



## FULFILMENT BUSINESSES REGULATIONS 2018

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Statutory Document No. 2018/0114



*Value Added Tax Act 1996*

## **FULFILMENT BUSINESSES REGULATIONS 2018**

*Laid before Tynwald: 15 May 2018*

*Coming into Operation: in accordance with regulation 2*

The Treasury makes the following Regulations under sections 18H(3), 18N<sup>1</sup> and 95<sup>2</sup> of the Value Added Tax Act 1996.

### **PART 1 – PRELIMINARY PROVISIONS**

#### **1 Title**

These Regulations are the Fulfilment Businesses Regulations 2018.

#### **2 Commencement**

- (1) Subject to paragraph (2), these Regulations come into operation on 1 April 2018.
- (2) Parts 3 and 4 come into operation on —
  - (a) 1 April 2018 in relation to dealing with contraventions mentioned in regulation 15(1)(a); and
  - (b) 1 April 2019 for all other purposes.

#### **3 Interpretation**

In these Regulations —

“**application**” means an application under regulation 5;

“**customer**” means, in relation to a third country goods fulfilment business<sup>3</sup>, the person referred to in section 18G(1)(a) or (b) of the Value Added Tax Act 1996;

<sup>1</sup> Sections 18G to 18N of the Value Added Tax Act 1996 are inserted by SD 2018/0111.

<sup>2</sup> Section 95(1) of the Value Added Tax Act 1996 provides that regulations to which that subsection applies must be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the regulations are laid or at the next following sitting resolves that the regulations shall be annulled, the regulations shall cease to have effect.

“**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 5(1)(a), a notice given by the Treasury in accordance with regulation 7(1)(a) or 7(3)(a);

“**specified**” means specified in a notice published by the Treasury for the purposes of these Regulations, and “specify” is construed accordingly.

#### **4 Applications and other communications with the Treasury**

- (1) An application or notification required to be 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 Treasury may specify that an application, or other communication with the Treasury, is to be made electronically.

## **PART 2 – APPROVAL, VARIATION AND REVOCATION PROCEDURE**

#### **5 Applications for approval and to vary an approval**

- (1) An application must be made to the Treasury —
  - (a) for 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) 30 June 2018, in the case of a person carrying on a third country goods fulfilment business as at 31 March 2018;
  - (b) 30 September 2018, in the case of a person who commences carrying on a third country goods fulfilment business between 1 April 2018 and 30 June 2018; and
  - (c) the later of 1 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 —

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<sup>3</sup> The meaning of carrying on a third country goods fulfilment business is set out in section 18G(1) of the Value Added Tax Act 1996.

- (a) is subject to —
  - (i) review under section 83C (review by the Treasury) or section 83E (review out of time) of the Value Added Tax Act 1996<sup>4</sup>; or
  - (ii) appeal under section 83G (bringing of appeals) of the Value Added Tax Act 1996; or
- (b) was confirmed on such review or appeal.

## **6 Amendment of an application**

- (1) An application may be amended by notification to the Treasury at any time before the Treasury has given notice under regulation 7(1) in relation to that application.
- (2) Where such an amendment is notified, the application is treated as made to the Treasury on the day the notification is received by the Treasury.

## **7 Response to an application**

- (1) The Treasury 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 Treasury 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 Treasury has received the additional information requested or inspected the premises, the Treasury 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 —

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<sup>4</sup> Sections 83A to 83G of the Value Added Tax Act 1996 were inserted by SD 218/09 and section 83G was amended by SD 2014/0217.

- (a) include the unique reference number assigned by the Treasury to the approved person;
  - (b) state the date from which approval has effect;
  - (c) contain any condition or restriction imposed by the Treasury; 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.

## 8 Variation or revocation of approval by the Treasury

Where the Treasury varies any condition or restriction to which an approval is subject or revokes an approval<sup>5</sup>, the Treasury 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 date 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.

## PART 3 – OBLIGATIONS IMPOSED ON APPROVED PERSONS

### 9 Customer not meeting Island obligations

- (1) An approved person must notify the Treasury 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.

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<sup>5</sup> Under section 18H(4) of the Value Added Tax Act 1996 the Treasury may at any time for reasonable cause vary the terms of, or revoke, an approval under that section.

- (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 the person has not met a relevant obligation.
- (5) In this regulation and regulation 10, a “**relevant obligation**” means a VAT or customs duty obligation under legislation in the Island in relation to third country goods.

## 10 Notice to a customer of Island obligations

- (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 Treasury 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 9(1) and (2) (referred to in paragraph (b) or (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 goods fulfilment business revoked.
- (2) A notice under paragraph (1) must be given to a customer on or before the latest of –
  - (a) 30 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 Treasury, 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 Treasury of the amendment.

## 11 Customer due diligence and record keeping

- (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 Treasury or Her Majesty's Revenue and Customs;
  - (c) a description of the type and quantity of the third country goods stored for each customer;
  - (d) any import entry number<sup>6</sup> 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 10; 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 6 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**" has the same meaning given in section 184(1) of the Customs and Excise Management Act 1986.

