

2018 No.

CUSTOMS

VALUE ADDED TAX

**The Fulfilment Businesses (Approval Scheme) Regulations
2018**

Made - - - - - ***

Laid before House of Commons ***

Coming into force in accordance with regulation 1

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by [sections 51 and 57 of the Finance (No. 2) Act 2017](a).

PART 1

PRELIMINARY

Citation and commencement

1.—(1) These Regulations may be cited as the Fulfilment Businesses (Approval Scheme) Regulations 2018.

(2) Subject to paragraph (3), these Regulations come into force on 1st April 2018.

(3) Parts 3 and 7 come into force on 1st April 2019, except in relation to dealing with contraventions mentioned in regulation 23.

Interpretation

2. In these Regulations—

“approved group” has the meaning given by regulation 14(4)(a);

“customer” means a person who, in relation to third country goods(b) stored by an approved person, is—

(a) the owner of those goods, or

(b) the person on whose behalf those goods are stored;

“notice” means a notice in writing, including electronic;

(a) [2017 c.*]

(b) Whether goods are “third country” goods is determined under [section 48(3)] of the Finance (No. 2) Act 2017].

“notice of approval” means a notice given by the Commissioners under regulation 4(1)(a) or (3)(a);

“representative member” means a representative member for an approved group;

“specified” means specified in a notice published by the Commissioners, and “specify” is construed accordingly.

PART 2

APPROVAL PROCEDURE

Applications for approval

3.—(1) An application for approval to carry on a third country fulfilment goods business^(a) must be made to the Commissioners.

(2) A person carrying on a third country goods fulfilment business as at 31st March 2018 must make an application for approval by 30th June 2018.

(3) A person who commences carrying on a third country goods fulfilment business between 1st April 2018 and 30th June 2018, must make an application for approval by 30th September 2018.

(4) An application may be amended by the applicant at any time before the Commissioners have given notice under regulation 4(1) in relation to that application.

(5) Where an application is amended, the application is treated as made to the Commissioners on the date the amendment is made.

Commissioners’ response to an application

4.—(1) The Commissioners must, as soon as reasonably practicable after receiving the application, give notice to the applicant—

- (a) accepting the application,
- (b) rejecting the application, or
- (c) requesting additional information or permission for the Commissioners to inspect any premises from which the applicant will carry on the third country goods fulfilment business, or both, by or on a specific date.

(2) Where an applicant—

- (a) fails to provide the additional information by the specific date, or
- (b) fails to allow the inspection of premises on the specific date,

the application is treated as withdrawn on that date.

(3) Where the Commissioners have requested additional information or permission to inspect premises, the Commissioners must, as soon as reasonably practicable after the later of the date on which the Commissioners received the additional information or the date on which the Commissioners inspected the premises, give notice to the applicant—

- (a) accepting the application, or
- (b) rejecting the application.

(4) Where an application is accepted, the notice under paragraph (1)(a) or (3)(a) must—

- (a) include the unique reference number assigned by the Commissioners to the approved person,
- (b) state the date from which approval has effect,

(a) Whether a person carries on a third country goods fulfilment businesses is determined under [section 48(1)] of the Finance (No. 2) Act 2017].

- (c) contain any conditions or restrictions imposed by the Commissioners, and
 - (d) refer to the obligations and the restriction set out in Part 3 of these Regulations.
- (5) Where an application is rejected, the notice under paragraph (1)(b) or (3)(b) must give the reasons for the rejection.

PART 3

OBLIGATIONS AND RESTRICTIONS

Customer not meeting UK obligations

5.—(1) An approved person must notify the Commissioners where the approved person knows or has reasonable grounds to suspect that a customer has not met a VAT or customs duty obligation in relation to third country goods.

(2) Notification must be given within 30 days from the date on which the approved person first knows or has reasonable grounds to suspect that the customer has not met a VAT or customs duty obligation in relation to third country goods.

