
STATUTORY INSTRUMENTS

2018 No. 1247

**EXITING THE EUROPEAN UNION
CUSTOMS**

**The Customs (Temporary Storage Facilities
Approval Conditions and Miscellaneous
Amendments) (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)

The Commissioners for Her Majesty's Revenue and Customs considering that it would facilitate the administration, collection and enforcement of import duty, make regulations 1 and 2 of these Regulations in exercise of their powers in section 25(1A)(a) and (b) of the Customs and Excise Management Act 1979(1).

The Treasury considering it appropriate in consequence of, or otherwise in connection with, the withdrawal of the United Kingdom from the EU, make regulations 1 and 3 to 9 of these Regulations in exercise of their powers in section 51(1) and (3) of the Taxation (Cross-border Trade) Act 2018(2).

In accordance with section 52(2) of the Taxation (Cross-border Trade) Act 2018, the Commissioners for Her Majesty's Revenue and Customs and the Treasury consider it appropriate in consequence of, or otherwise in connection with, the withdrawal of the United Kingdom from the European Union, for these Regulations to come into force on such day as the Treasury may appoint by regulations under section 52(2) of that Act.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Customs (Temporary Storage Facilities Approval Conditions and Miscellaneous Amendments) (EU Exit) Regulations 2018.

(2) These Regulations come into force on such day as the Treasury may appoint.

(3) In these Regulations—

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

(1) 1979 c. 2. Section 25 was amended by paragraphs 3 and 16 of Schedule 7 to the Taxation (Cross-border) Trade Act 2018 (c. 22).
(2) 2018 c. 22. Section 51(4) defines the “appropriate Minister” as meaning the Treasury.

“chargeable goods” has the same meaning as it has in section 2 of the Act;

“domestic goods” has the same meaning as it has in section 33 of the Act;

“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 any other case, where the person has—
 - (i) a registered office in the United Kingdom, or
 - (ii) a permanent place in the United Kingdom from which the person carries out activities;

“TSF” means a temporary storage facility as described in regulation 2(1).

Approval conditions

2.—(1) The conditions in Schedule 1 to these Regulations must be met in relation to a place which is being used for the deposit of imported goods which are subject to the control of any officer of Revenue and Customs as a result of Part 1 of the Act (“a temporary storage facility”) before the Commissioners may approve a temporary storage facility under section 25(1) of the Customs and Excise Management Act 1979.

(2) An officer of Revenue and Customs may, in any particular case, require that any one or more of the conditions in Schedule 2 to these Regulations are met in relation to a temporary storage facility before the Commissioners may approve that temporary storage facility.

Amendment of the Aircraft (Customs and Excise) Regulations 1981

3.—(1) The Aircraft (Customs and Excise) Regulations 1981(3) are amended as follows.

(2) In regulation 4(1)(f) for “transit shed” substitute “temporary storage facility”(4).

(3) In regulation 6 (removal of unloaded goods imported by air)—

- (a) in paragraph (1)(a) for “transit shed;” substitute “temporary storage facility; or”,
- (b) omit paragraph (1)(b),
- (c) in paragraph (2) for “transit shed” substitute “temporary storage facility”, and
- (d) omit paragraph (2)(a).

(4) Omit regulation 9.

Amendment of the Ship’s Report, Importation and Exportation by Sea Regulations 1981

4.—(1) The Ship’s Report, Importation and Exportation by Sea Regulations 1981(5) are amended as follows.

(2) In regulation 8 (unloading, landing and removal of goods by sea)—

- (a) for “transit shed” substitute “temporary storage facility”,
- (b) in paragraph (d) omit “due entry of” and for “has been made”, substitute “are released to a Customs procedure”,
- (c) in paragraph (e)—

(3) S.I. 1981/1259 amended by S.I. 1992/3095. There are other amending instruments but none are relevant.

(4) “Temporary storage facilities” are places approved under regulations made under section 25A of the Customs and Excise Management Act 1979 (c. 2) (“CEMA”).

(5) S.I. 1981/1260 as amended by S.I. 1986/1819 and 1992/3095. There are other amending instruments but none are relevant.

- (i) in sub-paragraph (i) for “whales and fresh fish” to the end of the sub-paragraph, substitute “catch (fish and other aquatic life) that are regarded as domestic goods by virtue of regulation 105 of the Customs (Import Duty) Regulations 2018(6), and
 - (ii) in sub-paragraph (ii) for “transit shed” substitute “temporary storage facility”.
- (3) Omit regulation 12.

