

Draft Order in Council laid before the House of Commons, under section 32(11) of the Taxation (Cross-border Trade) Act 2018, for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2018 No. 0000

**EXITING THE EUROPEAN UNION
CUSTOMS**

**The Crown Dependencies Customs
Union (Guernsey) (EU Exit) Order 2018**

Made - - - - *****

At the Court at Buckingham Palace, the ***** day of *****

Present,

The Queen's Most Excellent Majesty in Council

A draft of this Order was laid before the House of Commons in accordance with section 32(11) of the Taxation (Cross-border Trade) Act 2018(1) and approved by a resolution of that House.

Accordingly, Her Majesty, in exercising the powers conferred upon Her by section 31(4) of the Taxation (Cross-border Trade) Act 2018, by and with the advice of Her Privy Council, orders as follows—

Citation

1. This Order may be cited as the Crown Dependencies Customs Union (Guernsey) (EU Exit) Order 2018.

Customs union arrangements to have effect

2. It is declared that it is expedient that the arrangements establishing a customs union between the United Kingdom and Guernsey specified in—

- (a) the Exchange of Letters set out in Part 1 of the Schedule to this Order; and
- (b) the Arrangement set out in Part 2 of that Schedule

should have effect for the purposes of import duty.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory
Instrument: The Crown Dependencies Customs Union (Guernsey) (EU Exit) Order 2019 No. 254

Name
Clerk of the Privy Council

SCHEDULE

Article 2

PART 1

London, 26 November 2018

Dear Deputy Mary Lowe, President of the Committee for Home Affairs,

I have the honour to propose to you the ARRANGEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE STATES OF GUERNSEY (THE GOVERNMENT OF GUERNSEY) CONCERNING THE ESTABLISHMENT AND OPERATION OF THE UNITED KINGDOM-CROWN DEPENDENCIES CUSTOMS UNION (the ARRANGEMENT), at the Appendix to this letter.

I have the further honour to propose that, if the above is acceptable to the States of Guernsey, this letter and the Appendix together with your reply will constitute our mutual acceptance of the provisions of the ARRANGEMENT.

Mel Stride

London, 26 November 2018

Dear Financial Secretary,

I have the honour to acknowledge receipt of your letter of 26 November 2018, which reads as follows:

“Dear Deputy Mary Lowe, President of the Committee for Home Affairs,

I have the honour to propose to you the ARRANGEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE STATES OF GUERNSEY (THE GOVERNMENT OF GUERNSEY) CONCERNING THE ESTABLISHMENT AND OPERATION OF THE UNITED KINGDOM-CROWN DEPENDENCIES CUSTOMS UNION (the ARRANGEMENT), at the Appendix to this letter.

I have the further honour to propose that, if the above is acceptable to the States of Guernsey, this letter and the Appendix together with your reply will constitute our mutual acceptance of the provisions of the ARRANGEMENT.”

I am able to confirm that the contents of your letter of 26 November 2018 are acceptable to the States of Guernsey, and therefore that this letter together with your letter and its Appendix constitute our mutual acceptance of the provisions of the ARRANGEMENT.

Deputy Mary Lowe, President of the Committee for Home Affairs

PART 2

ARRANGEMENT BETWEEN

**THE GOVERNMENT OF THE UNITED KINGDOM
OF GREAT BRITAIN AND NORTHERN IRELAND**

AND

THE STATES OF GUERNSEY (THE GOVERNMENT OF GUERNSEY)

CONCERNING THE ESTABLISHMENT AND OPERATION OF THE UNITED KINGDOM-CROWN DEPENDENCIES CUSTOMS UNION

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Guernsey (together “the Governments”),

ACKNOWLEDGING that the United Kingdom continues to be responsible for the international relations of Guernsey in international law and that this Arrangement cannot therefore create obligations which are binding under international law and is not intended to alter or affect the constitutional relationship between Guernsey and the United Kingdom,

DESIRING to enter into a customs union covering all trade in goods involving the elimination between its members of customs duty on imports and exports and of any charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries,

ACKNOWLEDGING that this Arrangement is without prejudice to the imposition of import value added tax (hereinafter referred to as “import VAT”) or excise duty, or any charges having equivalent effect to import VAT or excise duty, on goods imported into the United Kingdom from Guernsey or into Guernsey from the United Kingdom,

RECOGNISING the importance of delivering a safe and fiscally secure customs regime,

RECOGNISING the importance of cooperation in delivering such a regime,

HAVE DECIDED as follows:

PARAGRAPH 1

Object

1. This Arrangement concerns the establishment and operation of the United Kingdom-Crown Dependencies Customs Union (hereinafter referred to as “the Customs Union”), the members of which are the United Kingdom, Jersey, Guernsey and the Isle of Man.

