

**The Customs and Excise (Safety and Security) (Export)
(Bailiwick of Guernsey) Regulations, 2019**

<i>Made</i>	18 th March , 2019
<i>Coming into operation</i>	see regulation 20
<i>Laid before the States</i>	, 2019

THE STATES COMMITTEE FOR HOME AFFAIRS, in exercise of the powers conferred on it by sections 14B and 79 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^a and all other powers enabling it in that behalf, hereby makes the following Regulations:-

PART 1
EXPORT

Application of this Part.

1. (1) Subject to the provisions of paragraph (2), this Part applies in respect of all goods being exported from the Bailiwick to outside the Customs

^a Ordres en Conseil Vol. XXIII, p. 573; as amended by Order in Council No. X of 2004 and the Customs and Cross-Border Trade (General and Enabling Provisions) (Bailiwick of Guernsey) Law, 2018; and Ordinance No. IX of 2016. There are other amendments not relevant to this instrument.

Territory.

(2) This Part does not apply in respect of goods falling within paragraph 1 of the Schedule, or in the circumstances set out in paragraph 2 of the Schedule.

Requirement to submit exit summary declaration.

2. (1) Where goods to which this Part applies are to be exported from the Bailiwick to outside the Customs Territory, a safety and security exit summary declaration ("EXS") must be prepared in respect of them and submitted to the proper officer in accordance with this Part.

(2) AN EXS must be in the form, and contain the information, set out in directions issued by the Committee; and in any particular case the Chief Revenue Officer may require such additional information to be provided as the Chief Revenue Officer thinks necessary for the purpose set out in paragraph (3).

(3) The purpose is to ensure sufficient information is provided in respect of goods to which this Part applies to enable a safety and security risk analysis to be undertaken in respect of them.

Persons who must submit exit summary declarations.

3. (1) Subject to paragraph (4), an EXS must be submitted by the carrier of the goods; and subject to paragraphs (2) and (3), in this Part "carrier" means the person who brings the goods, or who assumes responsibility for the carriage of the goods, out of the Bailiwick.

(2) In the case of combined transportation where the active means of transport leaving the Customs Territory is only transporting another means of

transport which, on arrival of the active means of transport at its destination, will move then by itself as the active means of transport, "carrier" means the person who will operate the means of transport which will move by itself once the means of transport leaving the Customs Territory has arrived at its destination.

(3) In the case of maritime or air traffic under a vessel-sharing or contracting arrangements, "carrier" means the person who concludes a contract and issues a bill of lading or air waybill for the actual carriage of the goods out of the Customs Territory.

(4) The following persons may, with the consent of the carrier, submit an EXS in respect of goods on behalf of the carrier –

- (a) the exporter, consignee or any other person in whose name or on whose behalf the carrier acts, and
- (b) any person who is able to present the goods, or arrange for them to be presented, to customs officers on departure from the Bailiwick.

(5) In this regulation and regulation 6, "**combined transportation**" refers to circumstances where goods arrive at an airport or port on a means of transport which itself is transported on an active means of transport, for example goods arriving at a port on a lorry which is itself transported on a ship.

Time limits for exit summary declarations: export by sea.

4. (1) Subject to regulation 7, where an EXS is required in respect of goods being exported from the Customs Territory by sea, it must be submitted in accordance with the time limits set out in this regulation.

(2) Where the goods are not containerised cargo, an EXS must be submitted at least 2 hours before the departure of the vessel on which they are to leave the Customs Territory.

(3) Where the goods are containerised cargo –

(a) if the duration of the voyage is less than 24 hours, and the first port of call of the vessel is a territory designated for this purpose by the Committee by way of a public notice, an EXS must be submitted at least 2 hours before the departure of the vessel on which they are to leave the Customs Territory, and

(b) in all other cases, an EXS must be submitted at least 24 hours before the goods are loaded onto the vessel on which they are to leave the Customs Territory.

Time limits for submitting exit summary declarations: export by air.

5. Subject to regulation 7, where an EXS is required in respect of goods being exported from the Customs Territory by air, it must be submitted at least 30 minutes prior to the aircraft's departure.

Time limits for submitting exit summary declarations: export by combined transportation or inter-modal transport.

6. Subject to regulation 7, where an EXS is required in respect of goods being exported from the Customs Territory using combined transportation, the time limit applicable to the submission of the EXS is the time limit that is applicable to the active means of transport used to export the goods; and for these purposes, "combined

transportation" has the meaning given in regulation 3(5), and "inter-modal transport" refers to goods arriving at the port or airport on another means of transport from which they are to be transferred before leaving the Customs Territory.

