.

### **CHAPTER 3**

#### **Non-Union goods imported before exit day**

#### **Transitional and saving provision under chapter 3**

**146.**—(1) This chapter applies in relation to goods which—

- (a) have been imported into the United Kingdom before exit day; and
- (b) are non-Union goods.

(2) Where under this chapter the EUCL continues to have effect in relation to the goods, the EUCL ceases to have effect in relation to the goods as provided by chapter 5, except as provided by regulation 147(2).

(3) For the purposes of paragraph (1)(a), where goods form part of a consignment and only part of the consignment is imported before exit day, all of the goods in the consignment are to be treated as imported before exit day.

#### **Goods notified as arriving on or after exit day**

**147.**—(1) Where notification of the arrival of the goods is made to HMRC on or after exit day, the EUCL continues to have effect in relation to the goods on and after exit day.

(2) The EUCL ceases to have effect in relation to the goods when a customs declaration or a temporary storage declaration is made in respect of the goods and the declaration made is to be treated as the equivalent declaration provided by or under the Act.

#### **Goods held in a temporary storage facility**

**148.**—(1) Where the goods are held in a temporary storage facility as a requirement of temporary storage immediately before exit day, subject to paragraph (2), the EUCL continues to have effect in relation to the goods on and after exit day.

(2) But on and after exit day, Article 148(5) of the UCC applies only in respect of temporary storage facilities in the United Kingdom.

#### **Goods declared to a customs procedure**

**149.**—(1) Paragraph (2) applies where before exit day a declaration is made to HMRC in respect of the goods to a customs procedure and—

- (a) before exit day the declaration has not been accepted by HMRC; or
- (b) if the declaration has been accepted before exit day, the goods have not been released before exit day by HMRC to the procedure.

(2) The EUCL continues to have effect in relation to the goods on and after exit day.

#### **Goods located in the United Kingdom released to a special procedure**

**150.**—(1) Paragraph (2) applies where before exit day a declaration is made to HMRC in respect of the goods to a special procedure, except the end-use procedure, and—

- (a) before exit day the goods—
  - (i) are released by HMRC to the procedure; but
  - (ii) are not discharged by HMRC from the procedure; and
- (b) immediately before exit day, the goods are located in the United Kingdom.

(2) The EUCL continues to have effect in relation to the goods on and after exit day.

(3) But where—

- (a) there is a breach of the procedure on or after exit day;
- (b) the procedure is not discharged; and
- (c) a liability to import duty is treated as incurred in respect of the goods in consequence of the breach,

the rate of duty is to be determined by reference to the customs tariff as it applies under the Act at the time of the breach.

### **CHAPTER 4**

#### **Transit, outward processing and end-use procedures**

##### **Transit procedure**

**151.** Where Union goods have been imported into the United Kingdom before exit day and are subject to the transit procedure, the EUCL continues to have effect in relation to the goods on and after exit day.

##### **Outward processing procedure**

**152.**—(1) Paragraph (2) applies where before exit day—

- (a) a declaration is made to HMRC in respect of Union goods to the outward processing procedure; and
- (b) the goods have not been discharged from the procedure.

(2) The EUCL continues to have effect in relation to the goods on and after exit day.

**End-use procedure**

**153.**—(1) Paragraph (2) applies where—

- (a) before exit day—
  - (i) a declaration is made to HMRC in respect of non-Union goods to the end-use procedure; and
  - (ii) the goods are released by HMRC to the procedure; and
- (b) immediately before exit day the goods are Union goods but subject to customs supervision.

(2) The EUCL continues to have effect in relation to the goods on and after exit day.

**Cessation of the EUCL**

**154.** The continued effect of the EUCL in relation to goods as provided by this chapter ceases to have effect in relation to the goods as provided by chapter 5.

**CHAPTER 5****Cessation of effect of the EUCL****Cessation of effect of the EUCL**

**155.**—(1) Paragraph (2) applies where, as provided by chapter 3 or 4, the EUCL continues to have effect in relation to goods on and after exit day.

