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STATUTORY INSTRUMENTS

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**2023 No. 618**

**EXITING THE EUROPEAN UNION  
CUSTOMS**

**The Customs (Northern Ireland: Repayment and  
Remission) (EU Exit) (Amendment) Regulations 2023**

<i>Made</i>	- - - -	<i>8th June 2023</i>
<i>Laid before the House of Commons</i>	- - - -	<i>9th June 2023</i>
<i>Coming into force</i>	- -	<i>30th June 2023</i>

The Treasury make the following Regulations in exercise of the powers conferred by sections 24(3) and 26(1) of the Finance Act 2003<sup>(1)</sup> and sections 30B, 32(7) and (8), 40(6) and (7) and 40B of the Taxation (Cross-border Trade) Act 2018<sup>(2)</sup>.

**Citation and commencement**

1. These Regulations may be cited as the Customs (Northern Ireland: Repayment and Remission) (EU Exit) (Amendment) Regulations 2023 and come into force on 30th June 2023.

**Amendment of the Customs (Northern Ireland) (EU Exit) Regulations 2020**

2.—(1) The Customs (Northern Ireland) (EU Exit) Regulations 2020<sup>(3)</sup> are amended as follows.  
(2) After Chapter 5 (reliefs and repayment) of Part 2 (importation of goods and goods potentially for export)<sup>(4)</sup> insert—

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(1) 2003 c. 14. Section 24 is cited for the meaning of “prescribed”. Section 26 was relevantly amended by paragraph 150 of Schedule 7 to the Taxation (Cross-border Trade) Act 2018 (c. 22).  
(2) 2018 c. 22. Sections 30A to 30C and 40A and 40B were inserted by sections 1 and 2 of the Taxation (Post-transition Period) Act 2020 (c. 26).  
(3) S.I. 2020/1605 (“the Regulations”), amended by S.I. 2020/1629. There are other amending instruments, but none is relevant.  
(4) Chapter 5 was inserted by S.I. 2020/1629.

## “CHAPTER 6

### Repayment or remission of duty on production of evidence

#### SECTION 1

##### *Introduction*

### **Interpretation**

**16T.** In this Chapter—

“claim for repayment” means a claim in respect of goods, made in accordance with Section 2, that HMRC repay duty paid in respect of a liability incurred in respect of those goods;

“claim for remission” means a claim in respect of goods, made in accordance with Section 2, that a liability to duty incurred in respect of those goods be remitted;

“claim for repayment or remission” is to be read in accordance with these definitions;

“claimant” means a person who makes a claim for repayment or remission;

“eligibility criteria” means criteria described in the repayment and remission reference document which must be met in relation to a claim for repayment or remission;

“principal” has the meaning given in regulation 16U;

“remitted” means the discharge of a liability to duty, or part of that liability;

“repayment and remission agent” has the meaning given in regulation 16U;

“repayment and remission reference document” means the document entitled “Duty incurred in Northern Ireland – repayment and remission on production of evidence: eligibility criteria and other conditions”, version 1.0 dated 6th June 2023<sup>(5)</sup> which—

- (a) describes the eligibility criteria which apply for the purposes of a claim for repayment or remission; and
- (b) describes cases expressed by reference to classes of goods in relation to which a claim for repayment or remission may be made.

### **Repayment and remission agents**

**16U.—**(1) A person (a “principal”) may appoint any other person (a “repayment and remission agent”) to act on the principal’s behalf for the purposes of this Chapter.

(2) A person may not act as a repayment and remission agent unless the person—

(a) in the case of an individual, is resident in the United Kingdom; and

(b) in any other case—

(i) has a registered office in the United Kingdom; or

(ii) has a permanent place in the United Kingdom from which the person carries out activities for which the person is constituted to perform.

(3) A repayment and remission agent must disclose their appointment to HMRC in each claim for repayment or remission which is made as agent on behalf of a principal.

(4) The effect of an appointment of a person as a repayment and remission agent is that anything done under, or otherwise for the purposes of, this Chapter by, or in relation to, the

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(5) Available electronically from <https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021> and otherwise by inspection free of charge at HMRC, 100 Parliament Street, London SW1A 2BQ.

agent is regarded as done under, or otherwise for the purposes of, this Chapter by, or in relation to, the principal (and not by the agent).

