

Statutory Document No. 2021/0225



Value Added Tax Act 1996
Taxation (Cross-border Trade) Act 2018

FULFILMENT BUSINESS (MISCELLANEOUS AMENDMENTS AND TRANSITIONAL PROVISIONS) REGULATIONS 2021

Laid before Tynwald:

Coming into Operation: in accordance with regulation 2

The Treasury makes the following Regulations under sections 18H(3), 18N and 95 of the Value Added Tax Act 1996 and sections 51(1) and 56(1) of the Taxation (Cross-border Trade) Act 2018, as it has effect in the Island¹.

PART 1 - INTRODUCTION

1 Title

These Regulations are the Fulfilment Business (Miscellaneous Amendments and Transitional Provisions) Regulations 2021.

2 Commencement

(1) These Regulations come into operation when they are made².

¹ The Taxation (Cross-border Trade) Act 2018 was applied to the Island by SD 2019/0080, as amended. Section 51 of that Act was applied to the Island (with modifications) by SD 2021/0172.

² Section 95(1) of the Value Added Tax Act 1996 provides that (unless section 95(3) applies) a public document made under that Act must be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the order is laid or at the next following sitting resolves that the order shall be annulled, the order thereupon ceases to have effect. Section 51(1) of the Taxation (Cross-border Trade) Act 2018 (as it has effect in the Island) provides for regulations made under that section to be subject to the negative Tynwald procedure, as set out in s. 32 of the Legislation Act 2015.

- (2) However, when they are made, these Regulations are deemed to have come into operation on IP Completion day^{3,4}

PART 2 - AMENDMENTS

3 Amendment of the Fulfilment Business Regulations 2018

- (1) The Fulfilment Business Regulations 2018⁵ are amended as follows.
- (2) In regulation 3 (interpretation), in the definition of “**customer**”, for “a third country goods”, substitute ~~“a third country goods”~~ **“an imported goods”**.
- (3) In regulation 5 (applications for approval and to vary an approval) —
- (a) in paragraph (1)(a), for “a third country goods”, substitute ~~“a third country goods”~~ **“an imported goods”**;
- (b) for paragraph (2), substitute —
- ~~“(2) An application under paragraph (1)(a) must be made on or before the day on which a person commences carrying on an imported goods fulfilment business.”~~ **“(2) An application under paragraph (1)(a) must be made on or before the day on which a person commences carrying on an imported goods fulfilment business.”**
- (4) In regulation 7(1)(c) (response to an application), for “third country goods”, substitute ~~“third country goods”~~ **“imported goods”**.
- (5) In regulation 9 (customer not meeting Island obligations) —
- (a) in paragraphs (3) and (4), in each place it occurs, for “a third country goods”, substitute ~~“a third country goods”~~ **“an imported goods”**; and
- (b) in paragraph (5), for “third country goods”, substitute ~~“third country goods”~~ **“imported goods”**.
- (6) In regulation 10 (notice to customer of Island obligations) —
- (a) in paragraph (1), in sub-paragraphs (c) and (d), in both places, for “a third country goods”, substitute ~~“a third country goods”~~ **“an imported goods”**; and

³ Section 95(2) of the Value Added Tax Act 1996 provides that a public document made by the Treasury under that Act may, in so far as the Treasury considers it necessary that such public document conforms with provision made for the United Kingdom by statutory instrument under an Act of Parliament, be made retrospective and shall take effect on such day or days as may be specified in the public document and different days may be appointed for different purposes and different provisions of the public document. Section 51(3)(b) of the Taxation (Cross-border Trade) Act 2018 (as it has effect in the Island) provides that regulations made under that section made be made so as to have retrospective effect and be deemed to have come into operation from such day or days as may be specified in the regulations, in so far as the Treasury considers it necessary that the regulations conform with provision made for the UK in or under a Parliamentary enactment and provided that the regulations may not be deemed to come into operation earlier than the date on which corresponding provision had effect in the UK.

⁴ “IP completion day” has the meaning given in the Interpretation Act 2015.

⁵ SD 2018/0114.

- (b) in paragraph (2)(c), for “a third country goods”, substitute **an imported goods**.
- (7) In regulation 11(1) (customer due diligence and record keeping), in subparagraphs (c), (d), (e) and (g), wherever occurring, for “third country goods”, substitute **imported goods**.
- (8) In regulation 12(2)(a)(iii) (verification of a customer’s VAT registration number), for “a third country goods”, substitute **an imported goods**.
- (9) In regulation 14 (ceasing to carry on a third country goods fulfilment business), and in the heading, for “a third country goods”, substitute **an imported goods**.