(2) Except as provided by regulation 147(2), the EUCL ceases to have effect in relation to the goods on the earliest to occur of the following—

- (a) where a person fails to comply with regulation 145 in relation to the goods;
- (b) except in relation to goods to which regulation 152 applies, on the removal of the goods from the United Kingdom;
- (c) where the goods are subject to temporary storage or a special procedure, when a customs declaration is made in respect of the goods;
- (d) except where regulation 153(2) applies, on release of the goods for free circulation;
- (e) where regulation 153(2) applies, when—
  - (i) the goods are destroyed or forfeited; or
  - (ii) customs supervision of the goods ends by reason that a case set out in Article 254(4) (a) or (c) of the UCC applies;
- (f) where the goods are subject to a special procedure except a storage procedure, on 29th March 2020; or
- (g) where the goods are subject to a storage procedure, on the goods being discharged from the procedure.

(3) Where paragraph (2)(a) applies, the Customs procedure provided by or under the Act applies which is equivalent to the customs procedure which applied when the EUCL ceased to have effect.

(4) Where paragraph (2)(c) applies, the declaration made is to be treated as the equivalent declaration provided by or under the Act.

(5) Where paragraph (2)(f) applies—

- (a) the goods become subject to the special Customs procedure<sup>(125)</sup> or outward processing procedure provided by or under the Act which is equivalent to the customs procedure

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<sup>(125)</sup> “Special Customs procedure” is defined in section 3(4) of the Act.

which applied to the goods immediately before the EUCL ceased to have effect in relation to the goods; and

- (b) any approval or authorisation granted on or after exit day in relation to the procedure which existed immediately before the EUCL ceased to have effect in relation to the goods is to be treated as an approval or authorisation which has effect for the equivalent procedure provided by or under the Act.

## CHAPTER 6

### Special procedures: additional provision

#### **Goods located outside the United Kingdom**

**156.**—(1) Paragraph (2) applies in relation to non-Union goods imported into the United Kingdom where—

- (a) before exit day—
  - (i) a declaration is made to HMRC in respect of the goods to a special procedure and the goods are released by HMRC to the procedure but are not discharged by HMRC from the procedure; or
  - (ii) a declaration is made to a customs authority outside the United Kingdom in respect of the goods to the transit procedure and the goods are being moved, in accordance with the procedure, to the United Kingdom; and
- (b) immediately before exit day, the goods are located outside the United Kingdom in accordance with the procedure.

(2) The EUCL continues to have effect in relation to the goods on and after exit day.

(3) Where paragraph (2) applies, the EUCL ceases to have effect in relation to the goods on the earliest to occur of the following—

- (a) where a person fails to comply with regulation 145 in relation to the goods;
- (b) except where paragraph (1)(a)(ii) applies, if the goods are not returned to the United Kingdom before 29th March 2020;
- (c) when a further customs declaration to a special procedure is made to HMRC in respect of the goods; or
- (d) on release of the goods for free circulation.

(4) Where paragraph (3)(a) applies, the Customs procedure provided by or under the Act applies which is equivalent to the customs procedure which applied when the EUCL ceased to have effect in relation to the goods.

(5) Where paragraph (3)(b) applies, the customs procedure is to be treated as discharged when the EUCL ceases to have effect in relation to the goods.

(6) Where paragraph (3)(c) applies, the declaration made is to be treated as the equivalent declaration provided by or under the Act.

#### **Goods discharged from a customs procedure**

**157.**—(1) Where before exit day non-Union goods are discharged from a customs procedure but verification in relation to the goods is not completed, the EUCL continues to have effect in relation to the goods on and after exit day.

(2) The EUCL ceases to have effect in relation to the goods on the earliest to occur of the following—

- (a) where a person fails to comply with regulation 145 in relation to the goods;

- (b) on completion of the verification; or
- (c) on 29th March 2020.
- (3) Where paragraph (2)(a) or (c) applies, the following apply in relation to the goods—
  - (a) paragraphs 13 and 14 of Schedule 1 to the Act<sup>(126)</sup>; and
  - (b) paragraph 4 of Schedule 6 to the Act<sup>(127)</sup>.