## SECTION 2

### *Application, claims and waivers*

#### **Repayment or remission – application of Chapter 6**

**16V.**—(1) Subject to paragraph (2), this Chapter applies—

- (a) in relation to goods—
  - (i) in respect of which a liability to duty chargeable under section 30A(3) of the Act(6) has been incurred and which were not relevant goods(7) for the purposes of Chapter 3 at the time the liability was incurred; or
  - (ii) in respect of which a liability to duty chargeable under section 40A(1)(b) of the Act has been incurred;
- (b) where—
  - (i) the duty referred to in paragraph (1)(a) has been paid; or
  - (ii) payment of the duty has been deferred under Article 110 of the UCC(8).

(2) This Chapter does not apply in relation to goods where—

- (a) a liability to duty in respect of the goods has been incurred by virtue of Article 79 of the UCC; and
- (b) the condition specified in Article 86(6) of the UCC does not apply.

#### **Making a claim**

**16W.**—(1) A claim for repayment or remission may only be made if—

- (a) the eligibility criteria are met or have been waived under regulation 16Z2; and
- (b) it relates to goods within a class described in the repayment and remission reference document.

(2) A claim for repayment of duty may only be made by, or on behalf of, a person who has paid some or all of the duty to which the claim relates.

(3) A claim for remission of duty may only be made by, or on behalf of, a person who—

- (a) is liable to pay the duty; and
- (b) has deferred payment of the duty.

(4) A claim must be made in the form and manner specified in a notice published by HMRC.

(5) HMRC must publish a notice specifying the matters referred to in paragraph (4).

#### **Time periods for claims**

**16X.**—(1) A claim for repayment or remission may be made at any time before the expiry of the period of three years beginning with the later of—

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(6) “The Act” is defined in regulation 1(2) of the Regulations.

(7) The meaning of “relevant goods” for the purposes of Chapter 3 of Part 2 of the Regulations is given in regulation 6 of the Regulations.

(8) “The UCC” is defined in regulation 1(2) of the Regulations.

- (a) the date on which notification is given, or treated as given, by HMRC of the liability to duty chargeable under section 30A(3) or 40A(1)(b) of the Act; and
- (b) the date on which this Chapter comes into force.

(2) Where an appeal was made in respect of the amount of duty to which the claim relates and the appeal has been determined, the period between the commencement and determination of the appeal is to be disregarded for the purposes of determining the period in paragraph (1).

(3) Where, by virtue of force majeure or unforeseeable circumstances, it would be unreasonable to expect a person to make a claim in time, HMRC may, on written request by the person which gives reasons for the request, allow the person to make the claim out of time.

### **Cases where a claim cannot be made**

**16Y.** A claim for repayment or remission may not be made in respect of goods—

- (a) where—
  - (i) more than one person incurred a liability to duty under section 30A(3) or 40A(1)(b) in respect of the goods; and
  - (ii) a claim for repayment or remission has been made by, or on behalf of, one of the persons liable in respect of the goods that has not been withdrawn or treated as withdrawn under regulation 16Z(2)(b),
 unless an HMRC officer consents to the making of the further claim;
- (b) where—
  - (i) an appeal has been made in respect of the amount of liability to duty to which the claim would apply; and
  - (ii) the appeal has not been determined;
- (c) where the goods are a catch caught by a vessel which is not a British ship<sup>(9)</sup>; or
- (d) where a claim for the repayment or remission in respect of the goods was previously made and determined unless an HMRC officer consents to the making of the further claim.

### **Claim for remission where duty is paid**

**16Z.**—(1) Paragraph (2) applies where—

- (a) a claim for remission of duty has been made which has not been withdrawn or determined; and
- (b) a payment is made in respect of the liability which is the subject of the claim.

(2) Where—

- (a) the claimant makes the payment, the claim is to be treated as a claim for repayment of duty; or
- (b) a person other than the claimant makes the payment, the claim is to be treated as withdrawn,

and HMRC must notify the claimant of that fact as soon as practicable after the payment is made.

(3) Where a repayment and remission agent made the claim on behalf of a principal the references in paragraph (2)(a) and (b) to the claimant are to be read as referring to the principal.

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(9) “British ship” and “catch” are defined for the purposes of Part 2 of the Regulations in regulation 3.

