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STATUTORY INSTRUMENTS

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**2018 No. 1249**

**EXITING THE EUROPEAN UNION  
CUSTOMS**

**The Customs (Special Procedures and Outward  
Processing) (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)*  
*and (3)*

The Treasury, in exercise of the powers conferred by sections 19, 21(7), 32(7), (8) and (13), 33(8) and 36(8) and (9) of, and paragraph 1(7) of Schedule 1, paragraphs 1 to 3, 9, 10, 12 to 18 and 20 to 23 of Schedule 2, paragraphs 6 and 8 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.

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

**PART 1**

**Introductory Provisions**

**Citation and commencement**

**1.—**(1) These Regulations may be cited as the Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018.

(2) Subject to paragraph (3), these Regulations come into force on such day as the Treasury may by regulations under section 52 of the Act appoint.

(3) The following regulations come into force on 2nd January 2019—

(a) this regulation;

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<sup>(1)</sup> 2018 (c. 22) (“the Act”).

- (b) regulation 2 (interpretation), insofar as it relates to the provisions specified in subparagraphs (c) to (j);
- (c) regulation 3(2), (3) and (4) (authorisation);
- (d) regulation 9 (eligibility for authorisation or approval);
- (e) regulation 10 (period for which an authorisation is to have effect);
- (f) regulations 19 to 21, 22(2), (3)(b) and (4) and 23(1) (authorisation to declare goods for an inward processing procedure);
- (g) regulations 27, 28(1), (4)(b) and (5) to (10), 29(1) to (3) and (7)(c) and 30 (authorisation to declare goods for an outward processing procedure);
- (h) regulations 32 and 33 (authorisation to declare goods for an authorised use procedure);
- (i) regulations 36, 37, 38(3) and 39 (authorisation to declare goods for a temporary admission procedure);
- (j) regulations 45 and 46 (authorisation to use equivalent goods).

## Interpretation

### 2.—(1) In these Regulations—

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

“the import duty regulations” means the Customs (Import Duty) (EU Exit) Regulations 2018(2);

“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;

“agricultural policy measure” means a provision made by or under any enactment relating to the import and export of the goods specified at points (1), (2) and (3) of the document entitled “Sensitive Goods” published on 27 November 2018(3);

“approval notification” means a notification issued under regulation 89 of the import duty regulations;

“charges” has the meaning given in regulation 94 of the import duty regulations;

“classification code” means the eight digit code given to goods in accordance with section 8(1)(b) of the Act;

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

- (a) Part 1 of the Act;
- (b) CEMA 1979(4);
- (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 the import duty regulations;

(2) [S.I. 2018/1248](#).

(3) The document entitled “Sensitive Goods” is available at <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal> and a hard copy is available for inspection, free of charge, at the offices of HMRC at 100 Parliament Street, London, SW1A 2BQ.

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

“customs warehouse” means premises owned, occupied or otherwise used by a person who is approved by HMRC under these Regulations to operate the premises as a place to keep goods declared for a storage procedure<sup>(5)</sup>;

“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;

“equivalent chargeable goods” means chargeable goods<sup>(6)</sup> that are of the same, or of substantially the same, description as domestic goods<sup>(7)</sup> intended to be declared for an outward processing procedure<sup>(8)</sup>;

“equivalent goods” means equivalent domestic goods<sup>(9)</sup> and equivalent chargeable goods;

“established in the United Kingdom” means—

- (a) in the case of an individual, where the individual is resident in the United Kingdom; or
- (b) in all other cases, 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;

“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;

“holder of a procedure” means—

- (a) a person in whose name, or on whose behalf, goods have been declared for a relevant non-transit Part 1 procedure; or
- (b) a person to whom rights and obligations in relation to goods declared for a relevant non-transit Part 1 procedure have been transferred under regulation 42,

and “holder of the procedure” is to be construed accordingly;

“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;

“non-tariff trade policy measure” means a provision made by or under any enactment relating to government policy in respect of international trade in goods, other than provisions relating to the amount of import duty;

“non-transit Part 1 procedure” means—

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(5) The meaning of “goods declared for a storage procedure” is given in paragraph 2 of Schedule 2 to the Act.

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

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

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

(9) The meaning of “equivalent domestic goods” is given in paragraph 23(2) of Schedule 2 to the Act.

(a) a Customs procedure<sup>(10)</sup> other than a transit procedure<sup>(11)</sup>; or

(b) an outward processing procedure;

“Part 1 procedure” means a Customs procedure or an outward processing procedure;

“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;

“private customs warehouse” means a customs warehouse that may only be used to store goods by the person approved to operate that warehouse;

“processed goods” means goods which have been released to a relevant non-transit Part 1 procedure and processed in accordance with that procedure;

“public customs warehouse” means a customs warehouse that may be used to store goods by any person;

“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;

“relevant non-transit Part 1 procedure” means—

(a) a special Customs procedure<sup>(12)</sup> other than a transit procedure; or

(b) an outward processing procedure;

“replacement goods” has the meaning given in regulation 5(3);

“sensitive goods” means the goods of a type listed in the document entitled “Sensitive Goods” published on 27 November 2018<sup>(13)</sup>;

“standard exchange system” has the meaning given in regulation 5(3);

“the temporary admission document” means the document entitled “Temporary Admission: Eligible Goods and Conditions for Relief” published on 27 November 2018<sup>(14)</sup>;

“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.

(2) For the purposes of these Regulations references to “process” (however expressed) include an operation of a type described in paragraph 11 of Schedule 2 to the Act.

<sup>(10)</sup> The meaning of “Customs procedure” is given in section 3(3) of the Act.

<sup>(11)</sup> The meaning of “a transit procedure” is given in paragraph 5 of Schedule 2 to the Act.

<sup>(12)</sup> The meaning of “special Customs procedure” is given in section 3(4) of the Act.

<sup>(13)</sup> The document entitled “Sensitive Goods” is available at <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal> and a hard copy is available for inspection, free of charge, at the offices of HMRC at 100 Parliament Street, London, SW1A 2BQ.

<sup>(14)</sup> The document entitled “Temporary Admission: Eligible Goods and Conditions for Relief” is available at <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal> and a hard copy is available for inspection, free of charge, at the offices of HMRC at 100 Parliament Street, London, SW1A 2BQ.

## PART 2

### Authorisation and Approval

#### Authorisation requirement

**3.—**(1) A person must not carry out an activity specified in paragraph (2) unless that person is authorised or approved to do so in accordance with these Regulations.

(2) The specified activities are—

- (a) operating premises as a place to keep goods declared for a storage procedure;
- (b) declaring goods for—
  - (i) an inward processing procedure<sup>(15)</sup>;
  - (ii) an outward processing procedure<sup>(16)</sup>;
  - (iii) an authorised use procedure<sup>(17)</sup>; or
  - (iv) a temporary admission procedure<sup>(18)</sup>.

(3) Subject to regulation 8, the activities specified in paragraph (2) are to be treated for the purposes of Part 9 of the import duty regulations as matters requiring approval under those Regulations.

(4) The period specified in regulation 89(2)(a) of the import duty regulations may be extended by a further period of up to one year where—

- (a) the application is—
  - (i) an application for authorisation to declare goods for an inward processing procedure in relation to which an examination of the available evidence is required for the purposes of regulation 20(1)(a); or
  - (ii) an application for authorisation to declare goods for an outward processing procedure to which regulation 27 applies; and
- (b) HMRC notify the applicant that such an extension will be made.

#### Treatment of a declaration as an application for authorisation

**4.—**(1) Subject to regulation 35, a person in whose name goods are declared for a relevant non-transit Part 1 procedure is to be treated for the purposes of these Regulations as making an application for authorisation to declare the goods for that procedure where—

- (a) that person is not so authorised and either—
  - (i) that person gives a single guarantee in accordance with Part 10 of the import duty regulations; or
  - (ii) there is no requirement for any person to give a guarantee by virtue of regulation 101 of those Regulations; and
- (b) the declaration—
  - (i) is of a type specified in paragraph (2);
  - (ii) is not one to which regulation 6 or 7 applies; and
  - (iii) is made in accordance with—

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<sup>(15)</sup> The meaning of declaring goods for an inward processing procedure is given in paragraphs 8, 9 and 11 of Schedule 2 to the Act.

<sup>(16)</sup> The meaning of declaring goods for an outward processing procedure is given in section 36(2) of the Act.

<sup>(17)</sup> The meaning of declaring goods for an authorised use procedure is given in paragraph 13 of Schedule 2 to the Act.

<sup>(18)</sup> The meaning of declaring goods for a temporary admission procedure is given in paragraph 15 of Schedule 2 to the Act.

- (aa) any provision made by or under Schedule 1 to the Act; or
- (bb) in the case of a declaration of goods for an outward processing procedure, any provision that applies by virtue of regulation 13.
- (2) The specified types of declaration are a declaration of goods for—
  - (a) a temporary admission procedure;
  - (b) an authorised use procedure;
  - (c) an outward processing procedure where the goods are to be exported for repair and—
    - (i) the goods are non-commercial goods or personal gifts which are to be released to the free-circulation procedure<sup>(19)</sup> following processing; or
    - (ii) the goods are not sensitive goods; or
  - (d) an inward processing procedure where the goods are not sensitive goods.

#### **Treatment of a declaration as an application to amend an authorisation**

5.—(1) Subject to regulation 7, where the conditions specified in paragraph (2) are met, a person in whose name goods are declared for the free-circulation procedure is to be treated, for the purposes of regulation 91(2)(a) of the import duty regulations, as making an application to amend an authorisation to declare goods for an outward processing procedure (“the authorisation”) so as to authorise the use of the standard exchange system in accordance with regulation 29.

