

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
(Isle of Man) (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 (Isle of Man) (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 the Isle of Man(2) 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

(1) 2018 c. 22.

(2) The arrangements specified in the Schedule amend the Customs and Excise Agreement 1979 between the Government of the United Kingdom and the Government of the Isle of Man, to which the Isle of Man Act 1979 (c. 58) gives effect.

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 (Isle of Man) (EU Exit) Order 2019 No. 257

should have effect for the purposes of import duty.

Name
Clerk of the Privy Council

SCHEDULE

Article 2

PART 1

London, 26 November 2018

Dear Hon Alfred Cannan MHK,

I have the honour to propose to you the ARRANGEMENT BETWEEN THE GOVERNMENTS OF THE UNITED KINGDOM AND THE ISLE OF MAN FURTHER AMENDING THE AGREEMENT BETWEEN THOSE GOVERNMENTS ON CUSTOMS AND EXCISE AND ASSOCIATED MATTERS DATED 15TH OCTOBER 1979 (the ARRANGEMENT), at the Appendix to this letter.

I have the further honour to propose that, if the above is acceptable to the Government of the Isle of Man, 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 Hon Alfred Cannan MHK,

I have the honour to propose to you the ARRANGEMENT BETWEEN THE GOVERNMENTS OF THE UNITED KINGDOM AND THE ISLE OF MAN FURTHER AMENDING THE AGREEMENT BETWEEN THOSE GOVERNMENTS ON CUSTOMS AND EXCISE AND ASSOCIATED MATTERS DATED 15TH OCTOBER 1979 (the ARRANGEMENT), at the Appendix to this letter.

I have the further honour to propose that, if the above is acceptable to the Government of the Isle of Man, 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 Government of the Isle of Man, and therefore that this letter together with your letter and its Appendix constitute our mutual acceptance of the provisions of the ARRANGEMENT.

I note that, in accordance with sub-paragraph 17(2) of the ARRANGEMENT, paragraphs 5, 8, 9, 10, 13(5), 13(6) and 14 of the ARRANGEMENT will take effect upon signature of this letter.

Hon Alfred Cannan MHK

PART 2

ARRANGEMENT BETWEEN THE GOVERNMENTS OF THE UNITED KINGDOM AND
THE ISLE OF MAN FURTHER AMENDING THE AGREEMENT BETWEEN THOSE
GOVERNMENTS ON CUSTOMS AND EXCISE AND ASSOCIATED MATTERS DATED
15TH OCTOBER 1979

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 (Isle of Man) (EU Exit) Order 2019 No. 257

Whereas the Governments of the United Kingdom and the Isle of Man have decided that the Agreement between them on Customs and Excise and associated matters dated 15th October 1979 (“the 1979 Agreement”) should be amended:

And Whereas that amendment should reflect the desire of the Governments to enter into a customs union comprising the United Kingdom, the Isle of Man, the Bailiwick of Jersey and the Bailiwick of Guernsey covering all trade in goods and involving the elimination between its members of customs duties 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:

And Whereas it is expedient to make other, minor amendments to the 1979 Agreement:

NOW THEREFORE IT IS DECIDED AS FOLLOWS:

1. Amendment of the 1979 Agreement

The 1979 Agreement is amended as follows.

2. Amendment of paragraph 3

1.—(1) Paragraph 3 is amended as follows.

(2) Re-number the existing text as sub-paragraph (1) of that paragraph.

(3) After sub-paragraph (1) insert—

“(2) Compliance with the commitment in sub-paragraph (1) will require the introduction of legislation which requires Isle of Man Courts to have due regard to the relevant decisions of United Kingdom Courts when interpreting correspondent provisions of Isle of Man law relating to the management of the Customs and Excise revenues and associated control functions.”

3. Amendment of paragraph 6

For paragraph 6(1)(c)(iii) substitute—

“(iii) accommodation provided by hotels and similar establishments, including the provision of holiday accommodation and the letting of camping sites and caravan parks, and such other non-exportable services as may be agreed between the two Governments”

4. Amendment of paragraph 7A

In paragraph 7A, for “be consistent with the relevant Community rules for the time being applicable in the United Kingdom and subject” substitute “be subject”.

5. Amendment of paragraph 8

In paragraph 8, for “desirable to import” substitute “desirable to impose”.