## CHAPTER 7

### Union goods imported

#### Union goods: movement beginning before exit day

**158.**—(1) This chapter applies to goods which immediately before exit day are Union goods and where—

- (a) before exit day, the goods are located in the customs territory of the Union except the United Kingdom;
  - (b) the person (“P”) who owns, controls or possesses the goods intends the goods to be moved—
    - (i) to the United Kingdom as the final place of destination of the goods; or
    - (ii) through the United Kingdom to a place of destination elsewhere; and
  - (c) before exit day P causes the goods to commence their movement from the customs territory of the Union to the United Kingdom.
- (2) Except in relation to goods to which paragraph (4) applies, the goods commence their movement to the United Kingdom—
- (a) in a case where P, or another person on behalf of P, brings the goods to the United Kingdom, when P or that person collects the goods in order to bring them to the United Kingdom; or
  - (b) in any other case, when P despatches the goods to the United Kingdom.
- (3) Paragraph (4) applies—
- (a) to goods which are non-commercial goods or personal gifts; and
  - (b) where an individual brings the goods to the United Kingdom contained in the individual’s accompanied baggage or by the goods being worn by the individual.
- (4) The goods commence their movement to the United Kingdom when the aircraft, train or vessel on which P is to bring the goods to the United Kingdom is scheduled to depart for the United Kingdom.
- (5) For the purposes of this regulation, it does not matter that in the course of the movement of goods from the customs territory of the Union that the goods may move temporarily outside the customs territory before their arrival in the United Kingdom, so long as that movement occurs without the goods being required to be subject to a customs procedure.
- (6) But this chapter does not apply to Union goods to which chapter 4 applies.

#### Continued effect of the EUCL

**159.** The EUCL continues to have effect on and after exit day in relation to the goods to which this chapter applies but the presumption in Article 153(1) of the UCC does not apply in relation to the goods.

<sup>(126)</sup> Paragraphs 13 and 14 of Schedule 1 to the Act concern the verification of Customs declarations.

<sup>(127)</sup> Paragraph 4 of Schedule 6 to the Act concerns the period before the end of which a notification of a liability to pay import duty must be given.

### **Requirement to provide evidence of import of Union goods**

**160.**—(1) Subject to regulation 161, on and after exit day HMRC may notify any person who imports goods and claims the goods are those to which this chapter applies to provide evidence to HMRC concerning any of the following—

- (a) whether or not the goods are Union goods;
  - (b) when the goods are imported into the United Kingdom;
  - (c) the place from which, or when, the goods commenced their movement to the United Kingdom; or
  - (d) any other matter which enables HMRC to determine whether or not the EUCL has effect in relation to the goods on or after exit day.
- (2) HMRC must in, or with, the notification state by when compliance is required.
- (3) HMRC may publish a notice specifying—
- (a) the type of evidence which may be required when a notification is given; and
  - (b) the form and manner in which evidence is to be provided to HMRC.

(4) Where a person fails to provide evidence in relation to goods as required by this regulation, the EUCL ceases to have effect in relation to the goods.

### **Exceptions to the requirement to provide evidence of import of Union goods**

**161.**—(1) The requirement in regulation 160(1) to provide evidence does not apply in the following cases.

- (2) Case 1 is where the goods—
- (a) are imported into the United Kingdom by aircraft;
  - (b) the aircraft departed for the United Kingdom from an airport within the customs territory of the Union except the United Kingdom;
  - (c) the scheduled departure time for the aircraft was before exit day; and
  - (d) the carriage of the goods is made under cover of a single transport document.
- (3) “Single transport document” means a document which—
- (a) is issued by the carrier of the goods in the place in the customs territory of the Union from which the aircraft departed;
  - (b) is provided to the sender of the goods;
  - (c) identifies the goods to which it applies;
  - (d) contains or records a contractual obligation to transport the goods to a destination named in the document; and
  - (e) lists the persons entitled to receive the goods.
- (4) Case 2 is where goods—
- (a) are imported into the United Kingdom by ship;
  - (b) the ship departed for the United Kingdom from a port within the customs territory of the Union except the United Kingdom;
  - (c) the scheduled departure time for the ship was before exit day; and
  - (d) the operator of the ship is authorised by a customs authority in the customs territory of the Union to transport Union goods by the ship within the customs territory, or temporarily outside it, without the goods being transported ceasing to be Union goods.