- (2) The specified conditions are that—
  - (a) the person in whose name the goods are declared is not so authorised and either—
    - (i) that person gives a single guarantee in accordance with Part 10 of the import duty regulations; or
    - (ii) there is no requirement on any person to give a guarantee by virtue of regulation 101 of those Regulations;
  - (b) the declaration is made—
    - (i) in the name of the person authorised to declare goods under the authorisation; and
    - (ii) in accordance with any provision made by or under Schedule 1 to the Act; and
  - (c) the goods declared for the free-circulation procedure are replacement goods.

(3) For the purposes of this regulation, “standard exchange system” means the import of goods to replace defective domestic goods that are to be, or have been, declared for an outward processing procedure and “replacement goods” means the goods that are imported for that purpose.

#### **Cases where a declaration is not to be treated as an application for authorisation**

6.—(1) Where any of paragraphs (2) to (4) applies, a declaration of goods for a relevant non-transit Part 1 procedure is not to be treated by regulation 4 as an application for authorisation.

(2) This paragraph applies where, by virtue of regulation 23, liability to import duty is to be determined by reference to the goods as they stood when the declaration was made.

- (3) This paragraph applies where—
  - (a) the declaration is for a temporary admission procedure;
  - (b) the goods fall within section 27 of the temporary admission document (other goods – no economic effect); and

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

- (c) in the opinion of an HMRC officer<sup>(20)</sup> it is not appropriate for the declaration to be treated as an application for authorisation.
- (4) This paragraph applies where—
  - (a) the declaration is—
    - (i) an oral declaration of goods for a temporary admission procedure under regulation 21 of the import duty regulations; or
    - (ii) for a temporary admission procedure by conduct under regulation 27 of the import duty regulations;
  - (b) the declaration relates to goods that are means of transport or spare parts, accessories and equipment for means of transport; and
  - (c) in the opinion of an HMRC officer there is a risk that the person in whose name the declaration is made will be involved in a breach of a Customs obligation.
- (5) Where a declaration is not to be treated as an application for authorisation by virtue of paragraph (4) HMRC must notify the person in whose name the declaration is made without delay after presentation of the goods.

**Cases where a declaration is not to be treated as an application for authorisation or for amendment**

- 7.—(1) Where paragraph (2) applies, a declaration—
  - (a) is not to be treated by regulation 4 as an application for authorisation; and
  - (b) is not to be treated by regulation 5 as an application to amend an authorisation to declare goods for an outward processing procedure.
- (2) This paragraph applies where—
  - (a) the declaration is made using—
    - (i) the simplified Customs declaration process within the meaning given in regulation 30(1) of the import duty regulations; or
    - (ii) the EIDR procedure within the meaning given in regulation 36(1) of the import duty regulations;
  - (b) the declaration relates to a case—
    - (i) where the requirements in relation to the relevant non-transit Part 1 procedure are intended to be met by reference to equivalent goods;
    - (ii) in relation to which an examination of the available evidence is required for the purposes of regulation 20(1)(a); or
    - (iii) to which regulation 27 applies;
  - (c) if the goods were declared for the free-circulation procedure—
    - (i) the goods would be subject to an additional amount of import duty under section 13, 14 or 15 of the Act; or
    - (ii) the importer of the goods would be required to give a guarantee under paragraph 15(5) of Schedule 4 to the Act;
  - (d) the declaration is made by a Customs agent as an indirect agent<sup>(21)</sup>; or
  - (e) the declaration is for a non-transit Part 1 procedure other than a temporary admission procedure and—

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<sup>(20)</sup> “HMRC officer” is defined in section 37(1) of the Act.

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

- (i) the person in whose name the declaration is made is not established in the United Kingdom;
- (ii) that person has made three previous declarations of goods for the same procedure that have, in the period of 12 months ending immediately before the date the declaration is made, been treated as applications for authorisation, or applications for amendment of an authorisation, under regulation 4 or 5 or under the UCC; or
- (iii) the value of the goods included in that declaration exceeds £500,000.

### **Determination of a declaration treated as an application for authorisation**

8.—(1) Where a declaration is to be treated by regulation 4 as an application for authorisation or by regulation 5 as an application for amendment of an authorisation, the application is to be determined in accordance with this regulation and regulations 87 to 91 of the import duty regulations do not apply.

(2) Where the eligibility criteria set out in regulation 9 are met, acceptance of the declaration<sup>(22)</sup> is to be treated as grant of authorisation.

(3) An authorisation treated by paragraph (2) as granted only authorises—

- (a) in the case of a declaration treated by regulation 4 as an application for authorisation, the making of that declaration; or
- (b) in the case of a declaration treated by regulation 5 as an application for amendment of an authorisation, the use of the standard exchange system in relation to the import of the goods declared for the free-circulation procedure in that declaration.

(4) HMRC must publish a notice setting out any matters that apply to an authorisation treated by paragraph (2) as granted that would have been included in an approval notification by virtue of these Regulations if the application for authorisation had been granted under regulation 89 of the import duty regulations and may make different provision for different cases.

(5) If the declaration is not accepted the application is to be treated as refused.

### **Eligibility for authorisation or approval**

9.—(1) The following criteria (“the eligibility criteria”) must be met before an authorisation or approval is granted to carry out an activity specified in regulation 3(2)—

- (a) the applicant must be established in the United Kingdom, except where—
  - (i) the application is for authorisation to declare goods for a temporary admission procedure; or
  - (ii) paragraph (2) applies;
- (b) where a liability to import duty may be incurred for goods declared for a relevant non-transit Part 1 procedure, the applicant must give a guarantee in accordance with Part 10 of the import duty regulations unless there is no requirement for any person to give a guarantee by virtue of regulation 101 of those Regulations;
- (c) an HMRC officer must be of the opinion that it is possible to exercise control of any goods declared under the authorisation sought without the effects being disproportionate to the benefit to the applicant of use of the procedure; and
- (d) an HMRC officer must be satisfied that the applicant will exercise proper conduct of the operations necessary to comply with the requirements of the procedure.

<sup>(22)</sup> See paragraphs 10 to 12 of Schedule 1 to the Act on acceptance of Customs declarations, which are applied to declarations of goods for an outward processing procedure by regulation 13(1) and (2)(c).



- (2) This paragraph applies where—
- (a) the application is for authorisation to declare goods for an inward processing procedure or an authorised use procedure; and
  - (b) in the opinion of an HMRC officer it is appropriate to grant authorisation to a person established outside the United Kingdom taking into consideration factors specified in a notice published by HMRC.
- (3) A notice published under paragraph (2)(b) may make different provision for different cases.
- (4) For the purposes of considering whether the applicant will exercise proper conduct of operations necessary to comply with the requirements of the relevant non-transit Part 1 procedure, the matters that an HMRC officer may take into account include (for example)—
- (a) whether, in the opinion of an HMRC officer, the applicant's financial standing makes the applicant suitable to carry out the activity for which authorisation is sought;
  - (b) whether the applicant, or any directors or senior employees of the applicant, has been involved in a breach of an obligation relating to tax or of a Customs obligation, which in the opinion of an HMRC officer is—
    - (i) a serious breach having regard to the circumstances and nature of any breach and the number of any breaches; and
    - (ii) relevant to the suitability of the applicant to carry out the activity for which authorisation is sought;
  - (c) whether the applicant, or any directors or senior employees of the applicant, has any criminal conviction which in the opinion of the HMRC officer is—
    - (i) serious having regard to the type of conviction; and
    - (ii) relevant to the suitability of the applicant to carry out the activity for which authorisation is sought;
  - (d) whether the applicant maintains a logistical system and records that identify sufficiently the movement of, and transactions in, chargeable goods and domestic goods and facilitate compliance with Customs obligations;
  - (e) whether—
    - (i) the applicant meets any professional standards of competence specified in a notice published by HMRC under regulation 93(2) of the import duty regulations; or
    - (ii) in the opinion of an HMRC officer, the applicant's practical experience makes the applicant suitable to carry out the activity for which authorisation is sought.
- (5) An authorised economic operator within the meaning given in section 22(2) of the Act is deemed to satisfy the requirement specified in paragraph (1)(d) unless, in the opinion of an HMRC officer, consideration is required of matters relating to the exercise of proper conduct of operations that were not considered at the time when the applicant was authorised as an authorised economic operator.

#### **Period for which an authorisation is to have effect**

**10.—**(1) Subject to paragraph (2), the period for which an authorisation to carry out an activity specified in regulation 3(2)(b) is to have effect must not be longer than—

- (a) in the case of activities relating to sensitive goods, three years beginning with the date from which the authorisation is to have effect; or
- (b) in all other cases, five years beginning with the date from which the authorisation is to have effect.

(2) In the case of authorisation to declare goods for a temporary admission procedure, the period for which an authorisation is to have effect may be longer than the period specified in paragraph (1) (a) or (b) where—

- (a) the applicant provides evidence that the proposed use of the goods in the UK while subject to the temporary admission procedure requires the authorisation to have effect for a longer period; and
- (b) in the opinion of an HMRC officer a longer period is justified.

### **Retrospective authorisation**

**11.**—(1) An approval notification issued in relation to an authorisation to carry out an activity specified in regulation 3(2)(b) may provide that the authorisation has effect from a time before the application for it is made (“retrospective authorisation”) in accordance with this regulation.

(2) Paragraph (1) applies even where the goods for which authorisation to make a declaration is sought are not available for examination by an HMRC officer at the time at which the application for authorisation is received by HMRC.