(3) An approved person must not carry on a third country goods fulfilment business with a person named in a notice issued by the Commissioners, until the expiry of that notice.

(4) A notice under paragraph (3) must—

- (a) only be issued if the Commissioners have reasonable grounds to believe that the person named in the notice has not met a VAT or customs duty obligation in relation to third country goods, and
- (b) state the date on which the notice will expire, which must be a date within 12 months of the date on which the notice is issued.

Notice to a customer of UK obligations

6.—(1) An approved person must give a notice to all of that person's customers that—

- (a) contains information specified by the Commissioners relating to VAT and customs duty obligations arising in relation to third country goods,
- (b) states that the approved person must notify the Commissioners where the approved person knows or has reasonable grounds to suspect that the customer has not met a VAT or customs duty obligation in relation to third country goods,
- (c) states that, in the event that the customer is named in a notice issued by the Commissioners, the approved person must not carry on a third country goods fulfilment business with that customer until the expiry of that notice, and
- (d) states that if the approved person fails to comply with the obligation referred to in paragraph (b) or the restriction referred to in paragraph (c), the approved person may be liable to a penalty of £3,000 for each failure and may have their approval to carry on a third country fulfilment goods business revoked.

(2) A notice under paragraph (1) must be given by the later of—

- (a) 30th April 2019,
- (b) 30 days from the date on which the approved person receives a notice of approval, and
- (c) 30 days from the day on which the approved person begins to carry on a third country goods business with a customer.

(3) Where the specified information referred to in paragraph (1)(a) is amended by the Commissioners, an approved person must give further notice to all of that person's customers containing the amended specified information within 30 days from the date on which the approved person is notified by the Commissioners of the amendment.

Customer due diligence and record keeping

7.—(1) An approved person must maintain a record of the following information—

- (a) the name and contact details of each customer,
- (b) the VAT registration number of each customer,
- (c) a description of the type and quantity of the third country goods stored for each customer,
- (d) the import entry number^(a) of the third country goods stored for each customer,
- (e) the address to which the third country goods are delivered from storage,
- (f) a copy of the notice required to be given to each customer under regulation 6, and
- (g) any further information relating to customers and third country goods stored for customers that is specified by the Commissioners.

(2) The records in paragraph (1) must be—

- (a) preserved for a period of six years beginning on the date the records are first held by the approved person, and
- (b) made available for inspection by an officer when required.

(3) In this regulation, “officer” means a person appointed under section 2(1) of the Commissioners for Revenue and Customs Act 2005^(b).

Verification of a customer’s VAT registration number

8.—(1) An approved person must verify the VAT registration number held in relation to each customer in accordance with any verification process specified by the Commissioners.

(2) Verification in relation to each customer, must be—

- (a) carried out for the first time by the later of—
 - (i) 30th April 2019
 - (ii) 30 days from the date on which the approved person receives a notice of approval, and
 - (iii) 30 days from the day on which the approved person begins to carry on a third country goods business with a customer,
- (b) repeated subsequently in accordance with a frequency specified by the Commissioners or, if different, set out in the notice of approval.

(3) An approved person must notify the Commissioners, within any period specified, if the verification process fails to verify a customer VAT registration number.

Change to registered details

9.—(1) An approved person must notify the Commissioners of any change in that person’s registered details.

(2) Notification must be given by the later of 30th April 2019 and 30 days from the day on which the change occurred.

(3) In this regulation, “registered details” means such information that is contained in the register of approved persons^(c) and that is also specified by the Commissioners.

(a) An import entry number is assigned to each consignment on entry to the United Kingdom, by HMRC, for administrative purposes.

(b) 2005 c. 11.

(c) Under [[section 50(1)] of the Finance (No. 2) Act 2017] the Commissioners must maintain a register of approved persons.

Ceasing to carry on a third country goods fulfilment business

10. Where an approved person has ceased to carry on a third country goods fulfilment business, that person must notify the Commissioners within 30 days from the day on which the activity ceased.