Time limits for submitting exit summary declarations: power of Chief Revenue Officer to impose different time limits.

7. In any case where the Chief Revenue Officer thinks it necessary or expedient for the purpose set out in regulation 2(3), the Chief Revenue Officer may impose a time limit for submission of an EXS that is different from the time limits set out in regulations 4, 5 and 6.

Amendment and cancellation of exit summary declarations.

8. (1) Subject to paragraph (2), a person who has submitted an EXS may, with the permission of the Chief Revenue Officer, amend it after it has been submitted.

(2) An EXS may not be amended –

(a) after notification that the goods are to be examined under section 68 of the Law, or

(b) after the Chief Revenue Officer has established that the EXS is incorrect in a material particular.

(3) Where an EXS has been submitted in respect of goods and those goods are no longer to be exported from the Bailiwick to outside the Customs Territory, the person who submitted the EXS must, as soon as reasonably practicable, inform the Chief Revenue Officer.

(4) On being informed under paragraph (3), the Chief Revenue Officer must, if satisfied that the goods will not be exported from the Bailiwick to outside the Customs Territory, as soon as reasonably practicable cancel the EXS, release the goods from customs charge, and return them to the carrier.

(5) For the avoidance of doubt, where an EXS is cancelled pursuant to paragraph (4), the goods may not be exported from the Bailiwick to outside the Customs Territory unless a new EXS is submitted in respect of them.

PART 2 PENALTIES

Civil penalties.

9. (1) A person who contravenes a requirement in these regulations is liable to a financial penalty in respect of the contravention of such amount as the Committee thinks appropriate and proportionate, but not exceeding £1,000.

(2) In deciding the amount of a penalty to be imposed under this section, the Committee must take into consideration the following factors –

- (a) the seriousness of the contravention,
- (b) whether or not the contravention was inadvertent,
- (c) whether or not the person in question has previously contravened a requirement of these regulations, and
- (d) the penalties imposed by the Committee under this regulation in other cases (if any).

(3) A penalty imposed under these regulations is payable to the States and is recoverable as a civil debt.

(4) For the avoidance of doubt, if a person acting on behalf a carrier under regulation 3(4) fails to submit an EXS on that carrier's behalf, it is the carrier and not that person who is deemed to have contravened a requirement of these regulations for the purposes of paragraph (1).

Exceptions from penalties.

10. (1) A person is not liable to a penalty under regulation 9 if that person satisfies –

(a) the Committee, or

(b) on appeal, the Court,

that there is a reasonable excuse for the conduct that constituted the contravention.

(2) For the purposes of paragraph (1), it is not a reasonable excuse that the contravention is attributed, in whole or in part, to the conduct of a person on whom reliance to perform any task was placed.

(3) Where, by reason of conduct falling within regulation 9, a person is prosecuted for an offence, that conduct does not give rise to liability to a civil penalty under these regulations.

Reduction of penalties.

11. Where a person is liable to a penalty under regulation 9, the Committee

(whether originally or on review) or, on appeal, the Court, may reduce the penalty to such amount (including nil) as they think proper.

Demands for penalties.

12. (1) Where a person is liable to a civil penalty under regulation 9, the Committee may give to that person a notice in writing (a "**demand notice**") demanding payment of the amount due by way of penalty.

(2) Paragraph 1 is subject to -

(a) any review by the Committee under regulation 15,

(b) any appeal under regulation 16, and

(c) paragraph 3.

(3) For the avoidance of doubt, an amount so demanded is not recoverable –

(a) if the demand has been subsequently withdrawn, or

(b) to the extent that the amount has been reduced under regulation 11.

Time limits for demands for penalties.

13. (1) A demand notice may not be given in relation to a penalty under this Part more than three years after the conduct giving rise to the penalty ceased.

(2) A demand notice may not be given more than two years after there has come to the knowledge of the Committee evidence of fact sufficient in the opinion of the Committee to justify the giving of the demand notice.

No prosecution after demand notice for penalty.

14. Where a demand notice is given for an amount due by way of a penalty under this Part in respect of the conduct of a person, no proceedings may be brought against that person for any offence constituted by that conduct (whether or not the demand notice is subsequently withdrawn).

Review of decision to impose a penalty.

15. (1) A demand notice given to a person under this Part must include an offer by the Committee to review the decision to impose the penalty on receipt of a request made within 30 days of receipt of the demand notice and in circumstances where no appeal has been to the Court in respect of the demand notice.