(3) HMRC may grant retrospective authorisation only if—

- (a) an HMRC officer is satisfied that—
  - (i) the applicant has an economic need for retrospective authorisation to be granted;
  - (ii) the application for retrospective authorisation is not an attempt to avoid—
    - (aa) any or all liability to import duty or other charges; or
    - (bb) any non-tariff trade policy measures or agricultural policy measures, that would have applied had the application been made before the time from which the authorisation is to have effect;
  - (iii) all the requirements in relation to the procedure imposed by or under Schedule 2 to the Act have been met from the date on which the authorisation is to have effect;
  - (iv) either—
    - (aa) the goods can be identified in the applicant’s accounts and records from the date on which the authorisation is to have effect; or
    - (bb) such identification is not required for the purposes of demonstrating compliance with obligations imposed by or under Part 1 of the Act;
  - (v) the applicant’s accounts and records identify sufficiently the movement of, and transactions in, chargeable and domestic goods so as to enable the applicant to comply with the obligations imposed by or under Part 1 of the Act in relation to the procedure for which retrospective authorisation is sought; and
  - (vi) the applicant and HMRC are able to take all steps required to ensure that records and other documentation reflect any grant of retrospective authorisation including, where necessary, the withdrawal or amendment of customs declarations;
- (b) in the period of three years ending immediately before the date that HMRC received the application—
  - (i) no previous retrospective authorisation was granted to the applicant to declare goods for the same relevant non-transit Part 1 procedure as that in relation to which the application seeks retrospective authorisation; and
  - (ii) no authorisation was granted to the applicant under Article 211(2) of the UCC to declare goods for a procedure which corresponds to that in relation to which the application seeks retrospective authorisation;

- (c) the case is one in relation to which an examination of the available evidence is not required for the purposes of regulation 20(1)(a) and regulation 27 does not apply; and
- (d) where the application is for renewal of authorisation in relation to the same kind of goods and operation, the application was submitted within three years of the expiry of the authorisation for which renewal is sought.

(4) Subject to paragraphs (5) to (7), the approval notification may provide that the authorisation has effect from a date within the period of a year before the date on which the application for authorisation is received by HMRC where, in the opinion of an HMRC officer, there are exceptional circumstances justifying that earlier date.

(5) Where the application is for renewal of an authorisation for the same kind of goods and operation, the approval notification must not provide that the authorisation has effect from a date earlier than the date on which the authorisation of which renewal is sought expired.

(6) Where the application for authorisation relates to sensitive goods, the approval notification must not provide that the authorisation has effect from a date earlier than three months before the date on which the application was received by HMRC.

(7) In all cases, the approval notification must not provide that the authorisation has effect from a date earlier than exit day.

## PART 3

### Declarations

#### **Declaration to be made in the name of the authorised person**

**12.**—(1) Where paragraph (2) applies, a Customs agent may not make a declaration of goods for—

- (a) an inward processing procedure, an outward processing procedure, an authorised use procedure or a temporary admission procedure; or
- (b) a storage procedure where the goods are to be kept in a private customs warehouse.

(2) This paragraph applies where—

- (a) the principal of the agent is authorised to declare goods for the relevant procedure;
- (b) the agent is not so authorised; and
- (c) the agent intends to act as an indirect agent on behalf of the principal.

#### **Declarations for an outward processing procedure**

**13.**—(1) The paragraphs of Schedule 1 to the Act specified in paragraph (2) apply to declarations of goods for an outward processing procedure as they apply to a Customs declaration, but—

- (a) as if any reference to “Customs declaration” were a reference to a declaration of goods for an outward processing procedure; and
- (b) with the modifications specified in paragraph (2).

(2) The specified paragraphs and modifications are—

- (a) paragraph 4 (form);
- (b) paragraph 7 (contents), as if, in sub-paragraph (1)(a), “, in addition to specifying the Customs procedure for which the goods are declared,” were omitted;
- (c) paragraphs 10 to 12 (acceptance), as if—

- (i) in paragraphs 10(a) and 11(1)(b), for “paragraphs 1 to 6” there were substituted “paragraph 4”; and
  - (ii) paragraph 11(1)(a) were omitted;
  - (d) paragraphs 13 and 14 (verification);
  - (e) paragraphs 15 and 16 (amendment and withdrawal); and
  - (f) paragraph 19 (notifications).
- (3) Section 2 of Chapter 3 of Part 4 of the import duty regulations (simplified Customs declarations using the EIDR procedure) applies to declarations of goods for an outward processing procedure as they apply to a Customs declaration, but as if any reference to a “Customs declaration” or to a “simplified Customs declaration” were a reference to a declaration of goods for an outward processing procedure.
- (4) For the purposes of these Regulations, goods declared for an outward processing procedure are released to the procedure—
- (a) at the time at which HMRC accept the declaration; or
  - (b) if later, at the time from which a person is authorised to use the procedure.

## PART 4

### Procedure-specific Rules

#### CHAPTER 1

##### Storage Procedure

##### **Eligibility for approval to operate a customs warehouse**

**14.—**(1) This regulation applies to a person who owns, operates or otherwise uses premises which the person intends to operate as a customs warehouse.

(2) HMRC may approve the person to operate the premises as a customs warehouse only if an HMRC officer is satisfied that—

- (a) the person will use the premises, or will only permit the premises to be used, primarily for the storage of goods;
- (b) the person has a satisfactory logistical system to record the movement of goods into, within and out of the premises;
- (c) where the person intends to operate premises as a public customs warehouse, there is sufficient potential trade for a public customs warehouse to be viable; and
- (d) where the person intends to operate premises as a private customs warehouse, there would be sufficient benefit to the applicant to justify approval.

##### **Approval to operate a customs warehouse**

**15.—**(1) A notification of approval by HMRC to operate premises as a customs warehouse must specify—

- (a) the premises;
- (b) the approved person; and
- (c) whether the premises are to be operated as a public customs warehouse or a private customs warehouse.

- (2) The warehouse is not to be used for any processing of goods other than—
  - (a) an operation of a type—
    - (i) described in sub-paragraph (b) of paragraph 11 of Schedule 2 to the Act; and
    - (ii) specified in a notice published by HMRC as an operation constituting a usual form of handling of goods; or
  - (b) processing authorised under paragraph (3).
- (3) The approval may authorise the taking place in the warehouse of the processing of goods declared for an inward processing procedure or for an authorised use procedure where an HMRC officer is satisfied that—
  - (a) the holder of the procedure in relation to the goods or the approved person of the warehouse has an economic need for the processing to be carried out in the warehouse; and
  - (b) control by any HMRC officer of the goods subject to the storage procedure and goods subject to, as the case may be, the inward processing procedure or authorised use procedure would not be adversely affected by the authorisation to carry out the processing in the warehouse.
- (4) An approval must not authorise the keeping of goods other than chargeable goods in the customs warehouse unless—
  - (a) the other goods to be kept in the warehouse are domestic goods; and
  - (b) an HMRC officer is satisfied that—
    - (i) the approved person has viable commercial reasons for the storage of domestic goods alongside goods declared for a storage procedure; and
    - (ii) control by any HMRC officer of any chargeable goods stored in the warehouse would not be adversely affected by storage of domestic goods.
- (5) The approval must require accounting segregation in accordance with a notice made under regulation 44 where—
  - (a) the approval permits domestic goods to be stored in the warehouse; and
  - (b) it is not possible, without incurring disproportionate cost, to identify—
    - (i) whether any goods stored are domestic goods or chargeable goods; and
    - (ii) the Customs procedure for which any chargeable goods have been declared.
- (6) The approval is granted subject to the following conditions—
  - (a) retail sales of goods from the warehouse are not permitted other than as specified in the approval notification;
  - (b) the approved person must not allow goods to leave the warehouse unless they are removed in accordance with regulation 17;
  - (c) the approved person must notify any person keeping goods declared for a storage procedure in the warehouse of any permission contained in the approval notification to remove such goods from the warehouse;
  - (d) the approved person must notify HMRC without delay of any breach by any person who is a holder of a procedure of any requirement imposed by or under Part 1 of the Act in relation to goods kept by the person in the warehouse; and
  - (e) such other conditions as may be specified in the approval notification.
- (7) The approval may be granted subject to conditions regarding (amongst other things)—
  - (a) the type of goods which may be kept in the warehouse;
  - (b) the activities that are permitted to be carried out in the warehouse;

- (c) the amount of time for which particular goods may be kept in the warehouse; and
- (d) the facilities in which particular goods must be stored whilst kept in the warehouse.

(8) Where the approved person breaches a requirement imposed by provision made by or under Schedule 2 to the Act in relation to the keeping of goods in the warehouse, the approved person is liable to any import duty arising as a result of that breach unless the approval specifies otherwise.

### **Obligations relating to keeping goods in a customs warehouse**

**16.—**(1) A person must not declare goods for a storage procedure where they are to be kept in a customs warehouse and are not of a type which may be kept in the warehouse under the conditions of the approval.

(2) Subject to paragraph (3), where goods have been declared for a storage procedure to be kept in a customs warehouse the person in whose name the goods have been declared must—

- (a) ensure that the goods declared are moved directly to the customs warehouse named in the declaration once HMRC have accepted the declaration; and
- (b) provide the approved person with details of the declaration and any differences between the goods deposited and the goods declared.

(3) In paragraph (2), where the person in whose name the goods have been declared is acting as an indirect agent, the reference to the person in whose name goods have been declared is to be read as a reference to the person on whose behalf the goods have been declared.

(4) A holder of the procedure who keeps goods in a customs warehouse must not—

- (a) cause or permit those goods to be removed from the warehouse unless they are removed in accordance with regulation 17; or
- (b) carry out, arrange or permit any processing of the goods other than as permitted under regulation 15(2).

### **Removal of goods from a customs warehouse**

**17.—**(1) No person may remove from a customs warehouse goods declared for a storage procedure which have not been discharged<sup>(23)</sup> from the storage procedure (“declared goods”) unless—

- (a) permitted under this regulation; or
- (b) permitted by the approval notification relating to that customs warehouse.