Amendment of the Control of Movement Regulations 1984

- 5.—(1) The Control of Movement Regulations 1984(7) are amended as follows.
- (2) In regulation 3 (interpretation)—
- (a) in paragraph (a) of the definition of “approved place” for “the clearance out of charge of such goods” substitute “facilitating the administration, collection or enforcement of any duty of customs”, and
 - (b) in the definition of “the loader”—
 - (i) for “shall have the same meaning as in section 57 of the Act; that is to say” substitute “means”, and
 - (ii) for “ship or aircraft” substitute “vehicle”.
- (3) In regulation 5 (restrictions on the movements of goods)—
- (a) for “not yet cleared from customs and excise charge” substitute “subject to the control of any officer of Revenue and Customs as a result of Part 1 of the Taxation (Cross-border Trade) Act 2018”,
 - (b) omit “either”, and
 - (c) omit “or a free zone and, in the case of transit goods, between their place of exportation”.
- (4) Omit regulation 6 (restrictions on the movements of goods).
- (5) In regulation 8 (restrictions on the movements of goods)—
- (a) omit “, 6”,
 - (b) for “writing on a document obtained from or approved by the Commissioners for that purpose” substitute “an electronic form specified in a public notice given by HMRC Commissioners”,
 - (c) in paragraph (a) omit “in the case of imported goods,” and at the end of the paragraph for “,” substitute “.”, and
 - (d) omit paragraphs (b) and (c).
- (6) Omit regulation 9 (local export control).
- (7) In regulation 10 (standing permission to remove) omit “, 6”.

Revocation of the Customs Controls on Importation of Goods Regulations 1991

6. The Customs Controls on Importation of Goods Regulations 1991(8) are revoked.

Amendment of the Channel Tunnel (Customs and Excise) Order 1990

7. The Channel Tunnel (Customs and Excise) Order 1990(9) is amended as follows.

(6) S.I. 2018/2148.

(7) S.I. 1984/1176.

(8) S.I. 1991/2724.

(9) S.I. 1990/2167 as amended by S.I. 1993/1813 and 1994/1405. There are other amendments but none are relevant.

- 8.—(1) In article 3 (channel tunnel customs approved areas)—
- (a) in paragraph (6) omit “Subject to paragraphs (6A) and (6B) below”, and
 - (b) omit paragraphs (6A) and (6B).
- 9.—(1) The Schedule (modifications of the Act of 1979) to the Order is amended as follows.
- (2) Omit paragraphs 4 and 4A(2),
 - (3) In paragraph 4B—
 - (a) in sub-paragraph (1)—
 - (i) after “such trains section 34 shall” insert “(subject to sub-paragraph 4)”, and
 - (ii) for “to (4)” substitute “and (3)”,
 - (b) for sub-paragraph (4) substitute—
 - “(4) The modifications in this paragraph do not apply to section 34(1A)(10)
 - (4) Omit paragraphs 5 and 5A.
 - (5) In paragraph 6 for “ship arriving at a port” substitute “vehicle entering the United Kingdom”.
 - (6) In paragraph 8 omit sub-paragraph (a).
 - (7) In paragraph 9 omit “, 58D (operative date for Community purposes and 58E (authentication of Community customs documentation) and in section 62 (information, documentation, etc as to export goods)”.
 - (8) Omit paragraphs 10 to 16, 18, 18A, 21 and 23.

29th November 2018

29th November 2018

Rebecca Harris
Craig Whittaker
Two of the Lords Commissioners of Her
Majesty’s Treasury
Jima Harra
Penny Ciniewicz
Two of the Commissioners for Her Majesty’s
Revenue and Customs

(10) Subsection (1A) is inserted into section 34 CEMA by paragraph 25 of Schedule 7 to the Taxation (Cross-border Trade) Act 2018.

