

**EXPLANATORY MEMORANDUM TO**  
**THE CROWN DEPENDENCIES CUSTOMS UNION (EU EXIT) REGULATIONS**  
**2019**

**2019 No. 385**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 This instrument forms part of legislation to be made under the Taxation (Cross-border Trade) Act 2018 (TCTA) to deal with circumstances in which the United Kingdom (UK) leaves the European Union (EU) without a negotiated deal. The instrument would modify various customs rules to take account of the customs union arrangements between the United Kingdom and the Crown Dependencies (Isle of Man, Bailiwick of Guernsey and Bailiwick of Jersey), which will take effect once the United Kingdom and the Crown Dependencies cease to be part of the customs territory of the European Union.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Select Committee on Statutory Instruments*

- 3.1 This instrument will come into force pursuant to regulations made under section 52 TCTA if the United Kingdom leaves the European Union without a negotiated deal. In the event of a negotiated deal with the European Union these provisions would not be required until the end of the implementation period, and may need to be adjusted in the light of a future customs arrangement with the European Union.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

## **6. Legislative Context**

- 6.1 These regulations are being made using the powers contained in section 31(6) and 31(7) TCTA, which are being used for the first time. Section 31 provides that, where the Government of the United Kingdom enters into arrangements establishing a customs union with another country or territory, and where these arrangements are given effect to by an Order in Council, regulations can be made to give effect to the terms of those arrangements.
- 6.2 Arrangements establish a “customs union” for the purposes of the TCTA if there is no import duty on goods moving between the territories in question and if each territory applies substantially the same rules for charging import duty when goods are imported from outside either territory. Both these conditions will be fulfilled by the United Kingdom-Crown Dependencies Customs Union.
- 6.3 On 26 November 2018, the United Kingdom Government signed customs union arrangements with each of the Governments of the three Crown Dependencies. These arrangements were given effect to by three Orders in Council made at the Privy Council meeting of 13 February 2019: the Crown Dependencies Customs Union (Guernsey) (EU Exit) Order 2019 (SI 2019/254), the Crown Dependencies Customs Union (Jersey) (EU Exit) Order 2019 (SI 2019/256) and the Crown Dependencies Customs Union (Isle of Man) (EU Exit) Order 2019 (SI 2019/257).

## **7. Policy background**

### *What is being done and why?*

- 7.1 The Bailiwick of Jersey (Jersey), the Bailiwick of Guernsey (Guernsey) and the Isle of Man are all Crown Dependencies of the United Kingdom. The Crown Dependencies’ customs relationships with the United Kingdom are currently underpinned by Protocol 3 of the United Kingdom’s 1972 Act of Accession to the European Union, as well as (in the case of the Isle of Man) the Isle of Man Act 1979 and the Customs and Excise Agreement 1979 between the Governments of the United Kingdom and the Isle of Man. Protocol 3 provides that the Crown Dependencies are within the European Union customs union, which involves the tariff-free movement of goods throughout the European Union customs territory, including the movement of goods between the United Kingdom and the Crown Dependencies. Following the United Kingdom’s withdrawal from the European Union, the United Kingdom and Crown Dependencies will leave the European Union customs union and Protocol 3 will cease to apply.
- 7.2 In order to prevent disruption to trade between the United Kingdom and Crown Dependencies when the United Kingdom exits the European Union, the Governments of the United Kingdom and Crown Dependencies entered into customs union arrangements on 26 November 2018. Taken together, the arrangements with each of the three Crown Dependencies form a single customs union (The United Kingdom-Crown Dependencies Customs Union), as defined by section 31 TCTA. The United Kingdom-Crown Dependencies Customs Union provides that no customs duty will be payable in respect of movements of goods between the United Kingdom and the Crown Dependencies, or between the Crown Dependencies themselves, and that the United Kingdom and the Crown Dependencies will apply a common external tariff.
- 7.3 As the United Kingdom-Crown Dependencies customs arrangements are internal constitutional arrangements of the United Kingdom, they are not binding international

agreements, and do not qualify as a customs union as defined by the General Agreement on Tariffs and Trade, under the World Trade Organisation framework.