## 12 Verification of a customer's VAT registration number

- (1) An approved person must verify the –
  - (a) VAT registration number; or
  - (b) reference number relating to a customer's exemption from VAT registration issued by the Treasury or Her Majesty's Revenue and Customs ("VAT exemption reference number"),held in relation to each customer in accordance with any specified verification process.
- (2) Verification in relation to each customer, must be –
  - (a) carried out for the first time on or before the latest of –
    - (i) 30 April 2019;

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<sup>6</sup> An import entry number may be assigned to a consignment on entry to the Island or the United Kingdom, for administrative purposes.

- (ii) the end of the period of 30 days beginning with the day on which the approved person received a notice of approval; and
    - (iii) the end of the period of 60 days beginning with the day on which the approved person begins to carry on a third country goods fulfilment business with a customer; and
  - (b) repeated in accordance with a specified frequency or, if different, the frequency set out in the notice of approval.
- (3) If the verification process does not verify a customer VAT registration number or VAT exemption reference number, an approved person must notify the Treasury, within 30 days beginning with the day on which the verification is carried out.

### **13 Change to registered details**

- (1) An approved person must notify the Treasury of any change in the registered details relating to that person.
- (2) Notification must be given on or before the later of 30 April 2019 and the end of the period of 30 days beginning with the day on which the change occurred.
- (3) In this regulation, “**registered details**” means such specified information relating to approved persons which is contained in the register of approved persons<sup>7</sup>.

### **14 Ceasing to carry on a third country goods fulfilment business**

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

## **PART 4 – PENALTIES**

### **15 Penalty assessment**

- (1) The Treasury may assess a penalty where a person fails to comply with –
  - (a) the requirements set out in regulation 5(2);
  - (b) any condition or restriction to which an approval is subject; or
  - (c) the obligations set out in Part 3.

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<sup>7</sup> Under section 18I(1) of the Value Added Tax Act 1996 the Treasury must maintain a register of approved persons.

- (2) In this Part references to a “**contravention**” are to failing to comply with the requirements, conditions, restrictions or obligations mentioned in paragraph (1)(a) to (c).
- (3) If the Treasury assesses a penalty it 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 Treasury to indicate the contravention comes to its knowledge.
- (6) Two or more contraventions may be treated by the Treasury as a single contravention for the purposes of assessing a penalty under this Part.

## 16 Amount of penalty

- (1) The amount of the penalty is —
  - (a) £500 for a contravention of the requirement imposed under regulation 5(2);
  - (b) subject to paragraph (2), £500 for each month that a contravention referred to in sub-paragraph (a) continues;
  - (c) £3,000 for each contravention of the obligations imposed under regulation 9; and
  - (d) in all other cases, £500 for each contravention.
- (2) The total amount of penalties under paragraph (1)(a) and (1)(b) must not exceed £3,000.

## 17 Special reduction

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

## 18 Reasonable excuse

- (1) Liability to a penalty does not arise under this Part if the person who would otherwise be liable for the penalty satisfies the Treasury or (on an appeal made to the VAT and Duties Tribunal) the Tribunal that there is a reasonable excuse for the contravention.
- (2) For the purposes of paragraph (1), reliance on another person to do anything is not a reasonable excuse unless the person otherwise liable for the penalty took reasonable care to avoid the contravention.

- (3) In this regulation the “**VAT and Duties Tribunal**” or “**Tribunal**” means the tribunal constituted in accordance with Schedule 13 to the Value Added Tax Act 1996.

**19 Payment and recovery**

- (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.

**MADE 28<sup>TH</sup> MARCH 2018**

**A L CANNAN**  
*Minister for the Treasury*

### *EXPLANATORY NOTE*

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

These Regulations set out the detailed framework for the Fulfilment House Due Diligence Scheme (the “Scheme”), and correspond to legislation introduced in the United Kingdom, which the Island is obliged to follow under the Customs and Excise Agreement 1979.

The Scheme applies to fulfilment houses operating in the Island that handle imported goods on behalf of third parties located outside the United Kingdom and the European Union.

The Regulations are made under sections 18H(3) and 18N of the Value Added Tax Act 1996, which are inserted by the Value Added Tax Act 1996 (Fulfilment Businesses) Order 2018<sup>8</sup>.

Part 2 of the Regulations deals with the approval process of the Scheme including —

- a) how and when to make an application for approval;
- b) how the Treasury will respond to an application; and
- c) the procedure for varying or revoking an approval.

Part 3 of the Regulations imposes obligations on approved persons, including —

- a) not starting a new third country goods fulfilment business with a person, or continuing an existing third country goods fulfilment business with a customer, that the approved person knows or has reasonable grounds to suspect is not meeting a VAT or customs duty obligation. The approved person must also notify the Treasury when they become aware or suspect that a customer is not meeting those obligations;
- b) giving notice to all third country customers;
- c) conducting due diligence checks on third country customers and maintaining records of those checks;
- d) verifying a third country customer’s VAT registration number or VAT exemption reference number and notifying the Treasury of discrepancies;
- e) notifying the Treasury of changes in registered details; and
- f) telling the Treasury when they cease to carry on a third country goods fulfilment business.

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<sup>8</sup> SD 2018/0111.

Part 4 of the Regulations is concerned with penalties for making late applications for approval, failing to comply with any conditions or restrictions to which an approval is subject, and failure to comply with any of the obligations imposed under Part 3.