
STATUTORY INSTRUMENTS

2018 No. 1248

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

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).

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- (b) the previous approval was revoked for failure to comply with the conditions of the approval; and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- (a) a previous authorisation as an authorised economic operator was revoked for failure to comply with the conditions of the authorisation; and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⁽¹⁾;
 - (ii) an inward processing procedure⁽²⁾;
 - (iii) an authorised use procedure⁽³⁾; or
 - (iv) a temporary admission procedure⁽⁴⁾,

(1) “An outward processing procedure” is defined in section 36(2) of the Act.

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

(3) “An authorised use procedure” is defined in paragraph 13 of Schedule 2 to the Act.

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

- 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⁽⁵⁾, 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.
- (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

(5) “A storage procedure” is defined in paragraph 2 of Schedule 2 to the Act.

- (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⁽⁶⁾ and domestic goods⁽⁷⁾ 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.

⁽⁶⁾ “Chargeable goods” is defined in section 2 of the Act.

⁽⁷⁾ “Domestic goods” is defined in section 33 of the Act.