Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Fulfilment Businesses Regulations 2018. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2018 No. 326

CUSTOMS
VALUE ADDED TAX

The Fulfilment Businesses Regulations 2018

Made - - - - *7th March 2018*
Laid before the House of Commons - - - - *8th March 2018*
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 49(3), 51, 55 and 57 of the Finance (No. 2) Act 2017 [F1]:

F1 2017 c. 32.

PART 1

PRELIMINARY PROVISIONS

Citation and commencement

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

(2) Subject to paragraphs (3) and (4), these Regulations come into force on 1st April 2018.

(3) Parts 3 and 4 come into force on—

(a) 1st April 2018 in relation to dealing with contraventions mentioned in regulation 14(1)(a), and

(b) 1st April 2019 for all other purposes.

(4) Part 5 comes into force on 9th March 2018.

Interpretation

2. In these Regulations—

"application" means an application under regulation 4;

"customer" means, in relation to a third country goods fulfilment business [F2], the person referred to in section 48(1)(a) or (b) of the Finance (No. 2) Act 2017;

"notice" means a notice in writing, including writing in electronic form;

"notice of approval" means, in relation to an application for approval made under regulation 4(1)(a), a notice given by the Commissioners in accordance with regulation 6(1)(a) or (3)(a);

"specified" means specified in a notice published by the Commissioners for the purposes of these Regulations, and "specify" is construed accordingly.

F2 The meaning of carrying on a third country goods fulfilment business is set out in section 48 of the Finance (No. 2) Act 2017.

Applications and other communications with the Commissioners

3.—(1) An application or notification made or given under these Regulations must be made or given—

(a) in any specified form,

(b) by any specified method, and

(c) providing any specified information.

(2) The Commissioners may specify that an application, or other communication with the Commissioners, is to be made electronically.

PART 2

APPROVAL, VARIATION AND REVOCATION PROCEDURE

Applications for approval and to vary an approval

4.—(1) An application must be made to the Commissioners—

(a) for an approval to carry on a third country goods fulfilment business, or

(b) to vary any condition or restriction to which an approval is subject.

(2) An application under paragraph (1)(a) must be made on or before—

(a) 30th June 2018, in the case of a person carrying on a third country goods fulfilment business as at 31st March 2018,

(b) 30th September 2018, in the case of a person who commences carrying on a third country goods fulfilment business between 1st April 2018 and 30th June 2018, and

(c) the later of 1st October 2018 and the day on which a person commences carrying on a third country goods fulfilment business, in all other cases.

(3) An application under paragraph (1)(b) cannot be made if the variation is in respect of a decision which—

(a) is subject to—

(i) review under section 15C (review by HMRC) or section 15E (review out of time) of the Finance Act 1994 [F3], or

(ii) appeal under section 16 (appeals to a tribunal) of the Finance Act 1994 [F4], or

(b) was confirmed on such review or appeal.

F3 1994 c. 9. Sections 15C and 15E were inserted by S.I. 2009/56. Both sections apply in relation to a relevant decision. The meaning of "relevant decision" is set out in section 13A(2) of the Finance Act 1994 and includes, at paragraph (j), any decision of HMRC of a description specified in Schedule 5 to that Act. Paragraph 9B(b) of Schedule 5 (as inserted by section 56(3) of the Finance (No. 2) Act 2017) specifies any decision for the purposes of Part 3 of the Finance (No. 2) Act 2017 as to the conditions or restrictions subject to which any person is approved and registered.

F4 Section 16 has been relevantly amended by S.I. 2009/56.

Amendment of an application

5.—(1) An application may be amended by notification to the Commissioners at any time before the Commissioners have given notice under regulation 6(1) in relation to that application.

(2) Where such an amendment is notified, the application is treated as made to the Commissioners on the day the notification is received by the Commissioners.

Response to an application

6.—(1) The Commissioners must, as soon as reasonably practicable after receiving an 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 permit the inspection of premises on the specific date,

the application is treated as withdrawn on that date.

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

(a) accepting the application, or

(b) rejecting the application.

(4) Where an application for approval 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,

(c) contain any condition or restriction imposed by the Commissioners, and

(d) refer to the obligations set out in Part 3 of these Regulations.

(5) Where an application to vary any condition or restriction is accepted, the notice under paragraph (1)(a) or (3)(a) must—

(a) state how the approval is varied, and

(b) state the date on which the variation has effect.

(6) Where an 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

7. Where the Commissioners vary any condition or restriction to which an approval is subject or revoke an approval [F5], the Commissioners must give notice of the variation or revocation to the approved person which—

(a) states the date on which the variation or revocation has effect, which cannot be earlier than the day after the notice is given,

(b) in the case of a variation, states how the approval is varied, and

(c) gives the reasons for the variation or revocation.

F5 Under section 49(4) 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.

PART 3

OBLIGATIONS IMPOSED ON APPROVED PERSONS

Customer not meeting UK obligations

8.—(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 relevant obligation.

(2) Notification must be given within 30 days beginning with the day on which the approved person first knows or has reasonable grounds to suspect that the customer has not met the relevant obligation.

(3) If after 60 days beginning with the day on which the approved person first knows or has reasonable grounds to suspect that a customer has not met a relevant obligation, the approved person still knows or has reasonable grounds to suspect that the customer is not meeting a relevant obligation, the approved person must cease to carry on a third country goods fulfilment business with that customer as soon as reasonably practicable.

(4) An approved person must not commence business by way of a third country goods fulfilment business with a person where the approved person knows or has reasonable grounds to suspect that that person has not met a relevant obligation.

(5) In this regulation and regulation 9, a "relevant obligation" means a VAT or customs duty obligation under legislation in the United Kingdom in relation to third country goods.

Commencement Information

I1 Reg. 8 in force at 1.4.2018 for specified purposes and in force at 1.4.2019 otherwise, see reg. 1(3)

Notice to a customer of UK obligations

9.—(1) An approved person must give a notice to each customer that—

(a) contains specified information relating to relevant obligations,

(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 relevant obligation,

(c) states that the approved person must as soon as reasonably practicable cease to carry on a third country goods fulfilment business with that customer if, within 60 days beginning with the day on which the approved person first knows or has reasonable grounds to suspect that the customer has not met a relevant obligation, the approved person knows or has reasonable grounds to suspect that the customer is still not meeting a relevant obligation, and

(d) states that if the approved person fails to comply with the approved person's obligations under regulation 8(1) and (2) (referred to in paragraph (b) and (c)), the approved person may be liable to a penalty of £3,000 for each failure and may have approval to carry on a third country goods fulfilment business revoked.

(2) A notice under paragraph (1) must be given to a customer on or before the latest of—

(a) 30th April 2019,

(b) the end of the period of 30 days beginning with the day on which the approved person receives a notice of approval, and

(c) the end of the period of 30 days beginning with the day on which the approved person begins to carry on a third country goods fulfilment business with that 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 beginning with the day on which the approved person is notified by the Commissioners of the amendment.

Commencement Information

I2 Reg. 9 in force at 1.4.2018 for specified purposes and in force at 1.4.2019 otherwise, see reg. 1(3)

Customer due diligence and record keeping

10.—(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 or, in cases where a customer is exempt from VAT registration, the reference number relating to that customer's exemption from VAT registration issued by the Commissioners,

(c) a description of the type and quantity of the third country goods stored for each customer,

(d) any import entry number [F6] of the third country goods stored for each customer,

(e) the country 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 9, and

(g) any specified further information relating to customers and third country goods.

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

(a) preserved for a period of six years beginning on the date the information is 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 [F7].