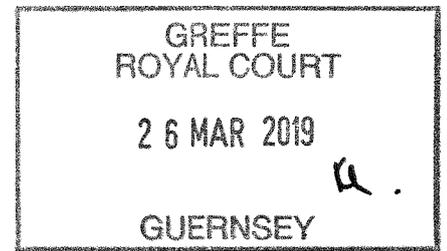


GUERNSEY STATUTORY INSTRUMENT

2019 No. 38



**The Export Control (Brexit) (Bailiwick of Guernsey)
Regulations, 2019**

<i>Made</i>	26 th March, 2019
<i>Coming into operation</i>	See Regulation 23
<i>Laid before the States</i>	, 2019

THE POLICY & RESOURCES COMMITTEE, in exercise of the powers conferred on it by sections 5(1) and 11 of the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018^a, and upon receipt of the certificate required under section 5(3) of that Law, hereby makes the following Regulations:-

Amendments to Export Control Law.

1. The Export Control (Bailiwick of Guernsey) Law, 2006 ("the principal Law") is amended as follows.

2. In section 1 of the principal Law, for subsections (4) and (5), substitute the following subsection –

"(4) Without limiting the generality of subsection (1), export controls may be imposed for the purpose of the implementation, with or without modifications, of –

^a Order in Council No. I of 2019.

^b Order in Council No. XIV of 2007; as amended by Ordinance No. IX of 2016.

- (a) provisions of any Community directive or regulation,
- (b) provisions of any UK enactment, or
- (c) any international obligation."

3. In section 2 of the principal Law, omit subsection (8).

4. In section 3 of the principal Law –

- (a) in subsection (4)(a), for subparagraph (ii), substitute the following subparagraph –

"(ii) the implementation of any controls for the purpose specified in section 5(2)," and

- (b) omit subsection (6).

5. In section 4 of the principal Law –

- (a) in subsection (4)(a), for subparagraph (ii), substitute the following subparagraph –

"(ii) the implementation of any controls for the purpose specified in section 5(2)," and

- (b) omit subsection (5).

6. In section 5(2) of the principal Law, for "of –" and paragraphs (a) and (b), substitute ", with or without modifications, of –" and the following paragraphs –

- "(a) provisions of any Community directive or regulation,
- (b) provisions of any UK enactment, or
- (c) any international obligation."

7. In section 7(2)(b) of the principal Law, for "or international agreement", substitute ", UK enactment or international obligation".

8. In section 13(1) of the principal Law –

- (a) for the definition of "**implementation**", substitute the following definition –

"implementation", in relation to provisions of a Community directive or regulation, provisions of a UK enactment or any international obligation, includes their enforcement or enactment and the securing of their administration, execution, recognition, exercise or enjoyment, in or under domestic law,"

- (b) at the end of the definition of "**transfer**", omit the word "and", and
- (c) at the end of the definition of "**transfer controls**", for the full stop, substitute ", and" and insert the following definition –

"UK enactment" means any enactment in force in any part of the United Kingdom,".

9. Immediately after section 13(1) of the principal Law, insert the following subsection –

"(1A) In this Law, a reference to "Community directive or regulation", "international obligation" or "UK enactment" includes a reference to any Community directive or regulation, any international obligation or (as the case may be) any UK enactment, whether or not applicable in or binding upon the Bailiwick."

10. In Schedule 1 to the principal Law, in the Table in paragraph 3(2), delete item A(b)(ii) (referring to "any member state of the European Community").

Amendments to the Export Control (Military, Security, and Related Matters) (Bailiwick of Guernsey) Order, 2010.

11. The Export Control (Military, Security, and Related Matters) (Bailiwick of Guernsey) Order, 2010^c ("**the principal Order**") is amended as follows.

12. In article 6 of the principal Order –

(a) in paragraph (1) –

(i) in subparagraph (b), for "belts", substitute "devices", and

^c G.S.I. No. 37 of 2010; as amended by Ordinance No. IX of 2016; G.S.I. No. 10 of 2012; G.S.I. No. 44 of 2014.

(ii) in subparagraph (c), for "shock devices", substitute "discharge weapons",

(b) in paragraph (3), for "5", substitute "11".

