

2024 No. 166

CUSTOMS

The Customs (Preferential Trade Arrangements: Error in Evidence of Origin) Regulations 2024

<i>Made</i>	- - - -	<i>19th February 2024</i>
<i>Laid before Parliament</i>		<i>21st February 2024</i>
<i>Coming into force</i>	- -	<i>13th March 2024</i>

The Commissioners for His Majesty’s Revenue and Customs, in exercise of the powers conferred by sections 166A(2) and (3) and 166C(1) and (2) of the Customs and Excise Management Act 1979(a), make the following Regulations.

Citation and commencement

1. These Regulations may be cited as the Customs (Preferential Trade Arrangements: Error in Evidence of Origin) Regulations 2024 and come into force on 13th March 2024.

PART 1

Obligation to notify error in evidence that goods originate from the United Kingdom

Interpretation of Part 1

2. In this Part—

“duty”, in relation to a country or territory outside the United Kingdom(b), means a duty of customs charged under the law of that country or territory by reference to the importation of goods into that country or territory;

“preferential trade arrangement” means an arrangement made between His Majesty’s government in the United Kingdom and the government of a country or territory outside the United Kingdom which makes provision for the rate of duty applicable, in that other country or territory, to goods originating from the United Kingdom to be lower than the rate which would otherwise be applicable; and in relation to a preferential trade arrangement—

(a) 1979 c. 2. Sections 166A and 166C of the Customs and Excise Management Act 1979 (“CEMA 1979”) were inserted by section 21 of the European Union (Future Relationship) Act 2020 (c. 29). The power to make regulations under sections 166A and 166C of CEMA 1979 is given to “the Commissioners”, defined as the Commissioners for His Majesty’s Revenue and Customs by section 1(1) of CEMA 1979 (as amended by paragraph 22(b) of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11)).

(b) By section 1(3A) of CEMA 1979 (which was inserted by paragraph 4(3) of Schedule 7 to the Taxation (Cross-border Trade) Act 2018 (c. 22)) the definition of “territory outside the United Kingdom” contained in section 37 of the Taxation (Cross-border Trade) Act 2018 applies for the purpose of any instrument made under CEMA 1979.

“evidence of origin” means evidence, required under the arrangement in order for goods to be subject to a lower rate of duty in the other country or territory, that goods originate from the United Kingdom;

“evidence provider” means a person who is required under the arrangement to provide evidence of origin;

“evidence recipient” means a person (including a party to the arrangement) to whom, under the arrangement, an evidence provider must or may provide evidence of origin;

“material error” means an error or deficiency in evidence of origin, or in the information upon which that evidence is based, which could affect the accuracy or validity of that evidence for the purposes of the arrangement.

Obligation to notify material error in evidence of origin

3. Regulations 4 and 5 apply where—

- (a) a preferential trade arrangement listed in the Schedule requires His Majesty’s government in the United Kingdom to make provision requiring evidence providers, upon becoming aware of, or having reason to believe that there are, material errors in evidence of origin which they have provided, to notify evidence recipients of those errors;
- (b) an evidence provider has provided an evidence recipient with evidence of origin in pursuance of the arrangement; and
- (c) the evidence provider has become aware of, or has reason to believe that there is, a material error in that evidence.

4. The evidence provider must notify the evidence recipient of the material error in accordance with regulation 5.

5. The evidence provider must ensure that the notification mentioned in regulation 4—

- (a) is given in such manner, and
- (b) satisfies such requirements as to timing, form and content,

as the Commissioners specify, in relation to the arrangement, by public notice.

PART 2

Penalties, appeals and reviews

Interpretation of Part 2

6. In this Part—

“demand notice” has the meaning given in regulation 10(1);

“HMRC” means His Majesty’s Revenue and Customs;

“notice” means notice in writing and includes, where regulation 20(b) applies, notice given by means of electronic communication;

“penalty” means a penalty under regulation 7(1);

“representative”, in relation to a person, means any person acting in a representative capacity in relation to the person and includes—

- (a) the person’s personal representative;
- (b) the person’s trustee in bankruptcy, or trustee or interim trustee in a sequestration;
- (c) a receiver or liquidator appointed in relation to the person or any of the person’s property.

Penalty for contravention of obligation to notify material error

7.—(1) An evidence provider who fails to comply with an obligation to notify under regulation 4 is liable to a penalty.

(2) The amount of the penalty is such amount as HMRC consider appropriate, up to a maximum of £1,000.

(3) This regulation is subject to the following provisions of this Part.