### **Information and evidence in relation to claims**

**16Z1.**—(1) A claim for repayment or remission must—

- (a) identify the case for repayment or remission described in the repayment and remission reference document relied upon;
- (b) identify the goods to which the claim relates;
- (c) identify how the eligibility criteria applicable to the claim are met or whether any eligibility criterion has been waived;
- (d) contain such information, be accompanied by such documents and evidence and include such declarations as may be specified in a notice published by HMRC.

(2) In such cases as may be specified in a notice published by HMRC, a requirement under paragraph (1)(d) for a claim to be accompanied by specified documents or evidence may be met by the person who has made the claim, or any other person—

- (a) making the documents or evidence available for inspection by an HMRC officer; or
- (b) making available to HMRC information of a description specified in the notice (whether electronically or otherwise).

(3) HMRC may publish a notice specifying the matters referred to in paragraphs (1)(d) and (2).

### **Waiver of eligibility criteria**

**16Z2.**—(1) A claimant may apply to HMRC for approval of a waiver of an eligibility criterion if—

- (a) the criterion is described in the repayment and remission reference document as being subject to “exceptional waiver”; and
- (b) HMRC have published a notice permitting eligibility criteria to be waived.

(2) An HMRC officer may approve the waiver if the officer is of the opinion that it is appropriate to waive the criterion, taking into consideration such factors as may be specified in a notice published by HMRC.

(3) Regulations 85 to 91 (applications for approvals etc) of the import duty regulations<sup>(10)</sup> apply in relation to an application under paragraph (2).

(4) Section 23(5) of the Act applies to approvals granted under this regulation, including where the approval relates to a claim for repayment or remission in relation to a liability to duty chargeable under section 40A(1) of the Act.

(5) HMRC may publish a notice specifying the matters referred to in paragraphs (1)(b) and (2).

### **Notifications of receipt and determination of a claim for repayment or remission**

**16Z3.**—(1) Notification of receipt of the claim for repayment or remission must be given by HMRC to the claimant—

- (a) as soon as practicable after the date on which HMRC receive the claim; and
- (b) in any event, by no later than the expiry of the period of 30 days beginning with that date.

(2) Notification that HMRC have determined to grant or refuse a claim for repayment or remission must be given to the claimant, and HMRC must do so—

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<sup>(10)</sup> “Import duty regulations” is defined in regulation 1(2) of the Regulations.

- (a) as soon as practicable after the date on which notification is given under paragraph (1) or treated as given under regulation 16Z7(2); and
- (b) in any event, by no later than the expiry of—
  - (i) the period of 120 days beginning with that date; or
  - (ii) an extended period, not exceeding 30 days, beginning with the day when the period of 120 days expires, where HMRC need an extension in order to reach a determination.
- (3) HMRC must notify the claimant within the period of 120 days of any such extended period which HMRC need.
- (4) Reasons for a refusal of a claim for repayment or remission must be given with the notification of the determination.
- (5) Where HMRC fail to comply with paragraph (1) or (2), the claim is to be treated as refused.

### **Granting claims for repayment or remission**

- 16Z4.**—(1) A claim for repayment or remission may be granted by HMRC if—
- (a) HMRC are satisfied that the claim has been made in compliance with this Section; and
  - (b) the amount to be repaid or remitted, as determined in accordance with paragraph (2) or (3), is a positive amount.
- (2) In relation to a claim for repayment or remission of duty charged under section 30A(3) of the Act, the amount to be repaid or remitted is—
- (a) where, at the time the liability to duty was incurred, the goods would not have been chargeable to duty under regulation 5 if they were goods for the internal market<sup>(11)</sup>, the amount of duty notified in relation to those goods that has been paid or deferred; and
  - (b) in any other case, the difference between the amount of duty paid or deferred in relation to the goods and the amount of duty that would have been chargeable in accordance with regulation 8 if those goods were relevant goods for the purposes of Chapter 3<sup>(12)</sup>.
- (3) In relation to a claim for repayment or remission of duty charged under section 40A(1) of the Act, the amount to be repaid or remitted is—
- (a) where the goods are chargeable to duty under section 40A(1)(a), the difference between the amount of duty paid or deferred in relation to those goods and the amount of duty that would have been chargeable in accordance with regulation 14 if those goods were relevant goods for the purposes of Chapter 4<sup>(13)</sup>; and
  - (b) in any other case, the amount of duty notified in relation to the goods that has been paid or deferred.

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(11) “Goods for the internal market” is defined for the purposes of Part 2 of the Regulations in regulation 3 (by reference to regulation 4).