(2) Declared goods may be permanently removed from a customs warehouse if the removal has been approved by HMRC.

(3) Declared goods may be temporarily removed from a customs warehouse if—

- (a) the purpose of removing the goods is to undertake an operation of a type—
  - (i) described in sub-paragraph (b) of paragraph 11 of Schedule 2 to the Act; and
  - (ii) specified in a notice published by HMRC as an operation constituting a usual form of handling of goods; and
- (b) the removal has been approved by HMRC.

(4) Paragraph (5) applies where—

- (a) a person removes declared goods from a customs warehouse;
- (b) the removal was not intended; and

<sup>(23)</sup> See paragraphs 18 to 20 of Schedule 2 to the Act on discharge of goods from a Customs procedure.

- (c) the removal was caused by abnormal and unforeseeable circumstances beyond the person's control.
- (5) Where this paragraph applies—
  - (a) approval by HMRC for the removal is not required; but
  - (b) the person must notify HMRC that the removal has occurred.
- (6) Declared goods may be removed from a customs warehouse where the goods move between—
  - (a) premises operated as customs warehouses and identified in the same approval;
  - (b) the warehouse and the customs office at which goods must be made available for examination following notification by HMRC that the goods have been released for export; or
  - (c) the warehouse and a customs office at which a declaration for the purposes of discharging the storage procedure may be accepted.
- (7) Any movement of goods under paragraph (6) must be completed within—
  - (a) 30 days beginning with the day after the day on which the goods are removed from the customs warehouse; or
  - (b) any longer period permitted by an HMRC officer.
- (8) Any person removing declared goods from a customs warehouse in contravention of this regulation is liable to import duty on those goods.
- (9) In this regulation “customs office” means premises used by HMRC for the purposes of exercising its functions under the Act.

#### **Usual forms of handling – changes in nature of goods**

- 18.**—(1) Paragraph (2) applies where—
- (a) a declaration (“the first declaration”) of goods for a storage procedure to be kept in a customs warehouse has been made;
  - (b) there is a change in the goods by virtue of an operation that has been applied to the goods whilst the goods are subject to the procedure;
  - (c) the operation is of a type—
    - (i) described in sub-paragraph (b) of paragraph 11 of Schedule 2 to the Act; and
    - (ii) specified in a notice published by HMRC as an operation constituting a usual form of handling of goods;
  - (d) a further declaration (“the second declaration”) of the goods for a different Customs procedure is made; and
  - (e) a liability to import duty is incurred in respect of the goods by virtue of making the second declaration.
- (2) Where this paragraph applies the declarant may elect in the second declaration that the liability be determined by reference to the goods as they stood when the first declaration was made.

### **CHAPTER 2**

#### **Inward Processing Procedure**

#### **Eligibility – inward processing procedure**

- 19.** HMRC may grant an application for authorisation to declare goods for an inward processing procedure only if an HMRC officer is satisfied that—

- (a) if the goods were declared for the procedure either—
  - (i) it would not be economically viable, following processing of the goods in accordance with the authorisation, to restore the goods to their condition at the time of the declaration; or
  - (ii) liability for import duty would be determined by virtue of regulation 23 by reference to the goods as they stood when the declaration was made;
- (b) use of the procedure could not result in circumvention of—
  - (i) a quota to which the goods are subject for the purposes of section 11 of the Act; or
  - (ii) any provisions made by or under section 17 of the Act for determining the place of origin of the goods for the purposes of Part 1 of the Act; and
- (c) where the processing to be carried out is the use of production accessories, the production accessories are not—
  - (i) fuels or energy sources, other than those needed for the testing of processed goods or for the detection of faults in goods declared for the procedure which need repair;
  - (ii) lubricants, other than those needed for the testing, adjustment or withdrawal of processed goods; or
  - (iii) equipment and tools.

#### **Economic condition – inward processing procedure**

**20.**—(1) Where an application for authorisation to declare goods for an inward processing procedure is a case of a description specified in a notice published by HMRC, an authorisation may be granted only if—

- (a) an HMRC officer is satisfied, on the basis of an examination of the available evidence, that the essential interests of producers of goods in the United Kingdom would not be adversely affected by the granting of the authorisation; or
  - (b) paragraph (2) applies.
- (2) This paragraph applies where—
- (a) HMRC are not aware of any evidence that the essential interests of producers of goods in the United Kingdom would be adversely affected by an authorisation to declare the goods for an inward processing procedure; and
  - (b) the authorisation concerns an operation which is not of a type specified in a notice published by HMRC.

#### **Authorisation to declare goods for an inward processing procedure**

**21.**—(1) An approval notification issued in relation to an authorisation to declare goods for an inward processing procedure must specify—

- (a) the type of goods to which the authorisation applies;
  - (b) the processing to which the goods are to be subject (“specified processing”); and
  - (c) the date by which the procedure must be discharged (“the discharge date”).
- (2) Where—
- (a) goods (“intended imported goods”) are to be imported into the United Kingdom in order to be processed there;
  - (b) the intended imported goods are to be declared for an inward processing procedure;



- (c) equivalent domestic goods<sup>(24)</sup> are to be subject to the specified processing in place of the intended imported goods; and
- (d) the goods resulting from the processing are exported before the intended imported goods are imported,

the approval notification issued in relation to an authorisation to declare the intended imported goods for an inward processing procedure must specify the period within which the intended imported goods are to be declared.

(3) The period specified under paragraph (2) must not be longer than 6 months beginning with the date after the date of any acceptance of such export declaration as may be provided for under section 35(3)(a) of the Act for the goods resulting from the processing.

(4) The period specified under paragraph (2) may be extended at the request of the authorised person, but the amended authorisation must not permit a declaration to be made more than 12 months after the date of any acceptance of an export declaration referred to in paragraph (3).

(5) In cases where paragraph (2) does not apply, an approval notification issued in relation to an authorisation to declare goods for an inward processing procedure may specify that goods released to the procedure, and processed goods resulting from processing of those goods, are to be treated for the purposes of Part 1 of the Act as if, on the discharge date, the goods had been declared for the free-circulation procedure and HMRC had accepted that declaration if, on that date—

- (a) the goods have not been declared for another Part 1 procedure;
- (b) the goods have not been exported; and
- (c) the applicant has requested that the goods are to be so treated.

(6) HMRC must not make the specification referred to in paragraph (5) where, under any enactment, the goods are subject to a prohibition from, or restriction on, declaring them for the free-circulation procedure.

(7) Where goods are treated as if they had been declared for the free-circulation procedure as a result of a specification under paragraph (5), HMRC must release the goods to the free-circulation procedure on the discharge date.

### **Authorisation to declare goods for an inward processing procedure – conditions and requirements**

**22.—**(1) An authorisation to declare goods for an inward processing procedure is subject to the condition that—

- (a) no evidence is presented to HMRC that the essential interests of producers of goods in the United Kingdom are likely to be adversely affected by—
  - (i) where the authorisation has been used to declare the goods, the further use of the authorisation;
  - (ii) in all other cases, the use of the authorisation; or
- (b) where such evidence is presented to HMRC, an HMRC officer is satisfied, on the basis of an examination of the available evidence, that the essential interests of producers of goods in the United Kingdom would not be adversely affected by—
  - (i) where the authorisation has been used to declare the goods, the further use of the authorisation;
  - (ii) in all other cases, the use of the authorisation.

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(24) The meaning of “equivalent domestic goods” is given in paragraph 23(2) of Schedule 2 to the Act.

(2) An authorisation to declare goods for an inward processing procedure is granted subject to such other conditions as may be specified in the approval notification issued in relation to the authorisation.

(3) Where an authorisation to declare goods for an inward processing procedure is granted the following requirements apply—

- (a) the authorised person must process the goods themselves or arrange for the processing to be carried out;
- (b) where the processing of the goods results in the production or manufacture of other goods in which the goods can be identified, the processing, or each individual processing operation, must result in the production or manufacture of an approved quantity of the other goods; and
- (c) the holder of the procedure must not export the goods where—
  - (i) the export is to a country or territory with whose government Her Majesty's government in the United Kingdom has made arrangements which contain provision for the rate of import duty applicable to goods, or any description of goods, originating from the country or territory to be lower than the applicable rate in the customs tariff<sup>(25)</sup> in its standard form, within the meaning given in section 9(2) of the Act; and
  - (ii) a United Kingdom proof of origin issued under any provision made under section 9 of the Act in relation to the goods has been obtained for the purpose of claiming the lower rate when the goods are imported into the country or territory referred to in paragraph (i).

(4) For the purposes of paragraph (3)(b), the methodology by which the approved quantity of the other goods is to be determined—

- (a) is to be specified in the approval notification; and
- (b) is to be—
  - (i) chosen by the applicant, if an HMRC officer approves that choice; or
  - (ii) in all other cases, set by an HMRC officer.

### **Liability to import duty where there is a change in the goods**

**23.—**(1) An applicant for authorisation to declare goods for an inward processing procedure may—

- (a) elect that any liability to import duty incurred in relation to processed goods resulting from processing under the procedure be determined by reference to the goods as they stood when the declaration was made; or
- (b) reserve the right to elect, once the authorisation has been granted, that any liability to import duty incurred in relation to processed goods resulting from processing under the procedure be determined by reference to the goods as they stood when the declaration was made.

(2) Determination of liability to import duty incurred in relation to processed goods resulting from processing under an inward processing procedure is to be by reference to the goods as they stood when the declaration for the procedure was made where—

- (a) an election is made under paragraph (1);
- (b) paragraph (3) or (4) applies; or

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(25) "Customs tariff" is defined in section 8 of the Act.