(2) The Committee must review a decision to impose a penalty under this Part on receipt of a request made within the time limit and in the circumstances specified in paragraph (1).

(3) The Committee must also review a decision to impose a penalty under this Part if the request is received outside the time limit specified in paragraph (1) and the Committee is satisfied that -

- (a) the person had a reasonable excuse for not making the request within the time allowed,
- (b) the person made the request without unreasonable delay after that excuse ceased to apply, and

(c) no appeal has been made to the Court in respect of the demand notice.

(4) When the Committee conducts a review under this regulation, the nature and extent of the review shall be such as appear appropriate to the Committee in the circumstances.

(5) For the purpose of paragraph (4), the Committee must, in particular, have regard to steps taken before the beginning of the review –

(a) by the Committee in reaching the decision, and

(b) by any person in seeking to resolve disagreement about the decision.

(6) The review must take account of any representations made by the person liable to the penalty at a stage which gives the Committee a reasonable opportunity to consider them.

(7) Subject to regulation 11, the review may conclude that the decision is to be –

(a) upheld,

(b) varied, or

(c) revoked.

(8) The Committee must give the person notice of the conclusions of the review, and its reasoning, within –

- (a) a period of 45 days beginning with the relevant date, or
- (b) such other period as the Committee and the person may agree.

(9) In paragraph (8), "the relevant date" means the date on which the Committee received the request under paragraph (2) or the date on which it was satisfied of the matters set out in paragraph (3), as the case may be.

Right to appeal.

16. (1) Where the Committee gives a demand notice to a person, the person may appeal to the Court in respect of –

- (a) the decision that the person is liable to a penalty under regulation 9, or
- (b) the decision as to the amount of the penalty.

(2) The grounds of an appeal under this regulation are –

- (a) the decision was *ultra vires* or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,

- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.

(3) Subject to regulation 11, the powers of the Court on an appeal under this regulation include –

- (a) the power to quash or vary a decision, and
- (b) the power to substitute the Courts own decision or any decision so quashed.

(4) On an appeal under this regulation –

- (a) the burden of proof as to the fact of the contravention lies on the Committee , but
- (b) it is otherwise for the appellant to show that the grounds on which any such an appeal is brought have been established.

Time limits for making appeals.

17. (1) Paragraphs (2) to (4) of this regulation are subject to paragraph (5).

(2) Where the Committee has undertaken a review of the decision to impose a penalty, no appeal may be made in respect of that decision before notice

is given of the conclusions of the review, and an appeal must be made within the period of 30 days beginning with the date of that notice.

(3) Where a request has been to the Committee to undertake a review of the decision to impose a penalty on receipt of a request made outside the time limit in accordance with regulation 15, and the Committee has not been satisfied of the matters set out in that paragraph and has subsequently not undertaken a review, an appeal may be made against the decision to impose a penalty only if the Court gives permission.

(4) In all other cases, an appeal must be made within 30 days of the date of the demand notice.

(5) An appeal may be made after the periods specified in paragraphs (1) to (3) if the Court gives permission to do so.

PART 3

FINAL

Retention of information, and post-submission controls.

18. (1) Information submitted in an EXS under Part 1 of these regulations, or that is otherwise required to be retained under that Part, must be retained by the carrier for a minimum of three years from the date of submission.

(2) The Chief Revenue Officer may, at any time within three years after the submission of an EXS –

(a) require the carrier to provide, in such form as the Chief Revenue Officer may require, any information relating

to the goods which were the subject of the EXS, and to produce any information relating to those goods (including information relating to commercial operations involving those goods), and

- (b) (where it is still possible) examine, and take samples of, the goods which were the subject of the EXS, at a time and place agreed with the owner of the goods or with any other person on behalf of the owner,

for the purpose of verifying the accuracy and completeness of the EXS.

Interpretation.

19. In these Regulations –

"**approved port**" means an approved port within the meaning of the Customs and Excise (Approved Ports and Customs Declarations) (Bailiwick of Guernsey) Regulations, 2019,

"**the Arrangement**" means the arrangement set out in the Schedule to the Crown Dependencies Customs Union (Guernsey) (EU Exit) Order 2019^b,

"**carrier**": see regulation 3,

"**combined transportation**": see regulation 3,

"**the Committee**" means the States Committee for Home Affairs,

^b UK S.I. 2019 No. 254 of 2019; registered in the Royal Court on 11th March 2019.