(12) The meaning of “relevant goods” for the purposes of Chapter 3 of Part 2 of the Regulations is given in regulation 6 of the Regulations.

(13) The meaning of “relevant goods” for the purposes of Chapter 4 of Part 2 of the Regulations is given in regulation 12 of the Regulations.

### **Time of repayment**

**16Z5.**—(1) Where a claim for repayment is granted, HMRC must, when notification of the grant is given, repay the claimant the amount referred to in regulation 16Z4(2) or (3), as the case may be.

(2) Paragraph (3) applies where—

- (a) a period of 30 working days has expired since the date that a notification of the grant is given;
- (b) HMRC have failed to repay some or all of the duty that is due to be repaid under paragraph (1) (“the outstanding amount”); and
- (c) that failure is substantially the fault of HMRC.

(3) HMRC must pay interest at the applicable rate on the outstanding amount for the period—

- (a) beginning with the day after the date on which the period mentioned in paragraph (2) (a) expires; and
- (b) ending with the date on which the outstanding amount is paid in full.

(4) In this regulation—

- (a) “the applicable rate” means the rate of interest provided by regulations for the purposes of section 197(2)(f) of the Finance Act 1996(14);
- (b) “working day” means any day except—
  - (i) a Saturday or Sunday;
  - (ii) Good Friday or Christmas day; or
  - (iii) a bank holiday within the meaning of section 1 of the Banking and Financial Dealings Act 1971(15), including those bank holidays in part only of the United Kingdom;
- (c) where the claim for repayment is made by a repayment or remission agent on behalf of a principal the reference to the claimant is to be read as referring to the principal.

### *SECTION 3*

#### *Errors*

### **Notification of errors**

**16Z6.**—(1) Paragraph (2) applies where—

- (a) the claimant becomes aware of an error in the claim for repayment or remission; or
- (b) the claimant becomes aware that repayment or remission has been granted in error.

(2) The claimant must—

- (a) notify HMRC as soon as practicable of details of the error, including when it first came to the claimant’s attention; and
- (b) make the notification in such form, and accompany it with such additional information or documentation, as HMRC may specify by notice.

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(14) 1996 c. 8. Section 197(2)(f) was inserted by section 130(3) of the Finance Act 1999 (c. 16). At the time these Regulations are made, the rate is provided by regulation 5(1)(e) of S.I. 1998/1461 as 5% per annum. Regulation 5 was substituted by S.I. 2000/631 and regulation 5(1)(e) amended by S.I. 2003/230.

(15) 1971 c. 80.

(3) If requested by an HMRC officer, the claimant must provide to the officer such additional information regarding the matters referred to in paragraph (1) as the officer reasonably requires.

(4) Where—

- (a) a repayment and remission agent made the claim on behalf of a principal; and
- (b) the principal becomes aware of a matter described in paragraph (1),

paragraphs (2) and (3) apply to the principal as if the references to the claimant were to the principal.

(5) HMRC may publish a notice specifying the matters referred to in paragraph (2)(b).

### **Rectification of errors in claim for repayment or remission before determination of claim**

**16Z7.**—(1) Where a notification of an error in a claim for repayment or remission is received by HMRC before the claim is determined—

- (a) an HMRC officer must correct the claim, or direct the claimant to make the necessary corrections; and
- (b) the claim is to be determined on the basis of the information contained in the claim as corrected (or required to be corrected) under this regulation.

(2) For the purposes of regulation 16Z3, notification of receipt of the claim is treated as given by HMRC on the date that the claim is corrected.

### **Repayments due to error**

**16Z8.**—(1) —(1) Paragraph (2) applies where an HMRC officer becomes aware, whether by way of notification under regulation 16Z6 or otherwise, of an error in a claim for repayment or remission which resulted in a grant of an amount of repayment or remission to which the claimant was not entitled.

(2) The grant of the claim is to be treated as null and void to the extent that the claimant was not entitled to the repayment or remission.

(3) Where paragraph (2) applies, HMRC must give notification of that fact as soon as practicable to the claimant and such other persons as HMRC consider are likely to be affected by the matter.

(4) If a repayment was made to a person to whom notification is given, that person must pay that repayment to HMRC, or such amount of the repayment to which the claimant was not entitled, together with any interest on that amount paid by HMRC under regulation 16Z5, before the expiry of the period of 10 days beginning with the date following the date on which the notification is given.