- (c) the liability is incurred as a result of a breach of the requirement specified in regulation 22(3)(c).
- (3) This paragraph applies where—
  - (a) the processed goods resulting from the processing of the goods are imported by the holder of the procedure within one year after export of the processed goods;
  - (b) if a declaration of those goods for the free-circulation procedure had been accepted at the time of their release to the inward processing procedure—
    - (i) the goods would have been subject to—
      - (aa) an additional amount of import duty under section 13, 14 or 15 of the Act;
      - (bb) a non-tariff trade policy measure; or
      - (cc) an agricultural policy measure; or
    - (ii) the importer of the goods would have been required to give a guarantee under paragraph 15(5) of Schedule 4 to the Act; and
  - (c) the application for authorisation to declare the goods for an inward processing procedure was not a case in relation to which an examination of the available evidence was required for the purposes of regulation 20(1)(a).
- (4) Subject to paragraphs (5) and (6), this paragraph applies where—
  - (a) the application for authorisation to declare the goods for an inward processing procedure is not a case in relation to which an examination of the available evidence is required for the purposes of regulation 20(1)(a); and
  - (b) if a declaration of those goods for the free-circulation procedure were accepted at the time the authorisation is granted—
    - (i) the goods would be subject to—
      - (aa) an additional amount of import duty under section 13, 14 or 15 of the Act;
      - (bb) a non-tariff trade policy measure; or
      - (cc) an agricultural policy measure; or
    - (ii) the importer of the goods would be required to give a guarantee under paragraph 15(5) of Schedule 4 to the Act.
- (5) Paragraph (4) does not apply where—
  - (a) the goods are not ones in relation to which, if a declaration of those goods for the free-circulation procedure were accepted at the time the authorisation is granted—
    - (i) an additional amount of import duty under section 13, 14 or 15 of the Act would be applicable; or
    - (ii) the importer of the goods would be required to give a guarantee under paragraph 15(5) of Schedule 4 to the Act; and
  - (b) the aggregate value of goods to be declared for an inward processing procedure, by the applicant for authorisation, in that calendar year, for each classification code, does not exceed—
    - (i) in the case of sensitive goods, £135,000;
    - (ii) in all other cases, £270,000.
- (6) Paragraph (4) does not apply where the goods—
  - (a) are non-commercial goods or personal gifts;
  - (b) are goods resulting from processing under a previous authorisation, the application for which was a case —

- (i) in relation to which an examination of the available evidence was required for the purposes of regulation 20(1)(a); or
- (ii) in relation to which an examination of the economic conditions was required for the purposes of Article 211(4)(b) of the UCC;
- (c) are to be processed into samples;
- (d) are to be reduced to waste and scrap;
- (e) are to be destroyed; or
- (f) are to be subject to recovery of parts or components.

#### **Value of goods where there is a change in the goods**

**24.**—(1) Where regulation 23(2) applies, the value of the goods for the purposes of import duty is to be determined by reference to the quantity of the goods declared for the inward processing procedure—

- (a) which, in accordance with a notice published by HMRC, are to be treated as present in the processed goods; and
- (b) for which import duty is incurred.

(2) HMRC must publish a notice specifying the methods for determining the matters referred to in paragraph (1) and may make different provision for different cases.

#### **Consequences of determination of liability under regulation 23**

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

- (a) a liability to import duty is to be determined in accordance with regulation 23(2);
- (b) the specified processing, within the meaning given in regulation 21(1)(b), in relation to the goods was an authorised use under regulation 32 at the time that the goods were released to an inward processing procedure; and
- (c) at the time that the goods were released to an inward processing procedure an application for authorisation to declare the goods for an authorised use procedure by the person authorised to declare the goods for an inward processing procedure would not have been prohibited by regulation 86(1) or (2) of the import duty regulations.

(2) Where this paragraph applies, the rate of import duty applicable to the goods is to be such rate as would have been applicable to those goods if they had been declared for an authorised use procedure and the declaration had been accepted by HMRC.

#### **Temporary export of goods released to an inward processing procedure**

**26.**—(1) Where an inward processing procedure in the supplementary form has effect in relation to any goods and paragraph (2) applies, the goods may be exported, in accordance with the applicable export provisions<sup>(26)</sup>, for a temporary period without discharging the procedure.

(2) This paragraph applies where—

- (a) the goods are exported for subjection to an operation described in paragraph 11 of Schedule 2 to the Act (“a relevant operation”) carried out outside the United Kingdom;
- (b) the operation is carried out—

<sup>(26)</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.

- (i) in accordance with requirements imposed on any person by a notice published by HMRC; and
  - (ii) during a period specified in a notice given to the person making the declaration by an HMRC officer.
- (3) The period referred to in paragraph (2)(b)(ii) may be subsequently extended (or further extended) by another notice given as mentioned in that sub-paragraph.
- (4) HMRC must publish a notice setting out the requirements imposed on any person in accordance with which—
- (a) the subjection of goods to a relevant operation outside the United Kingdom must be carried out for the purposes of paragraph (2)(b)(i); and
  - (b) the processing of goods outside the United Kingdom must be carried out for the purposes of paragraph 9(6)(a) of Schedule 2 to the Act.
- (5) A notice published under paragraph (4) may make different provision for different cases.

### CHAPTER 3

#### Outward Processing Procedure

##### **Economic condition – outward processing procedure**

**27.**—(1) Where paragraph (2) applies, HMRC must not grant an application for authorisation to declare goods for an outward processing procedure unless HMRC are satisfied that the essential interests of producers of goods in the United Kingdom would not be adversely affected by the granting of that authorisation.

- (2) This paragraph applies where—
- (a) the goods are sensitive goods;
  - (b) the processing of the goods under the outward processing procedure does not consist in their repair; and
  - (c) HMRC are aware of evidence that indicates that the essential interests of producers of goods in the United Kingdom would be adversely affected by the granting of authorisation to declare the goods for an outward processing procedure.

##### **Authorisation to declare goods for an outward processing procedure**

**28.**—(1) An approval notification issued in relation to an authorisation to declare goods for an outward processing procedure must specify the period within which goods released to the procedure must be imported as processed goods and declared for the free-circulation procedure.

(2) An authorisation to declare goods for an outward processing procedure is subject to the condition that—

- (a) no evidence is presented to HMRC that the essential interests of producers of goods in the United Kingdom are likely to be adversely affected by—
  - (i) where the authorisation has been used to declare the goods, the further use of the authorisation;
  - (ii) in all other cases, the use of the authorisation; or
- (b) where such evidence is presented to HMRC, an HMRC officer is satisfied, on the basis of an examination of the available evidence, that the essential interests of producers of goods in the United Kingdom would not be adversely affected by—

- (i) where the authorisation has been used to declare the goods, the further use of the authorisation;
  - (ii) in all other cases, the use of the authorisation.
- (3) A person must not use the standard exchange system in relation to goods declared for an outward processing procedure unless authorised to do so in accordance with regulation 29.
- (4) Where an authorisation to declare goods for an outward processing procedure is granted the following requirements apply—
  - (a) the goods must not be declared for the free-circulation procedure by any person other than the authorised person, unless the authorised person has given their consent for the goods to be so declared; and
  - (b) where the processing of the goods results in the production or manufacture of other goods in which the goods declared can be identified, the processing, or each individual processing operation, must result in the production or manufacture of the approved quantity of the other goods.
- (5) For the purposes of paragraph (4)(b), the methodology by which the approved quantity of the other goods is to be determined—
  - (a) is to be specified in the approval notification; and
  - (b) is to be—
    - (i) chosen by the applicant, if an HMRC officer approves that choice; or
    - (ii) in all other cases, set by an HMRC officer.
- (6) This paragraph applies where—
  - (a) goods (“intended exported goods”) are to be exported in order to be used in a process;
  - (b) the intended exported goods are to be declared for an outward processing procedure;
  - (c) the process takes place using equivalent chargeable goods in place of the intended exported goods; and
  - (d) the processed goods resulting from the processing are imported before the intended exported goods are exported.
- (7) Where paragraph (6) applies, the approval notification issued in relation to the authorisation to declare the intended exported goods for an outward processing procedure must specify the period within which the domestic goods that are replaced by equivalent chargeable goods must be declared for the procedure.
- (8) Subject to paragraph (9), the period within which the domestic goods must be declared for the procedure must not be longer than 6 months beginning with the date after the date on which the equivalent chargeable goods are imported.
- (9) The period within which the domestic goods must be declared for the procedure may be longer than 6 months, but not longer than 12 months, beginning with the date after the date on which the equivalent chargeable goods are imported where—
  - (a) the applicant for authorisation so requests; or
  - (b) the holder of the procedure requests an extension of the period specified in the approval to that effect.
- (10) An authorisation to declare goods for an outward processing procedure is granted subject to such other conditions as may be specified in the approval notification issued in relation to the authorisation.

**Standard exchange system**

**29.**—(1) An authorisation to declare goods for an outward processing procedure may authorise the standard exchange system to be used only if—

- (a) the processing consists of the repair of the domestic goods declared for the procedure;
- (b) none of the domestic goods are subject to—
  - (i) an additional amount of import duty under section 14 of the Act; or
  - (ii) insofar as it is retained EU law under the European Union (Withdrawal) Act 2018<sup>(27)</sup>—
    - (aa) a measure provided for under [Regulation \(EU\) No 1308/2013](#) of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products; or
    - (bb) an arrangement relating to goods resulting from the processing of agricultural products provided for under [Regulation \(EU\) No 510/2014](#) of the European Parliament and of the Council of 16 April 2014 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products;
- (c) the replacement goods have the same—
  - (i) classification code,
  - (ii) commercial quality, and
  - (iii) technical characteristics,as the domestic goods would have when repaired; and
- (d) where the domestic goods have been used prior to export, the replacement goods have been subject to the same use.