Exceptions to liability to penalty

8.—(1) A person is not liable to a penalty if the person satisfies—

- (a) HMRC, or
- (b) on appeal, the tribunal^(a),

that there is a reasonable excuse for the failure to comply with the obligation to notify under regulation 4.

(2) For the purposes of paragraph (1), neither of the following is a reasonable excuse—

- (a) that reliance was placed by the person on another person to perform any task;
- (b) that the failure is attributable wholly or partly to the conduct of another person on whom reliance was so placed.

(3) Where a person is prosecuted for an offence by reason of conduct which includes the failure to comply with the obligation to notify under regulation 4, the person is not liable to a penalty.

Reduction or increase of penalty

9.—(1) Where a person is liable to a penalty, HMRC on review under regulation 14 or 16, or the tribunal on appeal under regulation 12, may reduce or increase the penalty to such amount up to the maximum of £1,000 as they consider appropriate (which may be zero).

(2) In exercising their powers under paragraph (1), neither HMRC nor the tribunal may take into account—

- (a) an insufficiency of funds available to any person for paying the penalty; or
- (b) the fact that the person liable to the penalty, or a person acting on that person's behalf, has acted in good faith.

Demand for penalty

10.—(1) Where a person is liable to a penalty, HMRC may give to that person, or that person's representative, a notice (a "demand notice") demanding payment of the amount due by way of penalty.

(2) An amount demanded as due from a person or representative in accordance with paragraph (1) is recoverable as if it were an amount due from the person or representative as an amount of import duty within the meaning of section 1(1) of the Taxation (Cross-border Trade) Act 2018^(b).

(3) Paragraph (2) is subject to—

- (a) paragraph (4);
- (b) any appeal under regulation 12; and
- (c) any review by HMRC under regulation 14 or 16.

(4) An amount demanded is not recoverable if the demand notice has subsequently been withdrawn.

(a) The definition of "tribunal" in section 1 of CEMA 1979 was inserted by S.I. 2009/56.

(b) Section 1 was renumbered by section 2(2)(a) of the Taxation (Post-transition Period) Act 2020 (c. 26).

Time limit for demand for penalty

11.—(1) A demand notice may not be given in relation to a penalty more than three years after the failure to comply with the obligation to notify under regulation 4.

(2) A demand notice may not be given more than two years after there has come to the knowledge of HMRC evidence of facts sufficient in the opinion of HMRC to justify the giving of the demand notice.

Right to appeal

12.—(1) Where HMRC give a demand notice to a person or a person's representative, the person or representative may appeal to the tribunal in respect of—

- (a) HMRC's decision that the person is liable to a penalty; or
- (b) HMRC's decision as to the amount of the penalty.

(2) Subject to regulation 9, the powers of the tribunal on an appeal under this regulation include—

- (a) the power to cancel or vary a decision; and
- (b) the power to substitute the tribunal's own decision for any decision so cancelled.

(3) On an appeal under this regulation—

- (a) the burden of proof as to the matters mentioned in regulation 7(1) lies on HMRC; but
- (b) it is otherwise for the person or representative bringing the appeal to show that the grounds on which the appeal is brought have been established.

Offer of review

13.—(1) HMRC must offer a review of a decision in respect of which an appeal lies under regulation 12.

(2) HMRC must make the offer by notice given to the person liable to the penalty, or that person's representative, at the same time as the demand notice is given to that person or representative.

Review by HMRC

14.—(1) Subject to paragraphs (2) and (3), HMRC must review a decision if—

- (a) they have offered a review of the decision under regulation 13; and
- (b) the person or representative to whom the offer was made notifies HMRC accepting the offer within the period of 30 days beginning with the date of the notice of the offer.

(2) The person or representative may not notify acceptance of the offer if an appeal has been made to the tribunal under regulation 12.

(3) HMRC may not review the decision if an appeal has been made to the tribunal under regulation 12.

Extension of time

15.—(1) If HMRC have offered a review of a decision under regulation 13, HMRC may within the relevant period notify the person or representative to whom the review was offered that the relevant period is extended.

(2) If HMRC give notice under paragraph (1), the relevant period is extended to the end of the period of 30 days from—

- (a) the date of the notice; or
- (b) any other date set out in the notice or a further notice.

(3) In this regulation, "relevant period" means—

- (a) the period for acceptance of an offer of review referred to in regulation 14(1)(b); or
- (b) if notice has been given under paragraph (1), that period as extended (or most recently extended) in accordance with paragraph (2).