13. Revoke article 27 of the principal Order.

14. In article 29(2) of the principal Order, for "9(4)", substitute "21(5)".

15. In article 33(7) of the principal Order, for "8(2)", substitute "20(8)".

16. In article 40 of the principal Order –

(a) for paragraph (2), substitute the following paragraph –

"(2) A reference in the dual-use Regulation, or in any provision of a Community directive or regulation referred to or incorporated in the dual-use Regulation –

(a) to a Member State, Member States, the Community, the customs territory, the customs territory of the Union or the territory of the Community, howsoever referred to or styled, is deemed to include a reference to the Bailiwick and any other country or territory in the British Islands,

(b) to a third country, howsoever referred to or styled, is deemed to refer to a country or territory that is outside the customs territory,

- (c) to a competent authority, howsoever referred to or styled, is deemed to include a reference to –
 - (i) the Committee in respect of the Bailiwick, and
 - (ii) any other authority empowered to grant authorisations in respect of any other country or territory in the British Islands under provisions of or equivalent to the dual-use Regulation having or given effect in that other country or territory,
- (d) to export or exportation, shall be construed to -
 - (i) mean only removal from the Bailiwick to a destination outside the customs territory,
 - (ii) include shipment as stores,
 - (iii) in relation to a vessel, vehicle, submersible vehicle, aircraft, or any other means of conveyance, include taking it out of the Bailiwick to a destination outside the customs territory, even if it is conveying goods or passengers or moving under its own power, and
 - (iv) include transmission of software or technology by electronic media, including by fax, telephone, email or any other electronic means to a destination outside the customs territory; and include making available in

electronic form such as software and technology to legal or natural persons or partnerships outside the customs territory; and include oral transmission of technology when the technology is described over the telephone to legal or natural persons or partnerships outside the customs territory, and

- (e) to the date of entry into force is a reference to the date on which this Order comes into force.",
- (b) in paragraph (3), for "The Committee" in the first place that the expression occurs, substitute "For the avoidance of doubt, the Committee",
- (c) in paragraph (4), immediately after "28", insert "and the definition of **"export"** in Article 2(2)", and
- (d) for paragraph (6), substitute the following paragraph -

"(6) In paragraph (2)(b) and (d), for the avoidance of doubt, **"customs territory"** has the meaning given by article 44(1).".

17. In article 41 of the principal Order –

- (a) for paragraph (2), substitute the following paragraph –

"(2) A reference in the torture Regulation, or in any provision of a Community directive or regulation referred to or incorporated in the torture Regulation –

- (a) to a Member State, Member States, the Community, the customs territory, the customs territory of the Union or the territory of the Community, howsoever referred to or styled, is deemed to include a reference to the Bailiwick and any other country or territory in the British Islands,
- (b) to a third country, howsoever referred to or styled, is deemed to refer to a country or territory that is outside the customs territory,
- (c) to a competent authority, howsoever referred to or styled, is deemed to include a reference to –
 - (i) the Committee in respect of the Bailiwick, and
 - (ii) any other authority empowered to grant authorisations in respect of any other country or territory in the British Islands under provisions of or equivalent to the torture Regulation having or being given effect in that other country or territory, and
- (d) to the date of entry into force is a reference to the date on which this Order comes into force."

- (b) in paragraph (3), for "The Committee" in the first place that the expression occurs, substitute "For the avoidance of doubt, the Committee",
- (c) in paragraph (4), for "19", substitute "36", and
- (d) for paragraph (6), substitute the following paragraphs –

"(6) In paragraph (2)(b), for the avoidance of doubt, **"customs territory"** has the meaning given by article 44(1).

(7) In paragraph (5), the reference to the torture Regulation is deemed to include a reference to Council Regulation (EC) No 1236/2005."

18. In article 42(2)(b) of the principal Order, for "agreement", substitute "obligation".

19. In article 44 of the principal Order –

- (a) in paragraph (1) –
 - (i) repeal the definition of "**information security items**", and
 - (ii) for the definitions of "**competent authority**", "**customs territory**", "**dual-use Regulation**", "**Member State**", "**non-community goods**" and "**torture Regulation**", substitute the following definitions respectively –

""competent authority" means –

- (a) the Committee,
- (b) any other authority empowered to grant authorisations in respect of any country or territory in the British Islands (other than the Bailiwick) under provisions of or equivalent to the dual-use Regulation having or given effect in that other country or territory, or
- (c) any other competent authority within the meaning of the dual-use Regulation,