SCHEDULE 1

Regulation 2(1)

1. The person who is responsible for operating the TSF (“the operator”) must—
 - (a) be established in the United Kingdom;
 - (b) save where the operator is an authorised economic operator approved in accordance with regulations made under sections 22 and 23 of the Act, provide an undertaking that the TSF will be operated in accordance with the conditions in these Regulations and any other conditions or restrictions that may be attached to the grant of approval of the TSF;
 - (c) give HMRC a comprehensive guarantee covering any liability or potential liability to pay import duty in respect of the import of goods which are or have been stored in the TSF, in accordance with regulation 97 of the Customs (Import Duty) (EU Exit) Regulations 2018⁽¹¹⁾;
 - (d) ensure that there are effective systems in place to prevent goods stored in the TSF from being removed from control without having been released for a Customs procedure under section 3 of the Act;
 - (e) ensure that there are adequate real time information sharing arrangements in place between the TSF and any TSF to which goods are intended to be transferred to (“the transferee TSF”); and
 - (f) take reasonable steps to ensure that prior to the movement of any goods to a transferee TSF, the transferee TSF has—
 - (i) agreed to the transfer,
 - (ii) acknowledged that the goods are in the transferee TSF’s possession or control for the purposes of section 6(2) of the Act (liability for the payment of any import duty in respect of the goods being transferred), and
 - (iii) entered details of the movement of the goods transferred into the transferee TSF’s record keeping system.
2. The TSF must not be used for the purposes of retail sale.
3. Where it is intended to store goods in the TSF which are likely to present a danger, to spoil other goods or to require special facilities for other reasons, the TSF must be adequately equipped to store those goods safely.

SCHEDULE 2

Regulation 2(2)

1. The conditions related to the record keeping system in place for the TSF are that the system records details of—
 - (a) all goods stored in the TSF including identifying numbers, number and kind of packages, quantity, the commercial or technical description and, where relevant, the identification marks of the container necessary to identify the goods and whether the goods are domestic or chargeable goods;
 - (b) any accompanying documentation relating to the goods;
 - (c) the location of the goods including their storage position inside the TSF;
 - (d) any handling of the goods whilst the goods are in the TSF including details of any form of handling necessary to preserve the goods in the state they were in at the time of their import;

(11) 2018/1248.

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- (e) any movement of the goods into or out of the TSF, including the times and dates of the arrival and departure of such goods, the name and address of the person to whom the goods are sent (“the recipient”) and the time and the date the recipient receives the goods;
 - (f) the temporary storage declarations for any goods stored in the TSF;
 - (g) the Customs procedure into which any goods stored in the TSF are released.
2. Where there is more than one record keeping system in place for the TSF, the operator must ensure that any records relating to Customs matters are cross referenced on each system.
3. Domestic goods must not be stored in the TSF.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for conditions that must, or may be required to be, met in relation to temporary storage facilities (TSFs) before they can be approved for the deposit of imported goods that are subject to the control of an HMRC officer under paragraph 1 of Schedule 1 to the Taxation (Cross-border Trade) Act 2018 (c. 22) (“the Act”). The Regulations also revoke and make amendments to secondary legislation relating to the importation of goods into the United Kingdom in consequence of the United Kingdoms’ departure from the European Union.

Regulation 1 provides for citation, commencement and interpretation. Paragraph (2) of the regulation provides that the Regulations shall come into force on such day or days as the Treasury may appoint pursuant to regulations made under section 52(2) of the Act. Paragraph (3) contains a list of definitions.

Regulation 2(1) provides that the mandatory conditions that must be met in relation to all TSFs before they are approved under section 25A of the Customs and Excise Management Act 1979 are set out in Schedule 1 to the Regulations. Regulation 2(2) provides that an officer of HMRC may in a particular case, require that one or more of the conditions set out in Schedule 2 must be met in relation to a TSF prior to such approval being granted.

Regulation 3 makes consequential amendments to the Aircraft (Customs and Excise) Regulations 1981 (S.I. 1981/1259).

Regulation 4 makes consequential amendments to the Ship’s Importation and Exportation by Sea Regulations 1981 (S.I. 1981/1260).

Regulation 5 makes consequential amendments to the Control of Movement Regulations 1984 (S.I. 1984/1176).

Regulation 6 revokes the Customs Controls on Importation of Goods Regulations 1991 (S.I. 1991/1176).

Regulations 7, 8 and 9 make consequential amendments to the Channel Tunnel (Customs and Excise) Order 1990 (S.I. 1990/2167).

This instrument is one of a group of instruments covered by a single overarching HMRC impact assessment which will be published on 4th 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>.

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