6. Amendment of paragraph 9

In paragraph 9, omit “and will follow the practices and procedures of the Commissioners of Customs and Excise when giving effect to legislation of the European Communities in so far as that legislation extends to the Isle of Man”.

7. Amendment of paragraph 11

In paragraph 11, for “an exchange of letters” substitute “a memorandum of understanding”.

8. Amendment of paragraph 12

In paragraph 12, for “judgements” substitute, in both places, “judgments”.

9. Amendment of paragraph 14

- (1) Paragraph 14 is amended as follows.
- (2) In sub-paragraph (g), after “;” insert “and”.
- (3) In sub-paragraph (h), for “; and” substitute “.”
- (4) Omit sub-paragraph (i).

10. New paragraph 14A

Following paragraph 14, insert—

“**14A.** The Governments agree that the value added tax and duties tribunal which shall have jurisdiction in the Isle of Man shall be appointed by the Isle of Man Government and for each sitting of the tribunal the chairman shall be one of the following—

- (a) the Senior President of Tribunals appointed under section 2 of the Tribunals, Courts and Enforcement Act 2007 (an Act of Parliament) (hereinafter referred to as the “TCEA”);
- (b) the President of the chamber, established under section 7 of the TCEA, that deals with value added tax appeals in the United Kingdom (“the Chamber President”);
or
- (c) a judge of either the First-tier Tribunal or the Upper Tribunal established under section 3 of the TCEA authorised by the Chamber President.”

11. Amendment of paragraph 16

In paragraph 16, for “except as may be required by Community obligations (or by any other international obligations)” substitute “except as may be required by any international obligations”.

12. Amendment of paragraph 21

- (1) Paragraph 21 is amended as follows.
- (2) For “in such form and at such intervals as may from time to time be agreed by exchange of letters between the Commissioners and the Isle of Man Treasury” substitute “within twenty-eight calendar days, unless the Commissioners and the Isle of Man Treasury agree to an alternative time limit, of a request from the Commissioners”.

(3) In sub-paragraph (b), omit “as a result of the United Kingdom’s membership of the European Communities or”.

13. Amendment of paragraph 23

(1) Paragraph 23 is amended as follows.

(2) Omit the definition of “Community obligations”.

(3) In the definition of “customs duty”, for “means any duty imposed as a duty of customs and includes import duties (being Community customs duties, agricultural levies of the Communities and charges having equivalent effect)” substitute “means import duty or export duty, or any charge having equivalent effect, and, for the avoidance of doubt, does not include import value added tax”.

(4) After the definition of “excise duty”, insert—

““Isle of Man Courts” means the VAT and Duties Tribunal, the High Court of Justice of the Isle of Man and the Staff of Government Division of the High Court of Justice;

“the Isle of Man customs and excise service” means the Customs and Excise Division of the Isle of Man Treasury or its authorised representative”;

(5) In the definition of “judgement”, for “judgement” substitute, in both places, “judgment”.

(6) In the definition of “person”, for “1976” substitute “2015”.

(7) After the definition of “revenue functions”, insert—

““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”.

14. New paragraph 24A

Following paragraph 24, insert—

“**24A.** The Governments acknowledge that the United Kingdom continues to be responsible for the international relations of the Isle of Man in international law. This Agreement, including the Annex, cannot therefore create obligations which are binding under international law and is not intended to alter or affect the constitutional relationship between the Isle of Man and the United Kingdom.”

15. New annex

The schedule to this Arrangement will be annexed to the 1979 Agreement.

16. Citation

This Arrangement will be called the Customs and Excise (Amendment) Arrangement 2018.

17. Effective date

(1) Paragraphs 5, 8, 9, 10, 13(5), 13(6) and 14 of this Arrangement will take effect upon signature.

(2) The effective date for the remaining provisions of this Arrangement will be as agreed in an exchange of letters between the Governments.

SCHEDULE

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

1.—(1) This Annex 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 Annex, together with the relevant aspects of the 1979 Agreement, records the commitments of the Governments of the United Kingdom and the Isle of Man 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, and the Guernsey Arrangement records the commitments of the Government of the United Kingdom and the Government of Guernsey in relation to the Customs Union.