2. This Arrangement records the commitments of the Government of the United Kingdom and the Government of Guernsey in relation to the Customs Union. The Jersey Arrangement records the commitments of the Government of the United Kingdom and the Government of Jersey in relation to the Customs Union. The Isle of Man Arrangement records the commitments of the Government of the United Kingdom and Government of the Isle of Man in relation to the Customs Union.

PARAGRAPH 2

General definitions

For the purposes of this Arrangement, the following definitions apply:

- (a) “the Arrangements” means, collectively, this Arrangement, the Jersey Arrangement and the Isle of Man Arrangement;
- (b) “Competent Authority” means—
 - (i) in the United Kingdom, Her Majesty’s Revenue and Customs;
 - (ii) in Jersey, the Minister for Home Affairs or the Minister’s authorised representative;
 - (iii) in Guernsey, the Committee for Home Affairs or its authorised representative;
 - (iv) in the Isle of Man, the Customs and Excise Division of the Treasury or its authorised representative;
- (c) “Customs Law” means:

- (i) the law relating to import duty which includes, for the avoidance of doubt, the law relating to the transit of goods and their placing under any customs procedure;
- (ii) the law relating to export duty; and
- (iii) the law relating to import controls only to the extent that it relates to safety and security.

For the avoidance of doubt, “Customs Law” does not include the law relating to value added tax or excise duty;

- (d) “Customs Tariff” means the system established and maintained by HM Treasury pursuant to section 8(1) of the TCTA, as modified by provision made under any of sections 9 to 15 or section 19(4) of that Act, as well as any provision made under section 39(1) of the Act for the charging of export duty, as defined in section 39(1);
- (e) “GATT” means the General Agreement on Tariffs and Trade, part of Annex 1A to the agreement establishing the World Trade Organisation signed at Marrakesh on 15 April 1994 (as modified from time to time);
- (f) “the Government of Guernsey” means the States of Guernsey;
- (g) “Guernsey” means the Bailiwick of Guernsey, which comprises the jurisdictions of Guernsey, Alderney and Sark;
- (h) “Guernsey Courts” means the Royal Court of Guernsey and the Court of Appeal of Guernsey;
- (i) “the Isle of Man Annex” means the annex to the Customs and Excise Agreement 1979 between the Governments of the United Kingdom and the Isle of Man titled the “Annex concerning the Establishment and Operation of the United Kingdom-Crown Dependencies Customs Union”;
- (j) “the Isle of Man Arrangement” means—
 - (i) the Isle of Man Annex; and
 - (ii) “the relevant aspects of the 1979 Agreement” as defined in the Isle of Man Annex;
- (k) “Jersey” means the Bailiwick of Jersey;
- (l) “the Jersey Arrangement” means the Arrangement between the Government of the United Kingdom and the Government of Jersey concerning the Establishment and Operation of the United Kingdom-Crown Dependencies Customs Union;
- (m) “TCTA” means the Taxation (Cross-border Trade) Act 2018 (UK);
- (n) “United Kingdom Courts” means the Tax Chamber of the First-tier Tribunal, the Tax and Chancery Chamber of the Upper Tribunal, any of the Senior Courts of England and Wales, either of the Supreme Courts of Scotland, the Court of Judicature of Northern Ireland and the Supreme Court of the United Kingdom.

PARAGRAPH 3

Implementing legislation

Where necessary, the Governments will introduce legislation to implement this Arrangement in advance of its coming into effect.

PARAGRAPH 4

Prohibition of internal customs duty

No import duty or export duty, or any charge having equivalent effect, will be payable by reference to movements of goods between the United Kingdom and Guernsey.

PARAGRAPH 5

Taxation (Cross-border Trade) Act 2018 (UK)

1. For the avoidance of doubt, it does not follow from paragraph 4 that goods moved between the United Kingdom and Guernsey are “domestic goods” as defined by and under section 33 of the TCTA.

2. The rate of any duty of customs applied in accordance with Parts 1 and 2 of the TCTA to movements of “chargeable goods”, as that term is defined in section 2 of the TCTA, between the United Kingdom and Guernsey will be nil.

PARAGRAPH 6

Prohibition of quantitative restrictions

Movements of goods between the United Kingdom and Guernsey will be free of quantitative restrictions and all measures having equivalent effect, except as permitted under paragraph 13.

PARAGRAPH 7

Jersey and the Isle of Man

1. The Government of Guernsey will not require the payment of any import duty or export duty, or any charge having equivalent effect, by reference to movements of goods between Guernsey and Jersey or between Guernsey and the Isle of Man.