(2) For the purposes of paragraph (1)(c), the replacement goods have the same commercial quality as the domestic goods which they are replacing would have when repaired if a reasonable purchaser would consider the replacement goods to be of the same standard as the domestic goods would be when repaired.

(3) The condition in paragraph (1)(c) does not apply where the replacement goods have been supplied to the person who will use them without charge as a result of a contractual or statutory obligation arising from a guarantee or from a manufacturing defect.

- (4) Where replacement goods are supplied without charge to the person who will use them—
  - (a) the replacement goods are to be regarded as domestic goods from the date on which they are imported into the United Kingdom; and
  - (b) the domestic goods are not to be regarded as domestic goods from the date on which they are exported from the United Kingdom.
- (5) This paragraph applies where replacement goods—
  - (a) are imported after the domestic goods are exported; and
  - (b) are supplied with a charge to the person who will use them.
- (6) Where paragraph (5) applies—
  - (a) the value of the replacement goods is to be determined in accordance with regulation 31(2); and

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(27) [2018 c. 16](#).

- (b) domestic goods repaired outside the United Kingdom and then imported into the United Kingdom are not to be treated as imported in accordance with the outward processing procedure.
- (7) Subject to paragraph (8), where an authorisation to declare goods for an outward processing procedure authorises the import of replacement goods before the domestic goods are exported—
  - (a) the domestic goods must be exported within the period of two months beginning with the date on which the replacement goods are imported (“the required export period”);
  - (b) where paragraph (4) applies, if the domestic goods are not exported within the required export period—
    - (i) the replacement goods—
      - (aa) are not to be regarded as domestic goods from the date the required export period expired;
      - (bb) are to be treated as imported into the United Kingdom on that date;
      - (cc) are to be treated as if, on that date, they had been declared for the free-circulation procedure and HMRC had accepted that declaration; and
    - (ii) for the purposes of section 34(1)(b) of the Act, a notification of importation is to be treated as having been given in relation to the replacement goods on that date; and
  - (c) the authorised person must give a guarantee in accordance with Part 10 of the import duty regulations.
- (8) HMRC may grant an extension to the required export period where—
  - (a) the authorised person makes an application to HMRC for an extension; and
  - (b) in the opinion of an HMRC officer exceptional circumstances justify the extension.

### **Cases in which goods may not be declared for an outward processing procedure**

**30.** Goods must not be declared for an outward processing procedure where their export would give rise to—

- (a) remission or repayment of import duty under Part 7 of the import duty regulations; or
- (b) an export refund under Articles 196 to 204 of [Regulation \(EU\) No 1308/2013](#) of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products.

### **Valuation of goods regarded as chargeable goods**

**31.—(1)** For the purposes of section 36(7) of the Act, the value of the goods regarded as chargeable goods is to be the greater of—

- (a) zero; and
- (b) an amount equal to—

$$A - B$$

where—

A is the value of the processed goods at the time of acceptance of the customs declaration of those goods for the free-circulation procedure; and

B is the statistical value of the goods at the time when they were released to an outward processing procedure.

(2) For the purposes of regulation 29(6)(a), the value of the replacement goods is to be the greater of—



- (a) zero; and
- (b) an amount equal to—

$$C - D$$

where—

C is the value of the replacement goods at the time of acceptance of the customs declaration of those goods for the free-circulation procedure; and

D is the statistical value of the domestic goods which the replacement goods replaced at the time when the domestic goods were released to an outward processing procedure.

(3) In this regulation “the statistical value” has the meaning given in Article 4 of [Commission Regulation \(EU\) No 113/2010](#) of 9 February 2010 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries.

## CHAPTER 4

### Authorised Use Procedure

#### Authorised uses

**32.**—(1) The uses to which goods are to be subject for the purposes of paragraph 13 of Schedule 2 to the Act are any uses identified as authorised uses in the authorised use document.

(2) In this regulation “the authorised use document” means the document entitled “Authorised use: Eligible goods and authorised uses” published on 27 November 2018<sup>(28)</sup>.

#### Authorisation to declare goods for an authorised use procedure

**33.**—(1) An approval notification issued in relation to an authorisation to declare goods for an authorised use procedure must specify—

- (a) the use to which the goods are to be subject (“a specified authorised use”); and
- (b) where the only economically viable use of the goods is a specified authorised use, the requirements that must be met in relation to the authorised use procedure in respect of those goods.

(2) An approval notification of the kind mentioned in paragraph (1) may provide for different specified authorised uses for different goods.

(3) Where an authorisation to declare goods for an authorised use procedure is granted and paragraph (1)(b) does not apply, the following requirements apply—

- (a) the authorised person must put the goods to a specified authorised use in the United Kingdom; and
- (b) any specified authorised use of the goods must result in such quantity of other goods as may be—
  - (i) specified in the approval notification; or
  - (ii) determined by reference to a methodology specified in the approval notification.

<sup>(28)</sup> The document entitled “Authorised Use: Eligible goods and authorised uses” is available at <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal> and a hard copy is available for inspection, free of charge, at the offices of HMRC at 100 Parliament Street, London, SW1A 2BQ.

(4) Where an authorisation to declare goods for an authorised use procedure is granted and the goods are suitable for repeated use, the authorised person is subject to such requirements in respect of the goods, and for such period, as may be specified in the approval notification.

(5) Any period specified under paragraph (4) must not be longer than two years from the date the goods were first put to a specified authorised use.

(6) An authorisation to declare goods for an authorised use procedure is granted subject to such other conditions as may be specified in the approval notification issued in relation to the authorisation.

### **Waste and scrap**

**34.—**(1) Waste and scrap resulting from the destruction of goods released to an authorised use procedure—

- (a) is not to be regarded as domestic goods; and
- (b) is to be treated as imported into the United Kingdom on the date of destruction.

(2) For the purposes of section 34(1)(b) of the Act, a notification of importation is treated as having been given on the date of destruction in relation to the waste and scrap not regarded as domestic goods under paragraph (1).

(3) Waste and scrap of the kind referred to in paragraph (1) is to be treated, from the date of destruction, as being released to a storage procedure to be kept in a customs warehouse.

## **CHAPTER 5**

### **Temporary Admission Procedure**

#### **Application for authorisation to declare goods for a temporary admission procedure**

**35.—**(1) Where paragraph (2) applies, the person who is to be treated as making an application for authorisation to declare goods for a temporary admission procedure is—

- (a) in a case where the person (P) with physical control of the goods at the moment of the release of the goods to the temporary admission procedure is acting on behalf of another person, that other person; or
- (b) in all other cases, P.

(2) This paragraph applies where—

- (a) the goods declared for a temporary admission procedure fall within a description given in one of the following sections of the temporary admission document—
  - (i) section 6 (means of transport);
  - (ii) section 7 (means of transport – full relief for persons established in the United Kingdom);
  - (iii) section 8 (means of transport – full relief for individuals who have their habitual residence in the United Kingdom);
  - (iv) section 9 (other cases of relief from import duty in respect of means of transport);
- (b) the goods are declared orally under regulation 21 of the import duty regulations or a declaration is made by conduct under regulation 27 of the import duty regulations; and
- (c) the declaration is treated by regulation 4 as an application for authorisation.

### **Eligibility – temporary admission procedure**

**36.**—(1) Subject to paragraph (2), HMRC may grant an application for authorisation to declare goods for a temporary admission procedure where—

- (a) the applicant is established outside the United Kingdom; or
- (b) the goods fall within a description given in a section of the temporary admission document that specifies that the goods may be declared by, or on behalf of, a person established in the United Kingdom.

(2) An authorisation to declare goods that are consumable goods may be granted only if full relief from a liability to import duty in relation to the goods is to be given under regulation 40.

(3) For the purposes of paragraph (2), goods are consumable goods if they cannot be used without being rendered unusable.

### **Authorisation to declare goods for a temporary admission procedure**

**37.**—(1) An approval notification issued in relation to an authorisation to declare goods for a temporary admission procedure must specify—

- (a) the type of goods that may be imported;
- (b) the period, for the purposes of paragraph 15(b) of Schedule 2 to the Act, during which particular goods are to be used before they are exported from the United Kingdom in accordance with the applicable export provisions.

(2) Subject to paragraphs (3) and (4), the period specified under paragraph (1)(b) must not be longer than 24 months beginning with the date the goods are declared for the procedure.

(3) The period referred to in paragraph (2) may be longer than 24 months, or the authorisation may be amended on application by the authorised person to extend the period specified beyond 24 months, if an HMRC officer is satisfied that—

- (a) the use for which the goods are imported cannot be achieved within 24 months; and
- (b) a longer period is justified.

(4) An extension to the period referred to in paragraph (2) must not be granted with the effect that the total period granted is longer than 10 years beginning with the date the goods are declared for the procedure unless an HMRC officer is satisfied that there are abnormal and unforeseeable circumstances beyond the holder of the procedure's control justifying such an extension.

(5) When determining, for the purposes of this regulation, the period during which goods declared for a temporary admission procedure have been used—

- (a) any period during which the goods were subject to another special Customs procedure is to be disregarded; and
- (b) account is to be taken of any period during which, where relevant, each of the following conditions is met—
  - (i) the goods were subject a temporary admission procedure as a result of a subsequent declaration made by the holder of the procedure; and
  - (ii) where the goods fell within a description given in a section of the temporary admission document, the goods continue to fall within the same section.