"customs territory" means –

- (a) the customs territory described in Article 4 of Regulation (EU) No 952/2013, and
- (b) the British Islands,

taken collectively,

"dual-use Regulation" means Council Regulation (EC) No 428/2009 as given effect and modified by article 40 of this Order,

"Member State" –

(a) means a Member State of the European Union, and

(b) is deemed to include the Bailiwick and any other country or territory in the British Islands,

"non-community goods" means non-Union goods within the meaning of Article 5(24) of Regulation (EU) No 952/2013, and

"torture Regulation" means Regulation (EU) 2019/125 as given effect and modified by article 41 of this Order," and

(b) immediately after paragraph (1), insert the following paragraph –

"(1A) In any provision of a Community directive or regulation (other than the dual-use Regulation or the torture Regulation) referred to or incorporated in any provision of this Order, a reference –

(a) to a Member State, Member States, the Community, the customs territory, the customs territory of the Union or the territory of the Community, howsoever referred to or styled, is deemed to include a reference to the Bailiwick and any other country or territory in the British Islands, and

- (b) to a third country, howsoever referred to or styled, is deemed to refer to a country or territory that is outside the Community."

Saving of existing Export Control Orders.

20. The following Orders continue in effect as if they were duly made under the Export Control (Bailiwick of Guernsey) Law, 2006, as amended by regulations 1 to 10 –

- (a) the Export Control (Military, Security, and Related Matters) (Bailiwick of Guernsey) Order, 2010 as amended by regulations 11 to 19,
- (b) the Export Control (Miscellaneous Goods) (Bailiwick of Guernsey) Order, 2010 ,
- (c) Export Control (Miscellaneous Goods) (Bailiwick of Guernsey) (Amendment) Order, 2012 ,
- (d) Export Control (Miscellaneous Goods) (Bailiwick of Guernsey) (Amendment) Order, 2013 ,
- (e) Export Control (Military, Security, and Related Matters) (Bailiwick of Guernsey) (Amendment) Order, 2014 , and

^d G.S.I. No. 38 of 2010; as amended by G.S.I. No. 67 of 2010; No. 9 of 2012; G.S.I. No. 48 of 2013; and G.S.I. No. 51 of 2015.

^e G.S.I. No. 9 of 2012.

^f G.S.I. No. 48 of 2013.

- (f) Export Control (Miscellaneous Goods) (Bailiwick of Guernsey) (Amendment) Order, 2015 .

Extent.

21. These Regulations have effect in the Bailiwick of Guernsey.

Citation.

22. These Regulations may be cited as the Export Control (Brexite) (Bailiwick of Guernsey) Regulations, 2019.

Commencement.

23. These Regulations come into force on exit day, and for this purpose "exit day" has the meaning given by section 12(1) of the European Union (Brexite) (Bailiwick of Guernsey) Law, 2018.

Dated this 26th day of March, 2019



G. A. ST PIER

President of the Policy & Resources Committee

For and on behalf of the Committee

g G.S.I. No. 44 of 2014.

h G.S.I. No. 51 of 2015.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in consequence of the withdrawal of the United Kingdom from the European Union. These Regulations are designed to continue the free flow of trade between the Bailiwick and the UK, the rest of the British Islands and the European Union, while effectively continuing the existing export, transfer, technical assistance and trade controls in relation to dual-use and torture goods after this withdrawal.

Regulations 1 to 10 amend the Export Control (Bailiwick of Guernsey) Law, 2006 ("**the principal Law**").

Regulation 2 amends section 1 of the principal Law to clearly authorise the Committee for Home Affairs ("**the Committee**") to make orders to implement provisions of Community directives or regulations or UK enactments, as well as international obligation (including customary international law).

Regulation 3 omits section 2(8) of the principal Law as that subsection could otherwise imply a constraint on the Committee's power to make orders under section 2 of the principal Law (that power should only be constrained by section 5(2) of the principal Law, as amended by regulation 6 (see below)).

Regulation 4 amends section 3 of the principal Law. It substitutes section 3(4)(a)(ii) of the principal Law to clearly authorise orders to be made under this section for the purposes of controls corresponding or connected to the purpose specified in section 5(2) of the principal Law. Regulation 4 also omits section 3(6) of the principal Law, which could otherwise imply a constraint on the Committee's power to make orders under section 3 of the principal Law.