Review out of time

16.—(1) This regulation applies if—

- (a) HMRC offer a review of a decision under regulation 13; and
- (b) the person or representative to whom the offer was made does not accept the offer within the time allowed under regulation 14(1)(b) or 15(2).

(2) Subject to paragraphs (4) and (5), HMRC must review the decision if—

- (a) after the time allowed, the person or representative makes a request to HMRC in writing for a review out of time;
- (b) HMRC are satisfied that the person or representative had a reasonable excuse for not accepting the offer within the time allowed; and
- (c) HMRC are satisfied that the person or representative made the request without unreasonable delay after the excuse ceased to apply, if it has ceased to apply.

(3) If a person or representative makes a request as mentioned in paragraph (2)(a), HMRC must, within the period of 30 days beginning with the date of the request, notify the person or representative whether or not a review will be undertaken.

(4) The person or representative may not make a request for a review out of time if an appeal has been made to the tribunal under regulation 12.

(5) HMRC may not review the decision if an appeal has been made to the tribunal under regulation 12.

Nature of review

17.—(1) This regulation applies if HMRC must review a decision under regulation 14 or 16.

(2) The nature and extent of the review are to be such as HMRC consider appropriate in the circumstances.

(3) For the purpose of paragraph (2), HMRC must in particular have regard to steps taken before the beginning of the review—

- (a) by HMRC in reaching the decision; and
- (b) by any person in seeking to resolve disagreement about the decision.

(4) The review must take into account any representations made by the person or representative to whom the offer of review was made, at a stage which gives HMRC a reasonable opportunity to consider them.

(5) The review may conclude that the decision is to be—

- (a) upheld,
- (b) varied, or
- (c) cancelled.

(6) HMRC must give the person or representative notice of the conclusions of the review and their reasoning within—

- (a) the period of 45 days beginning with the relevant date; or
- (b) such other period as may be agreed between HMRC and the person or representative.

(7) In paragraph (6), “relevant date” means—

- (a) the date on which HMRC received notice from the person or representative accepting the offer of a review (in a case falling within regulation 14); or

- (b) the date on which HMRC's obligation to review the decision arose under regulation 16(2) (in a case falling within regulation 16).

(8) Where HMRC must review a decision but do not give notice of the conclusions within the period specified in paragraph (6), the review is to be treated as having concluded that the decision is upheld.

(9) If paragraph (8) applies, HMRC must give notice to the person or representative of the conclusions which the review is treated as having reached.

Bringing of appeals

18.—(1) Subject to paragraphs (2) to (5), an appeal under regulation 12 is to be made to the tribunal before—

- (a) the end of the period of 30 days beginning with the date of the demand notice; or
- (b) if later, the end of the relevant period (within the meaning of regulation 15(3)).

(2) In a case where HMRC must review under regulation 14, an appeal may not be made—

- (a) before the conclusion date; or
- (b) after the end of the period of 30 days beginning with the conclusion date.

(3) In a case where a person or representative has made a request under regulation 16(2)(a) for a review out of time—

- (a) an appeal may not be made until HMRC have notified the person or representative whether or not a review under regulation 16 will be undertaken;
- (b) if HMRC have notified the person or representative that such a review will be undertaken, an appeal may not be made—
 - (i) before the conclusion date; or
 - (ii) after the end of the period of 30 days beginning with the conclusion date;
- (c) if HMRC have notified the person or representative that such a review will not be undertaken, an appeal may not be made without the permission of the tribunal.

(4) In a case where regulation 17(8) applies, an appeal may not be made—

- (a) before the end of the period specified in regulation 17(6); or
- (b) after the end of the period of 30 days beginning with the conclusion date.

(5) An appeal may be made after the end of the period specified in paragraph (1), (2)(b), (3)(b)(ii) or (4)(b) if the tribunal gives permission.

(6) In this regulation, “conclusion date” means the date of the notice of the conclusions of the review given under regulation 17(6) or 17(9) as the case may be.

Settling appeals by agreement

19.—(1) Subject to the provisions of this regulation, where an appeal is made by a person or representative (“the appellant”) under regulation 12 and, before the appeal is determined by the tribunal, HMRC and the appellant reach an agreement (whether in writing or not) under the terms of which the decision under appeal is to be treated as—

- (a) upheld,
- (b) varied, or
- (c) cancelled,

for all purposes the consequences ensue which would have ensued had the tribunal, at the time when the agreement was reached, determined the appeal in accordance with the terms of the agreement.

(2) Paragraph (1) does not apply where, within 30 days of the date on which the agreement was reached, the appellant gives notice to HMRC of an intention to repudiate the agreement.

