

EXPLANATORY MEMORANDUM TO
THE FULFILMENT BUSINESSES REGULATIONS 2018

2018 No. 326

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Commissioners of HM Revenue and Customs (HMRC) and is laid before the House of Commons.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 These regulations set out the detailed framework for the Fulfilment House Due Diligence Scheme. The scheme applies to fulfilment houses operating in the UK that handle imported goods on behalf of third parties located outside the European Union (EU).
- 2.2 They make provision for applications for approval to carry on a third country goods fulfilment business, obligations imposed on approved persons (including due diligence and record keeping) and penalties for non-compliance. The scheme opens for applications on 1 April 2018.
- 2.3 This instrument replaces and revokes the Fulfilment Businesses (Approval Scheme) Regulations 2018 (SI 2018/299) in its entirety due to errors in those Regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 These Regulations replace and revoke the Fulfilment Businesses (Approval Scheme) Regulations 2018 which contained errors. HMRC acted to make these Regulations as soon as those errors were discovered. The revocation comes into force the day after these Regulations have been laid in order to provide certainty to those affected by the new scheme. As a result it was not possible to lay these Regulations before the House of Commons at least 21 days before Part 5 of the Regulations comes into force. HMRC apologises for this and for the errors in the earlier instrument.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Part 3 of the Finance (No. 2) Act 2017 (“the Act”) introduced the Fulfilment House Due Diligence Scheme to assist with preventing VAT and customs duties abuses in relation to the goods imported from outside the EU.
- 4.2 Section 49(1) of the Act prohibits anyone from carrying on a third country goods fulfilment businesses unless they have been approved and registered by the Commissioners for HMRC (“the Commissioners”). A person who carries on a third

country goods fulfilment business without an approval commits an offence (section 53) and is liable to a penalty (section 55(1)). The goods are also liable to seizure (section 54).

- 4.3 Part 3 of the Act also includes powers allowing the Commissioners to make regulations to further set out the details of the scheme.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The scheme is part of a package of measures announced at Budget 2016 that will disrupt and deter abuse by some overseas businesses selling goods to UK customers via online marketplaces and help protect revenue due to the exchequer.
7.2 Primary legislation establishing the scheme was introduced in the Finance (No. 2) Act 2017. The legislation requires those carrying on third country goods fulfilment business to be approved by HMRC.
7.3 The regulations make provision for the following matters in order to fully and effectively implement the scheme:

Approval process

- 7.4 Part 2 of the regulations deal with the procedure for applying for approval, as well as the procedure for dealing with variations to an approval once given.
7.5 An application must be made in any form, by any method and containing any information specified by the Commissioners (regulation 3 and 4(1)). Regulation 4(2) requires an application be made on or before
- 30 June 2018, in the case of existing fulfilment business
 - 30 September 2018 in the case of new fulfilment business starting between 1 April 2018 and 30 June 2018 and
 - the later of 1 October 2018 and the day on which a person commences carrying on a third country goods fulfilment business, in all other cases.
- 7.6 An application may be amended at any time before the Commissioners have responded to the application (regulation 5). Regulation 6 provides for how the Commissioners must respond to an application, including requesting additional information or permission to inspect premises before determining an application. Regulation 7 sets out the procedure to be followed by the Commissioners where they have reasonable cause to vary the terms of, or revoke, an approval.

Obligations imposed on approved persons

7.7 Part 3 of the regulations covers the obligations imposed on approved persons. These are:

- not start a new third country goods fulfilment business with a person, or continue an existing third country goods fulfilment business with a customer, that the approved person knows or has reasonable grounds to suspect is not meeting a VAT or customs duty obligation. The approved person must also notify the Commissioners when they first become aware or suspect that a customer is not meeting those obligations (regulation 8),
- give notice to all third country customers (regulation 9),
- conduct due diligence checks on third country customers and maintain records of those checks (regulation 10),
- verify a third country customer's VAT registration number or VAT exemption reference number and notify the Commissioners of discrepancies (regulation 11),
- notify the Commissioners of changes in registered details (regulation 12) and
- tell the Commissioners when they cease to carry on a third country goods fulfilment business (regulation 13).

Penalties for non-compliance with the regulations

7.8 Part 4 of the regulations deals with penalties. A person is liable for a penalty if they make a late application, fail to comply with any terms of their approval or fail to comply with the obligations set out in part 3 (regulation 14).

7.9 The amount of the penalty (set out in regulation 15) is:

- £500 for making a late application, and £500 for each month that the contravention continues (up to a maximum of £3,000),
- £3000 for failing to comply with an obligation under regulation 8 (customer not meeting UK obligations) and
- £500 in all other cases.

Revocation

7.10 Part 5 of the regulations revokes the Fulfilment Businesses (Approval Scheme) Regulations 2018.

Consolidation

7.11 Consolidation does not arise in this case.

8. Consultation outcome

8.1 HMRC formally consulted on the scope and shape of the new scheme at Budget 2016. There were 31 respondents. A range of comments were received and HMRC modified the proposal to minimise the impact on legitimate businesses. In particular there were changes to record keeping and due diligence requirements. There was a technical consultation on the draft primary legislation in autumn 2016.

8.2 A technical consultation on the draft secondary legislation was carried out between October and December 2017. The majority of the responses focused on the practicality of some aspects of record keeping and due diligence. As a result a number of drafting changes have been made to the legislation. These include requiring only the final country of delivery (instead of the full delivery address) and taking account

of practical difficulties in recording import entry and VAT registration numbers. Also, despite a specific question on whether the draft legislation at former Part 5 (group registration) was necessary, there was very limited feedback from stakeholders. HMRC has determined that the provisions for group registration has no identified interest, therefore, this provision has been removed from the legislation.

9. Guidance

- 9.1 Guidance for external stakeholders on the scope of the scheme, along with who needs to apply for approval, and by when, can be found at www.gov.uk/hmrc/fulfilmenthouses. HMRC will continue to develop this guidance, expanding it to cover other subjects.

10. Impact

- 10.1 Businesses will incur one-off compliance costs of registration and familiarisation with the new scheme. Businesses registered for the scheme will be required to keep records in relation to relevant goods, carry out due diligence checks on their overseas customers and issue them with a standard notice setting out their VAT and duty obligations. This will ensure that they have controls in place to identify what goods are stored on their premises and retain details of the overseas owners of such goods.
- 10.2 There is no impact on charities or voluntary bodies.
- 10.3 There is no impact on the public sector.
- 10.4 A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 HMRC has consulted with stakeholders on the impact of the scheme on small businesses. The penalty regime of the scheme has been designed to minimise regulatory burdens on small businesses.
- 11.3 Most fulfilment businesses will fall within the definition of a small business. Because the measures target overseas sellers selling via UK fulfilment businesses, the regulations need to apply to businesses of all sizes in order to target the intended audience.

12. Monitoring & review

- 12.1 This measure will be kept under review through communication with affected taxpayer groups and ongoing enforcement and compliance activity.

13. Contact

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