PART 4

VARIATION AND REVOCATION OF APPROVAL

Application to vary approval

11.—(1) An approved person may apply to the Commissioners to vary any conditions and restrictions imposed by the Commissioners and set out in a notice of approval (under regulation 4(4)(c)).

(2) But no application may be made to vary the conditions and restrictions of an approval if the variation is in respect of a matter which—

- (a) is subject to a review or appeal, or
- (b) was refused on review or appeal.

Response to application to vary approval

12.—(1) The Commissioners must, as soon as reasonably practicable after receiving the application, give notice to the approved person—

- (a) accepting the application,
- (b) rejecting the application, or
- (c) requesting additional information or permission for the Commissioners to inspect any premises from which the approved person carries on the third country goods fulfilment business, or both, by or on a specific date.

(2) Where an applicant—

- (a) fails to provide the additional information by the specific date, or
- (b) fails to allow the inspection of premises on the specific date,

the application is treated as withdrawn on that date

(3) Where the Commissioners have requested additional information or permission to inspect premises, the Commissioner must, as soon as reasonably practicable after the later of the date on which the Commissioners received the additional information or the date on which the Commissioners inspected the premises, give notice to the applicant—

- (a) accepting the application, or
- (b) rejecting the application.

(4) Where the application is accepted, the notice under paragraph (1)(a) or (3)(a) must—

- (a) identify how the approval is varied, and
- (b) state the date on which the variation has effect.

(5) Where the application is rejected, the notice under paragraph (1)(b) or (3)(b) must give the reasons for the rejection.

Variation or revocation of approval by the Commissioners

13. Where the Commissioners vary the terms of, or revoke, an approval^(a), the Commissioners must give notice of the variation or revocation to the approved person stating—

- (a) the date from which the variation or revocation has effect,
- (b) in the case of a variation, the variation made, and
- (c) the reasons for the variation or revocation.

PART 5

GROUPS

Group application for approval

14.—(1) Where two or more bodies corporate are members of the same group for the purposes of [Part 5 of the Finance (No. 2) Act 2017]^(b), an application may be made for each member of the group, which is required to be approved under [section 49(1)] of that Act, to be approved under a single application under regulation 3 made by a representative member of the group.

(2) The application must additionally—

- (a) identify each body corporate in relation to which approval is sought,
- (b) state which body corporate will be the representative member, and
- (c) satisfy the Commissioners that each of the bodies corporate has given their consent to be included in the application.

(3) For these purposes—

- (a) regulation 3(2) applies if a body corporate included in the application is carrying on a third country goods fulfilment business on 31st March 2018, and
- (b) if sub-paragraph (a) does not apply, regulation 3(3) applies if a body corporate included in the application commences carrying on a third country goods fulfilment business between 1st April 2018 and 30th June 2018.

(4) Where the application is accepted, the notice of approval given under regulations 4(1)(a) or 4(3)(a) must—

- (a) identify the bodies corporate in relation to whom approval is given (“the approved group”), and
- (b) include the unique reference number assigned by the Commissioners to the approved group.

Representative member

15.—(1) Anything required or permitted to be done under these Regulations by an approved person is required or permitted to be to be done by the representative member of the approved group of which the approved person is a member.

(2) Any notice required or permitted to be given by the Commissioners to an approved person under these Regulations is required or permitted to be to be given to a representative member.

Restriction on membership of an approved group

16. A body corporate may not be a member of more than one approved group at the same time.

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- (a) Under [section 49(2)] of the [Finance (No. 2) Act 2017] the Commissioners may at any time for reasonable cause vary the terms of, or revoke, an approval under that section.
 - (b) Whether two or more bodies corporate are members of the same group is determined under [[section 58(2)] of the Finance (No. 2) Act 2017].