(5) Cases 1 and 2 apply to goods whether or not they originate from the place in the customs territory of the Union from which the aircraft or ship, as the case may be, departed.

29th November 2018

*Rebecca Harris*  
*Craig Whittaker*  
Two of the Lords Commissioners of Her  
Majesty's Treasury



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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

The Regulations are made by 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 (introductory provisions)**

Part 1 provides for citation and commencement and definitions used in the Regulations. The Regulations will be brought into force in relation to approvals and authorisations on 2nd January 2019 and the remainder by way of a separate statutory instrument made under section 52 of the Act.

### **Part 2 (presentation)**

Part 2 makes provision further to that contained in section 34 of the Act in relation to the presentation of goods to Customs. It includes who is required to give a notification of importation to HMRC and provides for the contents of a notification and the time limits for giving it. It also sets out where a notification is treated as given, when a waiver from the requirement may be given and that a notification is not required in relation to goods temporarily unloaded.

### **Part 3 (temporary storage)**

Part 3 provides for the making of temporary storage declarations when goods are subject to the control of an HMRC officer further to paragraph 1(2) of Schedule 1 to the Act. It includes who is required to make a temporary storage declaration to HMRC and provides for the contents of a declaration and when it is required to be made. It also sets out restrictions on making amendments to a temporary storage declaration, when a declaration is treated as withdrawn and for section 5(1) of the Act to apply to goods where a declaration is not made or is treated as withdrawn such that the goods are liable to forfeiture. Restrictions on carrying out activities in relation to goods subject to control are imposed on a person who operates a temporary storage facility where the goods are held. Provision is made for forfeiture of the goods in certain cases if there is a failure to comply with the restrictions.

### **Part 4 (declarations)**

Part 4 makes provision further to that contained in Schedule 1 to the Act in relation to Customs declarations. A requirement is imposed, subject to exceptions, that a person must be established in the United Kingdom in order to be eligible to make a Customs declaration. Provision is made, in specified cases, which allows Customs declarations to be made orally, in a particular paper form or by conduct and provision is made about notifications of importation and acceptance and discharge of declarations in such cases.

This Part also makes provision concerning the process of simplified Customs declarations by way of making a declaration in two parts, a simplified Customs declaration and a supplementary Customs declaration. Provision includes who may use the process, when the parts of the Customs declaration must be made and cases where a supplementary Customs declaration is not required. This Part also provides for when a simplified Customs declaration may be made by entering details in the declarant’s electronic system, known as the EIDR procedure.

Part 4 also provides for the treatment of consignments of goods which comprise different types of goods and for a procedure by which certain individuals, known as qualifying travellers, may make a Customs declaration in an electronic form for particular goods contained in their baggage.

#### **Part 5 (notification of liability)**

Part 5 provides for those cases in which a notification of liability to pay import duty is treated as met by the release of goods to a Customs procedure. This Part also provides for when a liability is discharged.

#### **Part 6 (payment)**

Part 6 provides for the dates by which a liability to import duty must be paid. The period for payment may be suspended in specified cases, including where an application for remission of duty is made, where there is a joint liability but one of those liable is not involved in a breach of a relevant Customs obligation (see section 6 of the Act) or where goods are subject to condemnation proceedings. Provision is also made for interest to be payable on late payments.

#### **Part 7 (remission and repayment of import duty)**

Part 7 makes provision that in specified cases (reduced duty cases) an application may be made to HMRC for a liability to import duty to be discharged (remitted) or for payments made in respect of a liability to be repaid. Provision is made concerning who may make an application, the period for doing so, the contents of applications and the matters upon which HMRC must be satisfied in order to grant an application. Goods the subject of an application must be available for inspection, subject to exceptions, and movement of the goods must be notified to HMRC. An application may be rejected or accepted and, if accepted, granted or refused. An application may be granted subject to compliance with conditions, including that the goods are destroyed, removed from the United Kingdom or made subject to another Customs procedure. Provision is made where HMRC must pay interest on repayments.