"**the Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting alone,

"**the Customs Territory**" means the territory of the customs union between the United Kingdom, the Bailiwick, Jersey and the Isle of Man, established by the Arrangement,

"**demand notice**": see regulation 12,

"**EXS**": see regulation 2(1),

"**information**" includes documents,

"**the Law**" means the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972,

"**safety and security risk analysis**" means an analysis of the risk posed by the export of the goods from the Bailiwick, undertaken for the purpose of protecting the safety and security of the Bailiwick and the Customs Territory, and otherwise giving effect to the relevant parts of the Arrangement and any Memorandum of Understanding entered into thereunder, and

"**the States**" means the States of Guernsey, and

and other expressions have the same meanings as in the Law and in the Customs and Cross-Border Trade (General and Enabling Provisions) (Bailiwick of Guernsey) Law,

2018^c.

Citation and commencement.

20. These Regulations may be cited as the Customs and Excise (Safety and Security) (Export) (Bailiwick of Guernsey) Regulations, 2019, and shall come into force on exit day; and for these purposes, "exit day" has the meaning given in the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018^d.

Dated this 18th day of March, 2019



M. LOWE

President of the Home Affairs Committee

For and on behalf of the Committee

^c Approved by the States of Deliberation on 12th December, 2018.

^d Order in Council No. I of 2019.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations impose a requirement to submit safety and security exit summary declarations in respect of goods being exported from the Bailiwick to outside the United Kingdom, the Bailiwick, Jersey and the Isle of Man. They provide for some goods to be exempt from this requirement, and introduce a civil penalty regime for breaches of the regulations.

These Regulations come into force on exit day within the meaning of the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018.

SCHEDULE
EXEMPT GOODS

1. Part 1 does not apply to the following goods -

- (a) electrical energy;
- (b) goods leaving by pipeline;
- (c) items of correspondence;
- (d) goods moved under the rules of the acts of the Universal Postal Union;
- (e) personal effects, household linen, furnishings and equipment intended for the personal use of the persons concerned or for meeting their household needs, provided that they are not carried under a transport contract;
- (f) goods contained in travellers' personal baggage;
- (g) goods covered by ATA and CPD carnets;
- (h) goods moved under cover of the form 302 provided for in the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces, signed in London on 19 June 1951;

- (i) goods carried on vessels moving between ports in the Customs Territory without any intervening call at any port outside the Customs Territory;
- (j) goods carried on aircraft moving between airports in the Customs Territory without any intervening call at any airport outside the Customs Territory;
- (k) weapons and military equipment taken out of the Customs Territory by the authorities in charge of the military defence of the United Kingdom, in military transport or transport operated for the sole use of the military authorities;
- (l) the following goods taken out of the Customs Territory directly to offshore installations operated by a person established in the customs territory:
 - (i) goods to be used for construction, repair, maintenance or conversion of the offshore installations;
 - (ii) goods to be used to fit or equip the offshore installations;
 - (iii) provisions to be used or consumed on the offshore installations;
- (m) goods for which relief can be claimed pursuant to the Vienna Convention on diplomatic relations of 18 April 1961, the Vienna Convention on consular relations of 24 April 1963, other consular conventions or the New York Convention of 16 December 1969 on special missions;

- (n) goods which are supplied for incorporation as part of or accessories in vessels or aircraft and for the operation of the engines, machines and other equipment of vessels or aircraft, as well as foodstuffs and other items to be consumed or sold on board; and
- (o) any other goods specified in directions made for this purpose by the Committee.

2. An exit summary declaration is not required in respect of goods in the following situations –

- (a) where a vessel that transports the goods between ports in the Customs Territory is to call at a port outside the Customs Territory, and the goods are to remain loaded on board the vessel during the call at that port;
- (b) where an aircraft that transports the goods between airports in the Customs Territory is to call at an airport outside the Customs Territory and the goods are to remain loaded on board the aircraft during that call;
- (c) where, in a port or airport, the goods are not unloaded from the means of transport which carried them into the Customs Territory and which will carry them out of that territory;
- (d) where the goods were loaded at a previous port or airport in the Customs Territory, a pre-departure declaration (however described) was lodged or a waiver from the obligation to lodge a pre-departure

declaration (however described) was applicable, in both cases to the satisfaction of the Chief Revenue Officer, and the goods are not unloaded from the means of transport that will carry them out of the Customs Territory; and

- (e) where the goods were brought into the Bailiwick, but were rejected by the Chief Revenue Officer and immediately returned to the country of export.