### **Requirements relating to a temporary admission procedure**

**38.**—(1) Where an authorisation to declare goods for a temporary admission procedure is granted the following requirements apply—

- (a) the authorised person must—

- (i) use the goods; or
  - (ii) where permitted in the approval notification issued in relation to an authorisation, arrange for another person to use the goods in accordance with the authorisation;
- (b) the goods must not be imported to be repaired;
- (c) the goods must not undergo any substantive change while subject to the procedure that is not a necessary consequence of an intended use of the goods identified in the declaration of the goods for the procedure;
- (d) the goods must be capable of being identified at all times, except where an HMRC officer is satisfied that—
  - (i) in view of the nature of the goods or their intended use, the absence of identification will not result in the avoidance of any or all liability to import duty or other charges, or of any obligations relating to the authorisation; or
  - (ii) equivalent goods are used and it can be verified that they are used in accordance with regulation 45.
- (2) For the purposes of paragraph (1)(c), goods do not undergo a substantive change where—
  - (a) any change is the result of normal depreciation due to an intended use of the goods identified in the declaration of the goods;
  - (b) the goods are repaired, including overhaul, where this was not an intended use of the goods identified in the declaration of the goods; or
  - (c) the goods are maintained, including adjustments or measures to preserve the goods or ensure compliance with technical requirements for their use under the procedure.
- (3) An authorisation to declare goods for a temporary admission procedure is granted subject to such other conditions as may be specified in the approval notification issued in relation to the authorisation.

### **Specified goods**

**39.** The goods specified for the purposes of paragraph 15(a) of Schedule 2 to the Act are goods intended to be used in the United Kingdom for a temporary period before the goods are exported from the United Kingdom.

### **Temporary admission – full relief**

- 40.**—(1) Where paragraph (2) applies, full relief from a liability to import duty is to be given.
- (2) This paragraph applies where—
- (a) chargeable goods—
    - (i) are declared for a temporary admission procedure;
    - (ii) HMRC accept the declaration; and
    - (iii) a liability to import duty arises in relation to those goods;
  - (b) the goods fall within the description of goods given in a section of the temporary admission document; and
  - (c) any eligibility criteria described in the section are met;
- (3) Where full relief is to be given under this regulation any conditions specified in the section of the temporary admission document within which those goods fall apply and are requirements of the procedure.

### **Temporary admission – partial relief**

**41.**—(1) Where paragraph (2) applies partial relief from a liability to import duty is to be given.

(2) This paragraph applies where—

(a) chargeable goods—

(i) are declared for a temporary admission procedure;

(ii) HMRC accept the declaration; and

(iii) a liability to import duty arises in relation to those goods; and

(b) full relief is not to be given under regulation 40.

(3) Where partial relief is to be given under paragraph (1), the amount of import duty due is 3% of the amount of import duty which would have been payable on the goods if they had been declared for the free-circulation procedure and HMRC had accepted that declaration on the date on which they accepted the declaration of those goods for the temporary admission procedure.

(4) The amount specified in paragraph (3) is payable for every month, or fraction of a month, during which the goods are subject to the temporary admission procedure until—

(a) the procedure is discharged; or

(b) the amount of import duty charged reaches the amount that would have been charged in the absence of any partial relief.

## **PART 5**

### **General Rules**

#### **Transfer of rights and obligations**

**42.**—(1) Where paragraph (2) applies, a person to whom rights and obligations in relation to goods declared for a relevant non-transit Part 1 procedure are transferred (“the transferee”) is subject to such requirements of the procedure as are specified in accordance with paragraph (7).

(2) This paragraph applies where—

(a) HMRC grant—

(i) an application for authorisation or approval to carry out an activity specified in regulation 3(2) that includes an approval to transfer to the transferee some or all of the rights and obligations that relate to relevant declared goods; or

(ii) one of the applications specified in paragraph (3)(a) and one of the applications specified in paragraph (3)(b); and

(b) an agreement is made for a transfer of rights and obligations to take place.

(3) The specified applications are—

(a) an application—

(i) made by an approved person, an authorised person or a holder of procedure for approval to transfer to the transferee some or all of the rights and obligations that relate to relevant declared goods; or

(ii) made by an approved person under regulation 91(2)(a) of the import duty regulations to amend an authorisation or approval to carry out an activity specified in regulation 3(2) in order to approve such a transfer; and

(b) an application made by a person—

- (i) for approval to receive some or all of the rights and obligations that relate to relevant declared goods; or
- (ii) under regulation 91(2)(a) of the import duty regulations to amend that person's authorisation or approval to carry out an activity specified in regulation 3(2) in order to approve the person to receive such rights and obligations.

(4) For the purposes of Part 9 of the import duty regulations, the transfer of rights and obligations that relate to relevant declared goods is to be treated as a matter requiring approval under those Regulations.

(5) HMRC may only grant an application referred to in paragraphs (2)(a)(i) and (3) where—

- (a) in the case of goods declared for an inward processing procedure, an outward processing procedure, an authorised use procedure or a temporary admission procedure the transferee meets the eligibility criteria for authorisation to declare goods for procedure to which the rights and obligations specified in the application relate;
- (b) in the case of goods declared for a storage procedure to be kept in a customs warehouse, the transferee is established in the United Kingdom.

(6) HMRC may grant an application referred to in paragraph (3) subject to conditions.

(7) An approval notification issued in relation to an application referred to in paragraph (2)(a)(i) or (3) must specify the rights and obligations to be transferred.

(8) Where the transferee breaches—

- (a) a requirement imposed by or under Part 1 of the Act on the transferee as holder of the procedure; or
- (b) an obligation transferred by virtue of this regulation,

the transferee is liable to any import duty arising as a result of that breach.

(9) In this regulation—

“obligations”, in relation to relevant declared goods, includes—

- (a) conditions to which an authorisation to declare the relevant declared goods for the relevant non-transit Part 1 procedure is subject; and
  - (b) any other requirements in relation to the procedure imposed by or under Part 1 of the Act;
- “relevant declared goods” means goods declared for a relevant non-transit Part 1 procedure;

“rights”, in relation to relevant declared goods, includes—

- (a) any permissions contained in an authorisation to declare the relevant declared goods for the relevant non-transit Part 1 procedure; and
- (b) any rights in relation to those goods conferred by or under Part 1 of the Act.

### **Discharge of a special Customs procedure – supplementary provision**

**43.—**(1) An approval notification in relation to an authorisation to declare goods for an inward processing procedure or an authorised use procedure may specify that it is a requirement that the authorised person supplies to HMRC—

- (a) such information in relation to the discharge of the procedure as may be specified in the approval notification; and
- (b) in such manner and at such time as may be so specified.

(2) The evidence which is to be required, or is to be sufficient, for the purposes of showing that a relevant non-transit Part 1 procedure has been discharged, is to be determined by an HMRC officer in accordance with a notice published by HMRC.

(3) Where goods released to a relevant non-transit Part 1 procedure are placed together with other goods and are destroyed, the goods destroyed, for the purposes of showing the procedure has been discharged under paragraph 19(3)(b) of Schedule 2 to the Act, are—

- (a) where an HMRC officer is satisfied that the holder of the procedure has provided sufficient evidence as to the goods which were subject to the procedure that have been destroyed, those goods; or
- (b) where an HMRC officer is not so satisfied, such proportion of the goods placed together as is determined in accordance with a notice published by HMRC.

(4) Paragraph (5) applies where—

- (a) two or more declarations of goods of the same type are made for a relevant non-transit Part 1 procedure using a single authorisation; and
- (b) some of those goods—
  - (i) are exported from the United Kingdom in accordance with the applicable export provisions;
  - (ii) are destroyed;
  - (iii) are declared for another Customs procedure; or
  - (iv) are, in the case of goods declared for an authorised use procedure, subject to an authorised use.

(5) Where this paragraph applies, for the purposes of showing that a relevant non-transit Part 1 procedure has been discharged—

- (a) the event described in paragraph (4)(b) must have taken place in relation to the actual goods declared for the procedure where—
  - (i) an HMRC officer consents to a request from the approved person, the authorised person or the holder of the procedure that this should be the case; or
  - (ii) an HMRC officer is of the opinion that the amount of import duty which would be applicable to the goods would, as a result of treatment in accordance with subparagraph (b), be lower than the amount applicable to them if the event described in paragraph (4)(b) had taken place in relation to the actual goods declared; or
- (b) in all other cases, the goods referred to in paragraph (4)(b) are to be treated as having been declared under the earliest of the declarations referred to in paragraph (4)(a).

(6) A notice published under this regulation may make different provision for different cases.

## **Record keeping**

**44.**—(1) The persons specified in paragraph (2) must keep and preserve such records in respect of goods that are subject to a relevant non-transit Part 1 procedure, and in such form, as specified in a notice made by HMRC.

(2) The specified persons are—

- (a) any person authorised to carry out an activity specified in regulation 3(2);
- (b) any holder of a procedure; and
- (c) any person handling, storing, producing, or manufacturing, or applying a process to, goods released to a relevant non-transit Part 1 procedure.

(3) HMRC must publish a notice specifying—

- (a) the records to be kept and preserved under paragraph (1);
- (b) the form in which they are to be kept; and

- (c) the period for which they must be kept and preserved.
- (4) A notice published under paragraph (3)—
  - (a) may—
    - (i) specify that the records must be updated within a specified period after the occurrence of a specified event; and
    - (ii) make different provision for different cases; and
  - (b) must make different provision for authorised economic operators.

#### **Authorisation to use equivalent goods**

**45.**—(1) Subject to paragraph (2), an approval or authorisation to carry out an activity specified in regulation 3(2) (“a relevant non-transit Part 1 procedure authorisation”) may authorise requirements in relation to the relevant procedure to be met by reference to equivalent goods (“an equivalent goods authorisation”).

