

# STATES OF JERSEY



Jersey

## **DRAFT CUSTOMS AND EXCISE (EXPORT DECLARATIONS AND EXPORT CONTROLS) (JERSEY) REGULATIONS 202-**

---

**Lodged au Greffe on 16th October 2020  
by the Minister for Home Affairs**

---

**STATES GREFFE**



---

## REPORT

---

### 1. Background

Prior to the United Kingdom's ("UK") exit from the European Union ("EU") on 31st January 2020, (notwithstanding the transition period ending 31st December 2020), Jersey formed part of the UK Member State for the purposes of the EU customs union to the extent provided for by Protocol 3 to the UK Act of Accession 1972. In brief, Protocol 3 set out that EU law concerning "customs matters" was directly applicable in Jersey. For example, the EU rules on importation, exportation and movement of goods. These rules worked alongside and in conjunction with the [Customs and Excise \(Jersey\) Law 1999](#).

On the UK's exit from the EU the relationship Jersey has to the EU and the UK through the EU Treaties, via Protocol 3, comes to an end.

#### UK

Currently the UK's main provisions governing the export of goods from the UK are set out in directly applicable EU regulations. The Union Customs Code, Regulation (EU) No. 952/2013 ("UCC") is the overarching legislative framework for customs adhered to by all Member States.

Under the UK European Union (Withdrawal) Act 2018, EU customs law is not being retained and the UK has provided for new customs provisions, including the export of goods, predominantly exercised through the UK Taxation (Cross – border Trade) Act 2018 ("TCTA").

Section 35 of the TCTA provides for the export provisions including regulatory powers and notices made thereunder.

In addition, the UK controls the export of certain goods (prohibited and restricted goods) through a number of other instruments and through EU legislation applicable to the UK. As the UK exits the EU, it may retain EU legislation (as amended) or replicate EU legislation (as amended).

#### Jersey

Customs matters in Jersey are provided for via the [Customs and Excise \(Jersey\) Law 1999](#).

In addition, Jersey controls the export of certain goods (prohibited and restricted goods) through a number of local Laws, for example the [Misuse of Drugs \(Jersey\) Law 1978](#). The Agent and Officers of the Impôts enforce these controls as provided for by the Customs and Excise (Jersey) Law 1999, as an "assigned matter".

Furthermore, the [Export Control \(Jersey\) Law 2009](#) was adopted by the States on 1st April 2008 and came into force in 2018, for the purpose of controlling certain export goods. However, the regime under the Export Control (Jersey) Law 2009 was conceived before Brexit and drafted in the context of Jersey's Protocol 3 relationship with the EU, which included certain obligations relating to export control owing to Jersey being within the EU's customs territory.

With the advent of Jersey exiting its relationship with the EU, provisions are required for export matters not currently provided for and to ensure correspondence to changing UK legislation.

## 2 Detail

### Export declarations

The [Customs and Excise \(Jersey\) Law 1999](#) currently makes explicit provision for exporters to make export declarations for ‘certain goods’, defined as follows –

- (a) Goods from approved premises;
- (b) Transit goods;
- (c) Any other goods chargeable with any duty which has not been paid;
- (d) Drawback goods;
- (e) Goods of which the exportation is restricted by or under this Law or any other enactment; and
- (f) Any goods required by or under this Law to be entered before exportation or before shipment for exportation.

However, the Customs and Excise (Jersey) Law 1999 does not clearly provide for ‘standard goods’.

There is no definition of ‘standard goods’ in UK, EU or Jersey Law. Such goods are by default not restricted or prohibited goods.

Export declarations for ‘standard goods’ were not required prior to the UK exiting the European Union as ‘standard goods’ where exported to or through the UK/EU (customs territory).

This requirement will exist for ‘standard goods’ exported to the EU from 1 January 2021.

The proposed Regulations shall:

- Clearly provide that export declarations for ‘standard goods’ are required; and
- Make a minor amendment to Article 6 of the Law to enable customs controls to correspond to post-Brexit requirements to operationalise the UK-Jersey Customs Arrangement for related purposes.

### Exporting goods (controls)

As noted earlier, Jersey controls the export of certain goods (prohibited and restricted goods) through a number of local Laws. The Agent and Officers of the Impôts enforce these controls as provided for by the [Customs and Excise \(Jersey\) Law 1999](#).

Furthermore, the Customs and Excise (Jersey) Law 1999 provides, to an extent, for controlling exported goods not provided for by Jersey legislation via the Customs and [Excise \(Import and Export Control\) \(Jersey\) Order 2006](#). However, this Order can no longer be amended by the Minister as such power was removed by the Export Control (Jersey) Law 2009.

In addition, the [Export Control \(Jersey\) Law 2009](#) was adopted by the States on 1st April 2008 and came into force in 2018 for the purpose of controlling certain export goods. However, the regime under the Export Control (Jersey) Law 2009 was conceived before Brexit and drafted in the context of Jersey’s Protocol 3 relationship with the EU, which included certain obligations relating to export control owing to Jersey being within the EU’s customs territory.