PART 3 - TRANSITIONAL PROVISIONS

4 Transitional provisions

This Part applies to persons who immediately before IP completion day were not carrying on a “third country fulfilment business” but who, as a result of amendments made by the Value Added Tax (Amendment) Order 2021⁶, are carrying on an “imported goods fulfilment business” at IP completion day or commence doing so during the 12 month period immediately following IP completion day.

5 Interpretation of Part 3

In this Part —

“**the 2018 Regulations**” means the Fulfilment Business Regulations 2018⁷;

“**the Act**” means the Value Added Tax Act 1996;

“**imported goods fulfilment business**” has the meaning given by section 18G of the Act, as it has effect on and after IP completion day;

“**the first period**” means the period of 6 months beginning with the day on which IP completion day falls;

“**the second period**” means the period of 3 months immediately following the expiry of the first period;

“**third country goods fulfilment business**” has the meaning given by section 18G of the Act as it had effect immediately before IP completion day.

6 Application

- (1) This Part applies where a person meets the conditions in paragraph (2).

⁶ SD 2021/XXXX.

⁷ SD 2018/0114.

- (2) The conditions are that the person –
- (a) was not carrying on a third country fulfilment business immediately before IP completion day;
 - (b) is carrying on an imported goods fulfilment business at IP completion day or commences carrying on an imported goods fulfilment business within the period of 9 months beginning with the day on which IP completion day falls; and
 - (c) the imported goods fulfilment business referred to in subparagraph (b) would not have qualified as a “third country goods fulfilment business” before IP completion day.

7 Modification of regulation 5 of the 2018 Regulations (applications for approval and to vary an approval)

- (1) Where this Part applies, a person making an application for an approval under regulation 5(1)(a) of the 2018 Regulations must do so in accordance with the time limits in this regulation and regulation 5 of the 2018 Regulations is modified in accordance with paragraphs (2) and (3).
- (2) Where the person is carrying on an imported goods fulfilment business at IP completion day or commences doing so during the first period, the application for an approval must be made before the expiry of the first period.
- (3) Where the person commences carrying on an imported goods fulfilment business during the second period, the application for approval must be made before the expiry of the second period.

8 Penalty Assessment for failure to comply with the time limits in regulation 7

The Treasury may assess a penalty where a person fails to comply with the requirements set out in regulation 5(2) of the 2018 Regulations as modified by regulation 7.

9 Suspension of The Treasury’s power to assess penalties under regulation 15(1)(b) and (c), (2) and (3) of the 2018 Regulations until on or after the expiry of the second period

Where this Part applies, the Treasury’s power to assess a penalty under regulation 15(1)(b) and (c), (2) and (3) of the 2018 Regulations may only be exercised in respect of contraventions taking place after the expiry of the second period.

10 Transitional provision in relation to sections 18K to 18M of, and Schedule 5B to, the Act

Where this Part applies, the provisions of sections 18K to 18M of, and Schedule 5B to, the Act apply only in relation to contraventions taking place after the expiry of the second period.

MADE 9 JULY 2021

A L CANNAN
Minister for the Treasury

*EXPLANATORY NOTE**(This note is not part of the Regulations)*

These Regulations make amendments to the Fulfilment Businesses Regulations 2018 as a consequence of the United Kingdom leaving the European Union.

Part 3 of the regulations make transitional provisions in relation businesses that need to register for the Fulfilment House Due Diligence Scheme from IP completion day as a result of the United Kingdom's departure from the European Union.

The transitional arrangements only apply to fulfilment houses that:

- were carrying on a fulfilment house business before the end of the transition period but were not registered for the Fulfilment House Due Diligence Scheme because all of the goods stored were acquired from within the EU and owned by EU businesses
- start carrying on a fulfilment house business between IP completion day and 30 June 2021 and would not have required registration under the Fulfilment House Due Diligence Scheme if it was operating immediately before IP completion day. This means that this new fulfilment house business only has customers who are based in an EU member state after the end of the transition period
- start carrying on a fulfilment house business between 1 July 2021 and 30 September 2021 and has customers who are based outside the Isle of Man and United Kingdom.