2. The Government of Guernsey will not impose quantitative restrictions or any measures having equivalent effect on movements of goods between Guernsey and Jersey or between Guernsey and the Isle of Man, except as permitted under paragraph 13.

PARAGRAPH 8

Common external tariff

1. The Government of Guernsey will apply the Customs Tariff to trade with territories not included in the Customs Union, except as permitted under paragraph 13.

2. In the event of change to the Customs Tariff, the Government of Guernsey will take all steps necessary to maintain consistency with the Customs Tariff, and in all cases will ensure that the rate of duty applicable to trade with territories not included in the Customs Union is the rate specified in the Customs Tariff.

PARAGRAPH 9

International obligations

1. The Government of Guernsey will comply with all relevant international obligations.

2. For the purposes of sub-paragraph 1, a “relevant international obligation” is an international obligation which—

- (a) relates to customs matters within the scope of this Arrangement; and
- (b) extends to Guernsey.

3. For the avoidance of doubt, “customs matters within the scope of this Arrangement” includes—

- (a) import and export prohibitions and restrictions;
- (b) customs co-operation and mutual administrative assistance; and
- (c) import controls to the extent that they relate to safety and security.

PARAGRAPH 10

Customs Law

1. Subject to any exceptions that may be agreed by the Competent Authorities of the United Kingdom and Guernsey, the Government of Guernsey will keep Guernsey’s Customs Law correspondent with that of the United Kingdom and will legislate to maintain that correspondence whenever necessary and, in particular, when changes are made in relevant United Kingdom Customs Law.

2. Compliance with the commitment in sub-paragraph 1 will require the introduction of legislation which requires Guernsey Courts to have due regard to the relevant decisions of United Kingdom Courts when interpreting correspondent provisions of Guernsey Customs Law.

PARAGRAPH 11

Practices and procedures

Subject to any variations in practice and procedure which may be agreed between the Competent Authorities of the United Kingdom and Guernsey, Guernsey’s Competent Authority will adopt practices and procedures for the management of operations relating to Guernsey Customs Law correspondent with those in the United Kingdom.

PARAGRAPH 12

Tariff Information rulings and Origin Information rulings

1. The United Kingdom will make provision for—
 - (a) its Competent Authority to process applications for tariff information rulings and origin information rulings from persons intending to import goods from outside the Customs Union into Guernsey; and
 - (b) persons who have been issued such rulings to seek review of, and appeal against, them.
2. Guernsey’s Competent Authority will treat as binding—
 - (a) tariff information rulings and origin information rulings issued by the United Kingdom’s Competent Authority in accordance with sub-paragraph (1)(a); and
 - (b) decisions made on review and appeal in accordance with sub-paragraph (1)(b).

PARAGRAPH 13

Prohibitions and restrictions

The Governments may not impose prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, on imports, exports or goods in transit unless they can be justified under the provisions of GATT.

PARAGRAPH 14

Co-operation

1. The Governments will through their Competent Authorities co-operate (by the exchange of information or otherwise) on customs matters of mutual concern within the scope of this Arrangement to the extent permitted by domestic law.
 2. Any information so provided will not be further disclosed except with the consent of the Competent Authority that provided the information.
 3. The operational detail of the commitment set out in sub-paragraph 1 will be contained in a memorandum of understanding.
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PARAGRAPH 15

Shared safety and security zone

1. The Government of the United Kingdom will not require the provision of safety and security declarations in respect of movements of goods between the United Kingdom and Guernsey.
 2. The Government of Guernsey will not require the provision of safety and security declarations in respect of movements of goods between Guernsey and the United Kingdom, between Guernsey and Jersey or between Guernsey and the Isle of Man.
 3. The operational detail of the commitments set out in sub-paragraphs 1 and 2 will be contained in a memorandum of understanding.
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PARAGRAPH 16

Joint Customs Committee

1. By this Article in conjunction with paragraph 16 of the Jersey Arrangement and paragraph 12 of the Isle of Man Annex, the Joint Customs Committee is hereby established. The Joint Customs Committee will consist of representatives of the Competent Authorities of the United Kingdom, Guernsey, Jersey and the Isle of Man.
2. The Joint Customs Committee will hold at least one meeting each year, at a place and on a date with an agenda fixed by mutual consent.
3. The Joint Customs Committee will adopt its rules of procedure.
4. The Joint Customs Committee will function as a forum for:
 - (a) the exchange of views on any points of common interest regarding the Arrangements;
 - (b) reviewing the operation of the Arrangements; and

- (c) seeking appropriate ways and methods of preventing problems that might arise in areas covered by the Arrangements or of resolving disputes that may arise regarding the interpretation and application of the Arrangements.