- (3) An agreement which is not in writing—
- (a) is not treated as having been reached unless the fact that the agreement was reached, and its terms, are confirmed by notice given by HMRC to the appellant or by the appellant to HMRC; and
 - (b) is treated as having been reached at the time when that notice of confirmation was given.
- (4) Where—
- (a) an appeal is made under regulation 12 and the appellant notifies HMRC (whether in writing or not) of an intention not to proceed with the appeal; and
 - (b) 30 days have elapsed since that notification without HMRC giving to the appellant notice in writing indicating that they are unwilling that the appeal should be treated as withdrawn,

the preceding paragraphs of this regulation shall apply as if, at the date of the appellant's notification, HMRC and the appellant had reached agreement (in writing or not, as the case may be) that the decision under appeal should be treated as upheld.

(5) References in this regulation to an agreement being reached with, and the giving of notice or notification to or by, an appellant include references to an agreement being reached with, and the giving of notice or notification to or by, a representative of the appellant who is acting in relation to the appeal.

Service of notices

20. Any notice to be given to a person for the purposes of this Part may be given—
- (a) by sending it by post to that person or that person's representative at the last or usual residence or place of business of that person or representative; or
 - (b) if the person consents in writing to receiving notices under this Part by means of a particular type of electronic communication, by means of that type of electronic communication.

Jonathan Athow
Justin Holliday

19th February 2024

Two of the Commissioners for His Majesty's Revenue and Customs

SCHEDULE

Regulation 3(a)

Preferential trade arrangements to which regulation 3(a) applies

The following is the list of preferential trade arrangements which is referred to in regulation 3(a):

Trade Continuity Agreement between the United Kingdom of Great Britain and Northern Ireland and Canada, signed on 9th December 2020;

Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Turkey, signed on 29th December 2020;

Free Trade Agreement between Iceland, the Principality of Liechtenstein and the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland, signed on 8th July 2021;

Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and New Zealand, signed on 28th February 2022;

Comprehensive and Progressive Agreement for Trans-Pacific Partnership, signed at Santiago on 8th March 2018, including the Protocol on the Accession of the United Kingdom of Great Britain

and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, signed on 16 July 2023.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply to specified preferential trade arrangements, i.e. arrangements entered into between the United Kingdom and other countries or territories which provide for goods originating from the United Kingdom to be subject to a preferential rate of import duty in that other country or territory.

Part 1 creates an obligation to notify errors in evidence provided pursuant to such arrangements.

Regulation 3 sets out the circumstances in which this obligation will apply. It applies in relation to arrangements which are listed in the Schedule and under which the United Kingdom must make provision requiring a person who has provided evidence that goods originate from the United Kingdom to give notice where the evidence is erroneous. Documentation relating to relevant preferential trade arrangements will be accessible from <https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021>. A person who is unable to access this documentation online may inspect it free of charge, by appointment at the offices of His Majesty's Revenue and Customs ("HMRC"), 14 Westfield Avenue, London E20 1HZ.

Regulation 4 requires an evidence provider to notify the evidence recipient of a material error (as defined in regulation 2) in evidence of origin in the United Kingdom.

Regulation 5 makes provision for details of such notification to be set out by public notice. Where such a notice is made, it will be accessible from <https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021>. A person who is unable to access a notice online may inspect it free of charge, by appointment at the offices of HMRC, 14 Westfield Avenue, London E20 1HZ.

Part 2 makes provision for penalties for failure to comply with the obligation under regulation 4 and for matters arising from such penalties.

Regulation 7 provides for liability to a penalty of up to £1,000.

Regulation 8 provides for exceptions to liability (for example, in cases of reasonable excuse).

Regulation 9 provides for the power of HMRC and the tribunal to alter the amount of a penalty.

Regulations 10 and 11 concern demands for penalties.

Regulation 12 provides a right to appeal (against both liability to a penalty and its amount).

Regulations 13 to 17 concern reviews by HMRC of penalty decisions, including reviews out of time.

Regulations 18 and 19 make further provision concerning appeals.

Regulation 20 makes general provision about the service of documents.

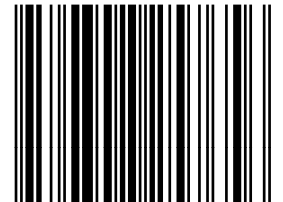
The Schedule lists the preferential trade arrangements to which regulation 3 applies.

An Impact Assessment has not been prepared for this instrument because it does not meet the financial threshold above which such an assessment is required.

£8.14

<http://www.legislation.gov.uk/id/uksi/2024/166>

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