In particular, the pre-Brexit Export Control (Jersey) Law 2009 is centred upon giving effect to any ‘Community’ provision or a joint action or common position adopted, or a decision taken, by the Council under Title V of the Treaty on European Union for example.

As the new relationships with the UK and EU have been subject to intense political uncertainty over the last year, the future alignments for Jersey's export control system have also remained uncertain. One certainty at the present time however is that from 1st January 2021 Jersey will cease to be treated as part of the EU's customs territory, and will form part of the UK-Crown Dependencies Customs Union.

In essence, the present absence of provision in the [Customs and Excise \(Jersey\) Law 1999](#) (and the constraints of the powers of the [Export Control \(Jersey\) Law 2009](#)) impede the Minister and Agent of the Impôts to control effectively the export of goods as deemed to require restriction or prohibition. This situation needs to be remedied.

Accordingly, it is proposed to reinsert the powers for export control that did previously exist at Article 19 of the Customs and Excise (Jersey) Law 1999, but were removed by a provision of the Export Control (Jersey) Law 2009.

The proposed Regulations shall:

- Provide the Minister with Order-making powers to control the export of any goods - essentially replicating those powers to control the import of any goods; and
- Provide the required enforcement powers for the Agent of the Impôts or an Officer of the Agent of the Impôts - essentially replicating those powers to control the import of any goods.

### **Financial and Manpower Implications**

There are no financial and manpower implications arising from this decision.



## **EXPLANATORY NOTE**

---

These Regulations, if passed, would amend the powers in the Customs and Excise (Jersey) Law 1999 (the “Law”) dealing with export declarations and controls to allow for provisions to be made following the United Kingdom’s exit from the European Union.

*Regulation 1* provides that the Law is amended in accordance with the Regulations.

*Regulation 2* amends Article 6 of the Law to clarify that the powers of the Agent of the Impôts are exercisable for the purposes of supporting the arrangements for Jersey set out in Treaties, or an arrangement between Jersey and the United Kingdom.

*Regulation 3* amends Article 19 of the Law. The amendments reinstate into the Law powers relating to export controls that were removed from the 1999 Law and included in the Export Control (Jersey) Law 2009. The amendments will allow the Minister for Home Affairs to make provision by Order prohibiting or regulating the exportation of goods from Jersey.

*Regulation 4* amends Article 35 to make provision for declarations to be made on export of any goods where export is not restricted or prohibited under the Law and which are not already goods to which Article 35 applies.

*Regulation 5* gives the name by which these Regulations may be known and provides that they come into force 7 days after they are made.







Jersey

## **DRAFT CUSTOMS AND EXCISE (EXPORT DECLARATIONS AND EXPORT CONTROLS) (JERSEY) REGULATIONS 202-**

### **Contents**

---

#### **Regulation**

1	Amendment of the Customs and Excise (Jersey) Law 1999.....	11
2	Article 6 (EU and British Island customs requirements) amended .....	11
3	Article 19 (import and export control) amended.....	11
4	Article 35 (entry outwards of certain goods) amended.....	12
5	Citation and commencement.....	12

#### **ENDNOTES**

**13**

Table of Endnote References.....	13
----------------------------------	----





Jersey

## **DRAFT CUSTOMS AND EXCISE (EXPORT DECLARATIONS AND EXPORT CONTROLS) (JERSEY) REGULATIONS 202-**

*Made* [date to be inserted]  
*Coming into force* [date to be inserted]

**THE STATES** make these Regulations under Article 5A of the European Union Legislation (Implementation) (Jersey) Law 2014<sup>1</sup> –

### **1 Amendment of the Customs and Excise (Jersey) Law 1999**

The Customs and Excise (Jersey) Law 1999<sup>2</sup> is amended in accordance with these Regulations.

### **2 Article 6 (EU and British Island customs requirements) amended**

In Article 6(1A) after “purposes of implementing” there is inserted “or supporting”.

### **3 Article 19 (import and export control) amended**

In Article 19 –

- (a) in paragraph (1) after “importation into” there is inserted “, or exportation from.”;
- (b) in paragraph (2) –
  - (i) after “imported” there is inserted “, exported or brought to any place for the purpose of being exported”;
  - (ii) after “forfeiture” there is inserted “, however the Agent of the Impôts may permit any such goods which are reported as intended for re-exportation to be dealt with in such manner as the Agent thinks fit”;
- (c) in paragraph (3) –
  - (i) after “imported” there is inserted “, exported or brought to any place for the purpose of being exported”;
  - (ii) after “importation” there is inserted “or exportation”.

**4 Article 35 (entry outwards of certain goods) amended**

In Article 35(6) after sub-paragraph (f) there is inserted –

“(g) any goods that are not referred to in sub-paragraphs (a) to (f) and which are not restricted or prohibited goods.”.

**5 Citation and commencement**

These Regulations may be cited as the Customs and Excise (Export Declarations and Export Controls) (Jersey) Regulations 202- and come into force 7 days after they are made.

## ENDNOTES

### Table of Endnote References

---

<a href="#">1</a>	<i>chapter 17.245</i>
<a href="#">2</a>	<i>chapter 24.660</i>