(5) Any amount payable under paragraph (4) is recoverable as if it were an amount of duty of customs.

(6) Interest is payable on the amount payable under paragraph (4) as if that amount were arrears of import duty.

(7) For the purposes of Article 114 of the UCC (interest), notification of the customs debt in respect of the amount payable under paragraph (4) is treated as made on the date that the repayment referred to in that paragraph was made by HMRC.

(8) Where the claim for repayment or remission is made by a repayment and remission agent on behalf of a principal the references to the claimant in this regulation are to be read as referring to the principal.

### **Agents' liability**

**16Z9.**—(1) Where a repayment and remission agent makes a claim for repayment or remission on behalf of, or purportedly on behalf of, a principal, paragraph (2) applies if—

- (a) the agent acts at a time when the appointment has not been disclosed to HMRC as mentioned in regulation 16U(3);
  - (b) the agent purports to act on behalf of the principal when the agent has no authority to do so; or
  - (c) the agent provides false information in connection with the claim for repayment or remission and the agent knew, or ought reasonably to have known, that the information was false.
- (2) The agent (as well as the principal) is liable to—
- (a) repay any amount referred to in regulation 16Z8(4); and
  - (b) pay any amount which is no longer treated as remitted.

## *SECTION 4*

### *Records*

### **Record keeping**

**16Z10.**—(1) The claimant must keep and preserve such records in respect of any claim for repayment or remission in such form and for such period as specified in a notice published by HMRC.

(2) Where the claim for repayment or remission is made by a repayment and remission agent on behalf of a principal—

- (a) the reference in paragraph (1) to the claimant is to be read as referring to the principal; and
- (b) the agent must provide to the claimant such documents as may be specified in a notice published by HMRC.

(3) HMRC must publish a notice specifying the matters referred to in paragraph (1).”

### **Amendment of the Customs (Contravention of a Relevant Rule) Regulations 2003**

**3.**—(1) The Schedule to the Customs (Contravention of a Relevant Rule) Regulations 2003(16) is amended as follows.

(2) After the entry relating to regulation 16S of the Customs (Northern Ireland) (EU Exit) Regulations 2020 insert—

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“Regulation 16Z6

The person required to make £2,500.  
the notification.

Requirement to notify HMRC as soon as practicable in accordance with regulation 16Z6 where a claim for repayment or remission is granted and the claimant becomes

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(16) S.I. 2003/3113, amended by S.I. 2009/3164, 2011/2534, 2015/636, 2018/483, 2018/1260, 2019/148, 2020/1431 and 2020/1629. There are other amending instruments, but none is relevant.

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aware of one of the matters set out in paragraph (1) of that regulation.

Regulation 16Z6(3)                      The person required to £2,500. provide the additional information.  
Requirement to provide additional information if requested by an HMRC officer.

Regulation 16Z10(1)                      The claimant or, where £1,000. relevant, the principal.  
Requirement to keep and preserve records, in a form, and for a period, specified in a notice by HMRC.

Regulation 16Z10(2)(b)                      The agent.                                      £1,000.”  
Requirement for an agent to provide specified documents to the claimant.

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8th June 2023

*Andrew Stephenson*  
*Steve Double*  
Two of the Lords Commissioners of His Majesty's Treasury

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## EXPLANATORY NOTE

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

The Regulations are made by the Treasury primarily under the Taxation (Cross-border Trade) Act 2018 (c. 22) (“the Act”) as amended by the Taxation (Post-transition Period) Act 2020.

Regulation 2 inserts a new Chapter 6 into Part 2 of the Customs (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1605) (“the Northern Ireland Regulations”) to provide for repayment or remission of duty charged under section 30A(3) or 40A(1) of the Act where goods that entered Northern Ireland are no longer at risk of entering the European Union.

Regulation 4 makes consequential amendments to the Customs (Contravention of a Relevant Rule) Regulations 2003 (S.I. 2003/3113).

The notices referred to in regulations 16W(4), 16Z1, 16Z2, 16Z6(2)(b) and 16Z10 of the Northern Ireland Regulations, inserted by regulation 2, will be published at <https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021>. A person unable to access the notices electronically may access them in hard copy by post free of charge on application to 03000 523905, and otherwise by inspection free of charge at HMRC, 100 Parliament Street, London SW1A 2BQ.

A Tax Information and Impact Note (TIIN) covering this instrument will be published on the GOV.UK website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.