Regulation 5 amends section 4 of the principal Law. It substitutes section

4(4)(a)(ii) of the principal Law to clearly authorise orders to be made under this section for the purposes of controls corresponding or connected to the purpose specified in section 5(2) of the principal Law. Regulation 5 also omits section 4(5) of the principal Law, which could otherwise imply a constraint on the Committee's power to make orders under section 4 of the principal Law.

Regulation 6 amends section 5(2) of the principal Law to extend the Committee's powers to make orders under sections 2 (transfer controls), 3 (technical assistance controls) and 4 (trade controls) of the principal Law to include the implementation of UK enactments and international obligations generally, and not just Community directives and regulations or international *agreements*. This amendment is intended to give the Committee more flexibility to make export control orders that are considered to be necessary or appropriate to maintain trade with the UK (as the UK's export controls might diverge significantly from EU export controls in the future) or to maintain the international reputation and standing of the Bailiwick of Guernsey (by implementing international obligations).

Regulation 7 amends section 7(2)(b) of the principal Law as a consequence of the amendments made by regulation 6 to section 5(2) of the principal Law.

Regulation 8 substitutes the definition of "**implementation**" and inserts a definition of "**UK enactment**" in section 13(1) of the principal Law as a consequence of the amendments made by regulation 6 to section 5(2) of the principal Law.

Regulation 9 inserts a new subsection (1A) in section 13 of the principal Law to clarify that references to Community directives or regulations, UK enactments or international obligations, include such directives, regulations, enactments or obligations whether or not they apply to or are binding upon the Bailiwick of Guernsey.

Regulation 10 amends Schedule 1 to the principal Law to delete item A(b)(ii), which refers to (adverse effects on) member states of the European Community.

Regulations 11 to 19 amend the Export Control (Military, Security, and Related Matters) (Bailiwick of Guernsey) Order, 2010 ("**the principal Order**"). These amendments are necessary to update the relevant provisions of the principal Order so that they remain clear, relevant, enforceable and aligned to recent changes in EU and (where necessary) UK legislation, following the withdrawal of the UK from the EU.

For example, Council Regulation (EC) No 1236/2005 ("**the former torture Regulation**"), has been repealed and replaced with a new, codified Regulation, Regulation (EU) 2019/125 ("**the new torture Regulation**") and this requires provisions in the principal Order to be updated accordingly.

Regulation 12 amends article 6 of the principal Order to update references to provisions of the former torture Regulation, to references to corresponding provisions of the new torture Regulation.

Regulation 13 revokes article 27 of the principal Order as UK legislation (the Export Control Order 2008) no longer requires registration and record-keeping for information security items.

Regulations 14 and 15 amend articles 29(2) and 33(7) of the principal Order respectively to update references to provisions of the former torture Regulation, to references to corresponding provisions of the new torture Regulation.

Regulation 16 amends article 40 of the principal Order to modify the dual-use Regulation (as given effect in the Bailiwick) in order to treat the territory collectively comprising the British Islands and the customs territory of the

European Union as the customs territory (or the Community, etc.) referred to in the dual-use Regulation. "**Export**" under the dual-use Regulation would also be regarded as removal from the Bailiwick to a destination outside the Community (in this enlarged sense).

Regulation 17 amends article 41 of the principal Order to modify the new torture Regulation (as given effect in the Bailiwick) in order to treat the territory collectively comprising the British Islands and the customs territory of the European Union as the customs territory (or the Community, etc.) referred to in the torture Regulation.

Regulation 18 amends article 42(2)(b) of the principal Order to refer to international obligation, instead of international agreement, as a consequence of amendments made to the principal Law by regulations 2 to 10 of these Regulations.

Regulation 19 amends article 44 of the principal Order to repeal the (now redundant) definition of "**information security items**", as well as substitute the definitions of "**competent authority**", "**customs territory**", "**dual-use Regulation**", "**Member State**", "**non-community goods**" and "**torture Regulation**". These amendments give effect to the intention of treating the British Islands and the EU customs territory as a single customs territory for the purposes of continuing to give effect to the prohibitions and restrictions in the dual-use Regulation and the new torture Regulation.

Regulation 20 saves extant export control orders made under the principal Law as if these orders were duly made under the principal Law, as amended by these Regulations.

Regulations 21, 22 and 23 are the extent, citation and commencement provisions.

These Regulations will come into force on 'exit day', that is when the United Kingdom leaves the European Union, which is either 11pm on the 29th March, 2019 or another day and time appointed by regulations made by the Policy & Resources Committee under the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018.