Applications to add members and substitute representative member

17.—(1) An application may be made to the Commissioners for approval for—

- (a) another body corporate which is treated as a member of the group for the purposes of [Part 5 of the Finance (No. 2) Act 2017] to be treated as a member of the approved group, or
- (b) another member of the approved group to be substituted as the group's representative member

(2) In the case of an application under paragraph (1)(a), the application must be made by the representative member and must satisfy the Commissioners that—

- (a) the existing members of the approved group, and
- (b) the body corporate which is the subject of the application to be a member of the approved group,

have consented to the application.

(3) In the case of an application under paragraph (1)(b)—

- (a) the application may be made by—
 - (i) the current representative member, or
 - (ii) the body corporate that is applying to be substituted for representative member, and
- (b) the applicant must satisfy the Commissioners that the members of the approved group have consented to the substitution.

(4) The Commissioners must, as soon as reasonably practicable after receiving the application, give notice—

- (a) accepting the application, or
- (b) rejecting the application.

(5) Where an application under paragraph (1)(a) is accepted, the notice under (4)(a) must—

- (a) be given to the representative member, and
- (b) state the date from which the new body corporate is to be treated as a member of the approved group.

(6) Where an application under paragraph (1)(b) is accepted, the notice under (4)(a) must—

- (a) be given to all members of the approved group, and
- (b) state the date from which the substitution has effect.

(7) Where the application is rejected, the notice under paragraph (4)(b) must be given to the applicant and state the reasons for the rejection.

Notification by a group member: leaving an approved group

18.—(1) A body corporate may cease to be treated as member of an approved group by notifying the Commissioners.

(2) The body corporate is to be treated as not being a member of the approved group on the later of—

- (a) 30 days from the date on which the Commissioners receive the notification, and
- (b) a date stated in the notification.

Termination of group membership by the Commissioners

19.—(1) The Commissioners may, by notice given to a company, terminate its membership of an approved group from a date stated in the notice.

(2) The Commissioners may give notice under paragraph (1) if it appears to them that the company is not a member of the same group in relation to whom approval has been given.

(3) Where the Commissioners give notice to a group company under paragraph (1), notice must also be given to the representative member (if different).

(4) If the group company referred to in paragraph (1) is the representative member—

- (a) notice must also be given to each member of the approved group, and
- (b) the members of the approved group must as soon as reasonably practicable appoint a new representative member.

(5) If it appears to the Commissioners that—

- (a) the approved group does not (or has ceased to) have a representative member, or
- (b) there are fewer than two bodies corporate being treated as members of the approved group,

they may give notice to each member that the group will cease to be an approved group from a date which is stated in the notice.

PART 6

COMMUNICATIONS

Applications to be made, and notification to be given, to the Commissioners

20.—(1) The Commissioners must specify the form and method of, and any information which must be provided with, an application or notification under the following provisions—

- (a) regulation 3(1) (application for approval),
- (b) regulation 5(1) (notification of customer not meeting UK obligations),
- (c) regulation 8(3) (notification that verification process fails to verify a customer VAT registration number),
- (d) regulation 9(1) (notification of change to registered details),
- (e) regulation 10 (notification of ceasing to carry on a third country goods fulfilment business),
- (f) regulation 11(1) (application to vary approval),
- (g) regulation 14(1) (group application for approval),
- (h) regulation 17(1) (application in relation to approved groups), and
- (i) regulation 18(1) (notification of leaving an approved group).

(2) An applicant or an approved person, as the case may be, must make an application and give notification in the form, by the method and providing the information, specified in paragraph (1).

(3) The Commissioners may specify that an application or notification is to be made electronically.

Notices to be given by the Commissioners

21. The Commissioners may use a specified electronic method to give a notice required under the following regulations—

- (a) regulation 4(1) and (3) (Commissioner's response to an application),
- (b) regulation 5(3) (Commissioner's notice: customer not meeting UK obligations),
- (c) regulation 12(1) and (3) (response to applications to vary approval),
- (d) regulation 13 (variation or revocation of approval),
- (e) regulation 17(4) (response to applications in relation to approved groups),
- (f) regulation 19(1) and (5) (termination of group membership), and
- (g) regulation 22(3) (penalties).

