
STATUTORY INSTRUMENTS

2018 No. 1249

The Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018

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.