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

3.—(1) Goods removed to the United Kingdom from the Isle of Man—

(a) will be deemed for the purposes of the UK customs and excise Acts not to be imported into the United Kingdom (and will not therefore be subject to import duty), except as provided in section 8(2) of the Isle of Man Act 1979 (an Act of Parliament); and

(b) will be deemed for the purposes of the IoM customs and excise Acts not to be exported from the Isle of Man (and will not therefore be subject to export duty), except as provided in section 183(2) of the Customs and Excise Management Act 1986 (an Act of Tynwald).

(2) Goods removed to the Isle of Man from the United Kingdom—

(a) will be deemed for the purposes of the IoM customs and excise Acts not to be imported into the Isle of Man (and will not therefore be subject to import duty), except as provided in section 182(2) of the Customs and Excise Management Act 1986 (an Act of Tynwald); and

(b) will be deemed for the purposes of the UK customs and excise Acts not to be exported from the United Kingdom (and will not therefore be subject to export duty), except as provided in section 21(2) of the Forgery and Counterfeiting Act 1981 (an Act of Parliament).

4. Movements of goods between the United Kingdom and the Isle of Man will be free of quantitative restrictions and all measures having equivalent effect, except as permitted or required under paragraph 8 of the 1979 Agreement.

5.—(1) The Isle of Man Government will apply the Customs Tariff to trade with territories not included in the Customs Union, except as permitted under paragraph 8 of the 1979 Agreement.

(2) In the event of change to the Customs Tariff, the Isle of Man Government 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.

(3) To the extent that there is any inconsistency between the preceding sub-paragraphs and paragraph 6 of the 1979 Agreement insofar as it relates to customs duty, the preceding sub-paragraphs will prevail.

6.—(1) The Isle of Man Government will not impose any import duty or export duty, or any charge having equivalent effect, on movements of goods between the Isle of Man and Jersey or between the Isle of Man and Guernsey.

(2) The Isle of Man Government will not impose quantitative restrictions or any measures having equivalent effect on movements of goods between the Isle of Man and Jersey or between the Isle of Man and Guernsey, except as permitted or required under paragraph 8 of the 1979 Agreement.

7.—(1) The Isle of Man Government will continue to apply import value added tax and excise duties to goods imported into the Isle of Man from Jersey and Guernsey in accordance with its commitment under paragraph 6 of the 1979 Agreement.

(2) With the exception of sub-paragraph (1), nothing in this Annex will be interpreted as making provision for value added tax or excise duty.

8.—(1) The Isle of Man Government 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 Annex or the relevant aspects of the 1979 Agreement; and

(b) extends to the Isle of Man.

(3) For the avoidance of doubt, “customs matters within the scope of this Annex or the relevant aspects of the 1979 Agreement” 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.

9.—(1) The United Kingdom will make provision for—

(a) the Commissioners to process applications for tariff information rulings and origin information rulings from persons intending to import goods from outside the Customs Union into the Isle of Man; and

(b) persons who have been issued such rulings to seek review of, and appeal against, them.

(2) The Isle of Man Treasury will treat as binding—

(a) tariff information rulings and origin information rulings issued by the Commissioners in accordance with sub-paragraph (1)(a); and

(b) decisions made on review and appeal in accordance with sub-paragraph (1)(b).

10.—(1) Except as provided in this Annex or as may otherwise be agreed by the Commissioners and the Isle of Man Treasury, the Isle of Man Government will keep the law relating to import controls to the extent that it relates to safety and security 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 law.

(2) Compliance with the commitment in sub-paragraph (1) will require the introduction of legislation which requires Isle of Man Courts to have due regard to the relevant decisions of United Kingdom Courts when interpreting correspondent provisions of Isle of Man law relating to import controls to the extent that it relates to safety and security.

(3) Except as may be agreed from time to time by exchange of letters between the Commissioners and the Isle of Man Treasury, the Isle of Man Government will adopt practices and procedures for the management of operations relating to import controls to the extent that they relate to safety and security corresponding to those in the United Kingdom.

11.—(1) The United Kingdom Government will not require the provision of safety and security declarations in respect of movements of goods between the United Kingdom and the Isle of Man.

(2) The Isle of Man Government will not require the provision of safety and security declarations in respect of movements of goods between the Isle of Man and the United Kingdom, between the Isle of Man and Jersey or between the Isle of Man and Guernsey.

12.—(1) By this paragraph in conjunction with paragraph 16 of the Jersey Arrangement and paragraph 16 of the Guernsey Arrangement, the Joint Customs Committee is hereby established. The Joint Customs Committee will consist of representatives of the Isle of Man customs and excise service, the Commissioners, the Competent Authority of Jersey and the Competent Authority of Guernsey.