PART 7

PENALTIES

Penalty assessment

- 22.**—(1) The Commissioners may assess a penalty in the cases set out in regulations 23 and 24.
- (2) In this Part references to a “contravention” are to acting as mentioned in regulation 23 and 24.
- (3) If the Commissioners assess a penalty they must give notice to the person who is liable for the penalty.
- (4) A notice under paragraph (3) must state the contravention in respect of which the penalty is assessed.
- (5) An assessment of a penalty under this Part may not be made later than one year after evidence of facts sufficient in the opinion of the Commissioners to indicate the contravention comes to their knowledge.
- (6) Two or more contraventions may be treated by the Commissioners as a single contravention for the purposes of assessing a penalty under this Part.

Late application

- 23.** A person is liable for a penalty if that person fails to comply with the requirements set out in regulation 3(2) or (3).

Failure to meet conditions, restrictions and obligations

- 24.** A person is liable for a penalty if that person fails to—
- (a) comply with any conditions or restrictions imposed by the Commissioners and set out in a notice of approval (under regulation 4(4)(c)),
 - (b) meet any of the obligations set out in regulations 5(1) and 6 to 10, or
 - (c) comply with the restriction set out in regulation 5(3).

Amount of penalty

- 25.**—(1) The amount of the penalty is—
- (a) £3,000 for each contravention of the obligation or the restriction imposed under regulations 5(1) and 5(3), respectively,
 - (b) £500 for a contravention of the requirement imposed under regulation 3(2) or (3).
 - (c) subject to paragraph (2), £500 for each month that the contravention referred to in sub-paragraph (b) continues, and
 - (d) in all other cases, £500 for each contravention.
- (2) The amount of monthly penalties under paragraph (1)(c) must not exceed £3,000 in total.

Special reduction

- 26.**—(1) If the Commissioners think it right because of special circumstances, they may reduce a penalty under this Part.
- (2) In paragraph (1), “special circumstances” does not include inability to pay.

Reasonable excuse

27.—(1) Liability to a penalty does not arise under this Part if the person liable for the penalty satisfies the Commissioners or (on an appeal made to the appeal tribunal) the tribunal that there is a reasonable excuse for the contravention.

(2) For the purposes of paragraph (1), where a person relies on any other person to do anything, that is not a reasonable excuse unless the approved person took reasonable care to avoid the contravention.

(3) In this regulation “appeal tribunal” has the same meaning as in Chapter 2 of Part 1 of the Finance Act 1994^(a).

Payment and recovery

28.—(1) A penalty payable under this Part must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.

(2) A penalty under this Part is recoverable as a debt due to the Crown.

Joint and several liability of members of a group

29. All bodies corporate that are members of the same group for the purposes of [Part 5 of the Finance (No. 2) Act 2017] when a penalty becomes payable under [Schedule 13 of the Finance (No. 2) Act 2017] or these Regulations, or becomes a member of the group member whilst the penalty remains unpaid, are jointly and severally liable for the penalty.

EXPLANATORY NOTE

(This note is not part of the Regulations)

[Section 49(1) of the Finance (No. 2) Act 2017 (c. *)] provides that a person may not carry on a third country goods fulfilment business otherwise than in accordance with an approval given by the Commissioners for Her Majesty’s Revenue and Customs (“the Commissioners”) under that section. A person carries on a third country goods fulfilment business if they meet the test set out in [section 48 of the Finance (No. 2) Act 2017].

The Regulations are in seven Parts.

Part 1 of the Regulations contains introductory provisions. Regulation 1 deals with citation, commencement and effect; and regulation 2 is concerned with interpretation.

Part 2 of the Regulations deals with the procedure for the approval scheme.

Regulation 3 deals with making an application for approval. It also makes provision about the timing of applications and amending applications. Regulation 4 provides for how the Commissioners must respond to an application, including requesting additional information or permission to inspect premises before determining an application.