5. The preceding sub-paragraphs of this Article do not preclude bilateral discussions or correspondence between the Competent Authorities of the United Kingdom and Guernsey regarding any of the matters listed in sub-paragraph 4.

PARAGRAPH 17

Monitoring and oversight

1. Following a request from the United Kingdom's Competent Authority, Guernsey's Competent Authority will provide within twenty-eight calendar days, unless the Competent Authorities agree to an alternative time limit, such information as may be required by the United Kingdom's Competent Authority for assessing Guernsey's adherence to the terms of this Arrangement and in particular will supply the following information—

- (a) particulars of Guernsey's external trade in goods; and
- (b) statistics and other information required as a result of any international agreement to which the United Kingdom is party.

2. Where the United Kingdom's Competent Authority gives notice to Guernsey's Competent Authority, Guernsey's Competent Authority will invite the United Kingdom's Competent Authority to visit and review its systems and facilities in order to enable the United Kingdom's Competent Authority to assess Guernsey's adherence to the terms of this Arrangement. Any visit under this sub-paragraph will take place on a date no more than fourteen calendar days after Guernsey's Competent Authority receives notice from the United Kingdom's Competent Authority, or such other date as the Competent Authorities agree.

3. Following a request from Guernsey's Competent Authority, the United Kingdom's Competent Authority will provide within twenty-eight calendar days, unless the Competent Authorities agree to an alternative time limit, such information as may reasonably be required by the Government of Guernsey on the operation of the Arrangements, and in particular to enable Guernsey's Competent Authority to participate effectively in the Joint Customs Committee.

PARAGRAPH 18

Value Added Tax and Excise

1. Nothing in this Arrangement prevents the United Kingdom from imposing import VAT or excise duty, or any charges having equivalent effect to import VAT or excise duty, on goods imported into the United Kingdom from Guernsey.

2. Nothing in this Arrangement prevents Guernsey from imposing import VAT or excise duty, or any charges having equivalent effect to import VAT or excise duty, on goods imported into Guernsey from the United Kingdom.

PARAGRAPH 19

Effective date

The effective date for this Arrangement will be as agreed in an exchange of letters between the Governments.

PARAGRAPH 20

Termination

1. The Governments may terminate this Arrangement at any time by mutual agreement.
2. Either of the Governments may unilaterally terminate this Arrangement by giving notice in writing to the other Government at least two years in advance.
3. Notwithstanding sub-paragraph (2), and noting the continuing relevance of the principles contained in the ‘Framework for developing the international identity of Guernsey’ (signed 18 December 2008), where the Government of Guernsey has, following consultation, informed the Government of the United Kingdom that it does not wish for an international obligation which is necessary to deliver the common external tariff to apply to Guernsey, this Arrangement will cease to have effect from the time that the international obligation comes into force.

EXPLANATORY NOTE

(This note is not part of the Order)

Part 1 of the Schedule to this Order contains an Exchange of Letters between the Government of the United Kingdom and the States of Guernsey relating to an Arrangement concerning the Establishment and Operation of the United Kingdom-Crown Dependencies Customs Union (“the Arrangement”). Part 2 of the Schedule contains the text of the Arrangement. The Exchange of Letters and the Arrangement are “arrangements establishing a customs union” between the United Kingdom and Guernsey for the purposes of section 31(2) of the Taxation (Cross-border Trade) Act 2018.

Article 1 provides for citation.

Article 2 provides that it is expedient that the arrangements specified in the Schedule should have effect for the purposes of import duty. Chargeable goods, as defined in section 2 of the Taxation (Cross-border Trade) Act 2018, imported into the United Kingdom from Guernsey will be subject to import duty at a rate of nil (paragraphs 4 and 5 of the Arrangement). The United Kingdom will make provision for Her Majesty’s Revenue and Customs (HMRC) to process applications for tariff information rulings and origin information rulings from persons intending to import goods from outside the United Kingdom-Crown Dependencies Customs Union into Guernsey, and for such persons to seek review and appeal of these rulings (paragraph 12 of the Arrangement).

The Government of the United Kingdom and the States of Guernsey entered into the arrangements set out in the Schedule on 26 November 2018 (Part 1 of the Schedule). As provided in paragraph 19 of the Arrangement, the Arrangement will come into effect upon an exchange of letters between the Government of the United Kingdom and the States of Guernsey.

The date that the Arrangement comes into effect will, in due course, be published in the London, Edinburgh and Belfast Gazettes.

A full impact assessment has not been prepared for this instrument as it contains no substantive changes to tax policy.