(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 paragraph do not preclude bilateral discussions or correspondence between the Isle of Man customs and excise service and the Commissioners regarding any of the matters listed in sub-paragraph (4).

13. Following a request from the Isle of Man customs and excise service, the Commissioners will provide within twenty-eight calendar days, unless the Isle of Man customs and excise service and the Commissioners agree to an alternative time limit, such information as may reasonably be required by the Isle of Man Government on the operation of the Arrangements, and in particular to enable the Isle of Man customs and excise service to participate effectively in the Joint Customs Committee.

14. Where the Commissioners give notice to the Isle of Man customs and excise service, the Isle of Man customs and excise service will invite the Commissioners to visit and review its systems and facilities in order to enable the Commissioners to assess the Isle of Man'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 the Isle of Man customs and excise service receives notice from the Commissioners, or such other date as the Commissioners and the Isle of Man customs and excise service agree.

15. The definitions in paragraph 23 of the 1979 Agreement apply in respect of this Annex. In addition, for the purposes of this Annex, the following definitions apply—

“the 1979 Agreement” means the Agreement of which this Annex forms a part (as amended from time to time), but excluding this Annex;

“the Arrangements” means, collectively, this Annex together with the relevant aspects of the 1979 Agreement, the Jersey Arrangement and the Guernsey Arrangement;

“Competent Authority” means—

(i) in Jersey, the Minister for Home Affairs or the Minister's authorised representative; and

(ii) in Guernsey, the Committee for Home Affairs or its authorised representative;

“Customs Tariff” means the system established and maintained by HM Treasury pursuant to section 8(1) of the Taxation (Cross-border Trade) Act 2018 (UK), 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);

“the Government of Guernsey” means the States of Guernsey;

“Guernsey” means the Bailiwick of Guernsey, which comprises the jurisdictions of Guernsey, Alderney and Sark;

“the Guernsey Arrangement” means the Arrangement between the Government of the United Kingdom and the States of Guernsey concerning the Establishment and Operation of the United Kingdom-Crown Dependencies Customs Union;

“the IoM customs and excise Acts” has the same meaning as the term “the customs and excise Acts” in the Customs and Excise Management Act 1986 (Act of Tynwald);

“Jersey” means the Bailiwick of Jersey;

“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;

“the relevant aspects of the 1979 Agreement” means paragraphs 3, 6, 8, 9, 11, 12, 14A, 16 and 21 of the 1979 Agreement, but only insofar as they relate to import duty (which includes, for the avoidance of doubt, the transit of goods and their placing under any customs procedure), export duty, import and export prohibitions and restrictions, and import controls to the extent that they relate to safety and security;

“the UK customs and excise Acts” has the same meaning as the term “the customs and excise Acts” in the Customs and Excise Management Act 1979 (an Act of Parliament).

16. Notwithstanding paragraph 22 of the 1979 Agreement, where the Isle of Man Government 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 the Isle of Man, this Annex, together with the relevant aspects of the 1979 Agreement, 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 Government of the Isle of Man relating to the Customs and Excise (Amendment) Arrangement 2018 (“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 the Isle of Man for the purposes of section 31(2) of the Taxation (Cross-border Trade) Act 2018.

The Arrangement amends the Customs and Excise Agreement 1979 between the Government of the United Kingdom and the Government of the Isle of Man, to which the Isle of Man Act 1979 gives effect. Pursuant to section 31(4) of the Taxation (Cross-border Trade) Act 2018, this Order will have effect for the purposes of import duty “despite any enactment”.

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. Goods removed to the United Kingdom from the Isle of Man will be deemed not to be imported into the United Kingdom and will not therefore be subject to import duty (except as provided in section 8(2) of the Isle of Man Act 1979) (paragraph 3(1)(a))

of the Annex scheduled to 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 the Isle of Man, and for such persons to seek review and appeal of these rulings (paragraph 9 of the Annex scheduled to the Arrangement).

The Governments of the United Kingdom and the Isle of Man entered into the arrangements set out in the Schedule on 26 November 2018 (Part 1 of the Schedule). The Arrangement will, subject to limited exceptions, come into effect upon an exchange of letters between the Government of the United Kingdom and the Government of the Isle of Man (paragraph 17(2) of the Arrangement).

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.