Part 3 of the Regulations is concerned with the obligations imposed on an approved person and the restriction on carrying on a third country goods fulfilment business.

Regulation 5 provides that an approved person must notify the Commissioners where they know or have reasonable grounds to suspect that a third country customer has not met a VAT or customs duty obligation in relation to third country goods stored by the approved person. It also restricts an approved person from carrying on a third country goods fulfilment business with a person named in a notice issued by the Commissioners. Regulation 6 provides that an approved person must give

(a) 1994 c. 9.

notice to all third country customers and makes further provision about what that notice must state. Regulation 7 sets out an approved person's due diligence and record keeping obligations. Regulation 8 provides that an approved person must verify a third country customer's VAT registration number in accordance with the process specified by Commissioners. Further provision is made to the timing of such verification and notifying the Commissioners of discrepancies. Regulation 9 provides that a person must notify the Commissioners of any changes in details that are specified by the Commissioners. Further provision is made to the timing of such notification. Regulation 10 provides that an approved person must notify the Commissioners within 30 days of ceasing to carry on a third country goods fulfilment business.

Part 4 of the Regulations is concerned with the procedure for variation and revocation of an approval.

Regulation 11 provides that an approved person may apply to the Commissioners to vary the conditions and restrictions to which their approval is subject. Further provision is made as to when an application to vary conditions and restrictions cannot be made. Regulation 12 provides for how the Commissioners must respond to an application. Regulation 13 provides that the Commissioners must give notice where they vary the terms of, or revoke, an approval. Further provision is made as to the content of the notice.

Part 5 of the Regulations is concerned with companies that are part of the same group.

Regulation 14 deals with applications and modifications in relation to Part 2 of the Regulations. A group application must identify the representative member. Regulation 15 provides that anything required or permitted to be done under these Regulations by an approved person is required or permitted to be done by the representative member. Regulation 16 provides that a company may not be a member of more than one approved group at the same time. Regulation 17 provides the procedure for applications for another company (that is part of the same group) to be treated as a member of the approved group and to substitute representative members. Further provision is made for how the Commissioners must respond to an application. Regulation 18 deals with the procedure for notifying the Commissioners when a group company wants to leave an approved group. Regulation 19 deals with the circumstances in which the Commissioners may terminate a company's membership of an approved group and the procedure for giving notice of termination.

Part 6 of the Regulations is concerned with communications.

Regulation 20 requires the Commissioners to specify the form and method of, and the information which must be provided with, an application or notification that is required to be given or made under the Regulations. It also provides that an applicant or approved person must use form and method specified for applications and notifications. The Commissioners may specify that an application or notification is to be made electronically. Regulation 21 provides that the Commissioners may use a specified electronic method to give notice required to be given under the Regulations.

Part 7 of the Regulations is concerned with penalties.

Regulation 22 provides that Commissioners may assess a penalty in the cases set out in regulations 23 and 24. Further provision is made in relation to giving notice of the assessment to the person liable for the penalty, the timing of an assessment and combining contraventions for the purposes of assessment. Regulations 25 provided that a person is liable for a penalty making a late application. Regulation 24 provides that a person is liable for a penalty for the contravention of: any conditions or restrictions imposed by the Commissioners, the obligations set out in regulations 5(1) and 6 to 10, or the restriction set out in regulation 5(3). Regulation 25 specifies the amount of the penalty for each contravention. Regulation 26 provides that the Commissioners may reduce the amount of a penalty because of special circumstances. Regulation 27 deals with reasonable excuse for a contravention. Regulation 28 deals with payment and recovery of the penalty. Regulation 29 provides for group companies to be jointly and severally liable for penalties under [Schedule 13 of the Finance (No. 2) Act 2017] or the Regulations.

A Tax Information and Impact Note covering this instrument was published on 5 December 2016 alongside draft provisions for Finance Bill 2017 and is available on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that apply to this instrument.