- (2) An equivalent goods authorisation must not be granted—
  - (a) subject to paragraph (3), where, in the opinion of an HMRC officer control by any HMRC officer of the goods to be declared for the relevant non-transit Part 1 procedure could not be satisfactorily exercised if an equivalent goods authorisation were granted;
  - (b) in relation to a declaration of goods for a temporary admission procedure unless—
    - (i) the goods fall within the description given in any of the following sections of the temporary admission document—
      - (aa) section 1 (pallets);
      - (bb) section 2 (spare parts, accessories and equipment for pallets);
      - (cc) section 3 (containers);
      - (dd) section 4 (spare parts, accessories and equipment for containers); and
    - (ii) full relief is to be given in respect of those goods under regulation 40;
  - (c) in relation to a declaration of goods for an inward processing procedure where the goods are only to be subject to an operation of a type that is—
    - (i) described in sub-paragraph (b) of paragraph 11 of Schedule 2 to the Act; and
    - (ii) specified in a notice published by HMRC as an operation constituting a usual form of handling;
  - (d) in relation to a declaration of goods for an inward processing procedure where the export of the processed goods that would result from the processing under the procedure would constitute a breach of the requirement at regulation 22(3)(c);
  - (e) in relation to a declaration of goods for a storage procedure to be kept in a storage warehouse, an inward processing procedure, a temporary admission procedure or an authorised use procedure where, if the goods were declared for the free-circulation procedure—
    - (i) they would be subject to an additional amount of import duty by virtue of section 13, 14 or 15 of the Act; or
    - (ii) the importer of the goods would be required to give a guarantee under paragraph 15(5) of Schedule 4 to the Act;
  - (f) in relation to a declaration of goods for an outward processing procedure where, if the equivalent chargeable goods were declared for the free-circulation procedure—



- (i) the equivalent chargeable goods would be subject to an additional amount of import duty by virtue of section 13, 14 or 15 of the Act; or
  - (ii) the importer of the equivalent chargeable goods would be required to give a guarantee under paragraph 15(5) of Schedule 4 to the Act;
  - (g) in relation to a declaration of goods for a storage procedure to be kept in a customs warehouse where the goods are sensitive goods; or
  - (h) in relation to a declaration of goods for a relevant non-transit Part 1 procedure where the goods or the equivalent goods have been genetically modified or contain elements that have undergone genetic modification.
- (3) Paragraph (2)(a) does not apply where the applicant for authorisation is an authorised economic operator within the meaning given in section 22(2) of the Act unless, in the opinion of an HMRC officer, consideration is required of matters relating to the use of equivalent goods that were not considered at the time when the applicant was authorised as an authorised economic operator.
- (4) A relevant non-transit Part 1 procedure authorisation may authorise equivalent goods to be stored together with other goods where—
- (a) the equivalent goods can be identified by such method as HMRC may specify in the approval notification; or
  - (b) where it is not possible to identify the equivalent goods without incurring disproportionate cost, the approval notification specifies that it is a requirement of the procedure that the authorised person carries out accounting segregation in accordance with a notice made under regulation 44 (record keeping).
- (5) It is a condition of an equivalent goods authorisation in relation to the declaration of goods for an inward processing procedure, an outward processing procedure or a storage procedure to be kept in a customs warehouse that—
- (a) goods which are organic must not be replaced by goods which are not organic; and
  - (b) goods which are not organic must not be replaced by goods which are organic.
- (6) An equivalent goods authorisation in relation to the declaration of goods for an inward processing procedure is subject to any conditions set out in a notice published by HMRC concerning—
- (a) rice;
  - (b) wheat;
  - (c) sugar;
  - (d) live animals and meat;
  - (e) maize;
  - (f) olive oil; and
  - (g) milk and milk products.
- (7) A notice published under paragraph (6) may make different provision for different cases.
- (8) In this regulation “organic” has the meaning given in Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products.

## **Equivalent goods**

**46.—**(1) For the purposes of paragraph 23 of Schedule 2 to the Act—

- (a) in relation to a declaration of goods for an inward processing procedure the following are to be regarded as equivalent domestic goods —

- (i) goods at a more advanced stage of manufacture than the imported goods;
  - (ii) where the processing consists of repair—
    - (aa) new goods where the imported goods are used goods; and
    - (bb) goods that are newer goods, or goods in less need of repair, than the imported goods; and
  - (iii) goods with—
    - (aa) technical characteristics the same as, or similar to, those of the imported goods; and
    - (bb) the same classification code and the same commercial quality as the imported goods;
  - (b) in all other cases, goods are not to be regarded as equivalent domestic goods unless the goods have the same—
    - (i) classification code;
    - (ii) commercial quality; and
    - (iii) technical characteristics,
 as the imported goods.
- (2) In relation to a declaration of goods for an outward processing procedure the goods are not to be regarded as equivalent chargeable goods for the purposes of these Regulations unless—
- (a) they have the same—
    - (i) classification code;
    - (ii) commercial quality; and
    - (iii) technical characteristics,
 as the goods they are replacing; and
  - (b) the goods which are being replaced are not sensitive goods.
- (3) For the purposes of paragraphs (1) and (2), goods have the same commercial quality as the imported goods or the goods they are replacing if a reasonable purchaser would consider the equivalent goods to be of the same standard as the imported goods or the goods they are replacing.
- (4) In this regulation “imported goods” means goods to be declared for a relevant non-transit Part 1 procedure.

### **Treatment of equivalent goods**

- 47.—**(1) Paragraph (2) applies where—
- (a) there is a declaration of goods—
    - (i) for a storage procedure to be kept in a customs warehouse; or
    - (ii) for an inward processing procedure; and
  - (b) the requirements in relation to the relevant procedure are to be met by reference to equivalent domestic goods in accordance with these Regulations.
- (2) Where this paragraph applies—
- (a) the goods are to be treated for the purposes of Part 1 of the Act as if they had been simultaneously released to, and discharged from, the procedure, on the date on which the declaration of the goods for the procedure is accepted by HMRC; and
  - (b) the equivalent domestic goods—

- (i) are not to be regarded as domestic goods from the date on which the declaration of the goods for the relevant procedure is accepted by HMRC (“the date of acceptance”); and
- (ii) are to be treated for the purposes of Part 1 of the Act as imported into the United Kingdom on the date of acceptance.

(3) For the purposes of section 34(1)(b) of the Act, a notification of importation is to be treated as having been given in relation to the equivalent goods not to be regarded as domestic goods under paragraph (2)(b)(i) on the date of acceptance.

(4) Paragraph (5) applies where—

- (a) there is a declaration of goods—
  - (i) for an authorised use procedure; or
  - (ii) for a temporary admission procedure; and
- (b) the requirements in relation to the procedure are to be met by reference to equivalent domestic goods in accordance with these Regulations.

(5) Where this paragraph applies, the goods are to be treated for the purposes of Part 1 of the Act as if they had been simultaneously released to, and discharged from, the relevant procedure where—

- (a) the declaration of the goods for the procedure is accepted by HMRC; and
- (b) the requirements in relation to the procedure were met by reference to the equivalent domestic goods.

(6) Where paragraph (5) applies, the goods are to be treated as if they had been discharged from the procedure on the date on which the equivalent domestic goods are exported from the United Kingdom where—

- (a) the declaration of the goods for the procedure is accepted by HMRC;
- (b) the requirements in relation to the procedure were not met by reference to the equivalent domestic goods at the time of the declaration of the goods;
- (c) the procedure has not been discharged in accordance with paragraph 18 or 19 of Schedule 2 to the Act; and
- (d) the equivalent domestic goods are exported from the United Kingdom.

## **Animals**

**48.** Where an animal that is not to be regarded as a domestic good for the purposes of Part 1 of the Act is treated by regulation 104 of the import duty regulations as being imported into the United Kingdom on a particular date, the animal is to be treated for the purposes of that Part as being released on that date to the Customs procedure to which the animal’s mother has been released.

*Rebecca Harris*

*Craig Whittaker*

Two of the Lords Commissioners of Her  
Majesty’s Treasury

29th November 2018

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision under Part 1 of the Taxation (Cross-border) Trade Act 2018 (“the Act”) in relation to outward processing and special Customs procedures, other than transit. These procedures are defined in sections 3 and 36 of the Act. These Regulations replace provisions in European Union legislation which will cease to have effect when the United Kingdom ceases to be a member of the European Union.

These Regulations are made alongside the Customs (Import Duty) (EU Exit) Regulations 2018 ([S.I. 2018/1248](#)) which make further provision under Part 1 of the Act relating to import duty. Further instruments relevant to outward processing and special Customs procedures will be made in due course covering matters such as applicable export provisions and the customs tariff.

Part 1 makes provision in relation to citation, commencement and interpretation.

Part 2 makes provision in relation to authorisation and approvals. In particular, this Part:

- specifies the activities relating to outward processing and non-transit special Customs procedures that may only be carried out by a person who is authorised or approved to do so;
- makes provision for declarations of goods to be treated as an application for authorisation or amendment of an approval;
- specifies eligibility criteria for authorisation or approval that apply to more than one procedure;
- makes provision in relation to the period for which an authorisation is to have effect and the circumstances in which an authorisation may have effect from a time before the application for it is made.

Regulation 11 provides for circumstances in which an authorisation may have effect from a time before the application for it is made. This retrospective effect is authorised by paragraph 1(2)(i) of Schedule 2 to the Act.

Part 3 makes provision in relation to declarations for outward processing and non-transit special Customs procedures.

Part 4 sets out the rules that apply to each procedure in relation to eligibility, conditions of approval or authorisation and requirements of the procedure and other matters relating to the operation of the procedure.

Part 5 sets out other general rules relating to outward processing and non-transit special Customs procedures, including the circumstances in which rights and obligations in relation to the procedures may be transferred and the use of equivalent goods.

Copies of the documents referred to in this instrument are available at <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal> and hard copies are available for inspection, free of charge, at the offices of HMRC at 100 Parliament Street, London, SW1A 2BQ.

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>.