7.4 These regulations are needed to give effect in United Kingdom law to provisions required for the effective operation of the UK-Crown Dependencies customs union. For example, the regulations:

- Clarify that Isle of Man domestic goods should be treated as domestic goods in the United Kingdom.
- Allow persons established in the Isle of Man to make customs and export declarations to HMRC, and to act as customs agents.
- Make arrangements for the control of goods subject to HMRC control where these are located in the Isle of Man.
- Allow Isle of Man established persons access to certain special customs procedures, facilitations and easements on the same basis as persons established in the United Kingdom. This includes customs procedures and arrangements that allow for the suspension and relief of United Kingdom import duty.
- Ensure that provisions relating to passengers arriving in or leaving the United Kingdom apply to passengers travelling to the Isle of Man via the UK or leaving the Isle of Man via the United Kingdom.
- Ensure that persons established in the Isle of Man or Channel Islands are eligible to hold comprehensive guarantees with HMRC.
- Provide for traders importing goods into the Crown Dependencies to be able to apply to HMRC for rulings giving legal certainty as to the applicable tariff or origin for their goods, and to be able to request a review of such rulings.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it gives effect in United Kingdom law to arrangements signed with the Crown Dependencies as a direct result of the United Kingdom and Crown Dependencies' ceasing to be a part of the European Union customs territory.

## **9. Consolidation**

9.1 This is new legislation and therefore no consolidation is required.

## **10. Consultation outcome**

10.1 Following the 2016 referendum on membership of the European Union, the Government has consulted the Governments of each of the Crown Dependencies on the formation of a new customs union comprising the United Kingdom, the Isle of Man, Jersey and Guernsey.

10.2 The United Kingdom-Crown Dependencies customs union arrangements were entered into by Ministers from each of the respective Governments following engagement between officials from each of the Governments throughout 2017 and 2018.

- 10.3 As part of wider Government consultation with the Crown Dependencies, Chief Ministers from each of the Crown Dependencies have met with the Parliamentary Under-Secretary of State for the Department for Exiting the European Union in quarterly meetings on preparations for future United Kingdom-Crown Dependency arrangements on goods since 2017 and with the Financial Secretary to the Treasury on specific matters.
- 10.4 These regulations ensure the United Kingdom can maintain the current United Kingdom-Crown Dependencies customs relationships when the United Kingdom withdraws from the European Union. Therefore, consultation of individuals or businesses in the United Kingdom is not considered necessary.

## **11. Guidance**

- 11.1 General guidance on the relationship between the Crown Dependencies and the United Kingdom can be found at:  
<https://www.gov.uk/government/publications/crown-dependencies-jersey-guernsey-and-the-isle-of-man>

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 This instrument will be covered by an overarching HMRC impact assessment (third edition) which will be published and available on the website at  
<https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal>
- 12.4 These regulations allow the United Kingdom to maintain its current customs relationships with the Crown Dependencies. There will accordingly be no significant impact on the public sector, charities, businesses or voluntary bodies in the United Kingdom. There are no new direct costs to businesses and no additional information requirements as a result of these regulations.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 However, no specific action is proposed to minimise regulatory burdens on small businesses (employing up to 50 people).
- 13.3 The basis for the final decision on what action to take to assist small businesses was that these regulation allow current arrangements for the customs treatment of goods traded between the United Kingdom and Crown Dependencies to continue. The regulations do not therefore create any new requirements for small businesses.

## **14. Monitoring & review**

- 14.1 HM Revenue and Customs will keep the instrument under review to ensure that it meets the policy objectives set out in section 7.
- 14.2 A statutory review clause is not included within these regulations because the instrument relates to a tax or duty, and therefore meets the requirements of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

## **15. Contact**

- 15.1 Rosemary Kilian at HMRC, Telephone: 07776667167 or email: rosemary.kilian1@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Alex Pienaar, Deputy Director for Customs EU Exit policy team at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Mel Stride, Financial Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.