This Part also provides for treating as a nullity a determination to remit or repay made in error. Further provision is made for cases where remission or repayment may be made without an application, including where a breach or failure has occurred in relation to specified matters but which has no significant effect on a Customs procedure, where there is no avoidance of a liability to pay import duty, where goods leave the United Kingdom, where assistance is provided to HMRC in relation to a breach or failure or where the liability does not exceed £9.

#### **Part 8 (Customs agents)**

Part 8 makes provision further to that in section 21 of the Act in relation to Customs agents. With exceptions, Customs agents must be established in the United Kingdom. Transitional provision is included in relation to persons acting as the equivalent of Customs agents before exit day. Provision is made for the disclosure of the appointment and withdrawal of an appointment of a person as a Customs agent.

#### **Part 9 (approvals and authorisations and authorised economic operators)**

Part 9 makes provision in relation to applications for approvals or authorisations generally in the Regulations, subject to exceptions. Provision includes cases where an application may not be made, the periods within which HMRC must decide if an application falls to be determined, appeals to the appeals tribunal if the application is not determined in accordance with the Regulations, the periods within which a determination to grant or refuse an application must be made and notified and cases where extensions of time apply. Provision is also made to require approved or authorised

persons to notify HMRC of changes in circumstances, for the amendment, suspension or revocation of approvals and authorisations and for transitional provision for approvals or authorisations granted under EU legislation before exit day. This Part also provides for the eligibility criteria for a person to be authorised as an authorised economic operator.

#### **Part 10 (guarantees)**

Part 10 makes provision in relation to guarantees which are required to be provided by or under the Regulations and in relation to special Customs procedures in respect of a liability to import duty or a potential liability. Provision includes the approval of guarantees and guarantors and requirements concerning the giving of a guarantee in respect of particular goods declared for a Customs procedure (a single guarantee) and the giving of a guarantee in respect of all goods declared for special Customs procedures in a calendar month (a comprehensive guarantee). Guarantees must be given for a specified amount and provision is included for circumstances when the amount may be reduced. Further provision is made for the waiver and discharge of guarantees and cases where no guarantee is required.

#### **Part 11 (domestic goods)**

Part 11 makes provision further to that in section 33 of the Act as to goods which are, or are not, to be regarded as domestic goods.

#### **Part 12 (valuation of chargeable goods)**

Part 12 makes further provision to that in section 16 of the Act in respect of the valuation of chargeable goods for the purposes of Part 1 of the Act. Provision is made for six methods of valuation, the order in which they are to be applied and the evidence required to support a valuation. In particular cases, a Customs declaration may be made where a valuation is not determined. Where a valuation of goods is based upon a transaction value (see section 16(3) of the Act), provision is made for specified matters to be included or excluded in determining that value.

#### **Part 13 (chargeable goods destined for RoRo listed locations)**

Part 13 makes provision for Customs declarations or certain temporary storage declarations (see Part 3 of the Regulations) to be made before goods are imported into the United Kingdom. This applies where the goods are carried on certain vehicles (RoRo vehicles) boarded onto a train or vessel destined for locations (RoRo listed locations) listed in a notice made by HMRC.

#### **Part 14 (fees)**

Part 14 provides authority for the charging of fees, limited to the costs incurred or to be incurred, where HMRC exercises functions or powers in relation to import duty. This includes specified cases where an attendance by an HMRC officer is required, where goods require special care or treatment or an examination or where seized goods are destroyed. Provision is made for the reduction or waiver of fees and for payment.

#### **Part 15 (transitional and savings provisions)**

Part 15 makes transitional and savings provision. It provides for cases where EU legislation, which would otherwise cease to have effect by virtue of paragraph 1(1) of Schedule 7 to the Act, continues to have effect with modifications in specified cases on or after exit day. The modifications include that import duty under the Act has effect in relation to goods imported and not EU customs duty. Provision is also made for the cessation of the continued effect of the EU legislation.

**Status:** *This is the original version (as it was originally made).*

This instrument is one of a group of instruments covered by a single overarching HMRC impact assessment which will be published on 4 December 2018 and will be available on the website at <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal>.