

**The European Union (Withdrawal Agreement) (Brexit)
(Bailiwick of Guernsey) Regulations, 2020**

THE POLICY & RESOURCES COMMITTEE, in exercise of the powers conferred upon 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:-

Made

28th January, 2020

Coming into operation

See regulation 5

Laid before the States

Amendment of the 1973 Law.

1. The European Communities (Bailiwick of Guernsey) Law, 1973^b ("the 1973 Law") is amended as set out in Schedule 1.

Amendment of the Brexit Law.

2. The European Union (Brexit) (Bailiwick of Guernsey) Law, 2018 ("the

^a Order in Council No. I of 2019; there are amendments not relevant to these Regulations.

^b Ordres en Conseil Vol. XXIV, p. 87; as amended by Ordres en Conseil Vol. XXVII, p. 242; Ordres en Conseil Vol. XXIX, p. 127; Ordres en Conseil Vol. XXIX, p. 419; Ordres en Conseil Vol. XXXI, p. 278; No. XXV of 2002, Ordres en Conseil Vol. XLII(2), p. 1320; No. V of 2018; No. I of 2019; Recueil d'Ordonnances Tome XXVI, p. 316; No. XVII of 1998, Recueil d'Ordonnances Tome XXVIII, p. 79; No. XLVII of 2001, Recueil d'Ordonnances Tome XXVIII, p. 541; No. XVIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 362; No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406; No. II of 2007, Recueil d'Ordonnances Tome XXXII, p. 6; No. XIX of 2014; and No. IX of 2016.

Brexit Law") is amended as set out in Schedule 2.

Extent.

3. These Regulations have effect throughout the Bailiwick.

Citation.

4. These Regulations may be cited as the European Union (Withdrawal Agreement) (Brexit) (Bailiwick of Guernsey) Regulations, 2020.

Commencement.

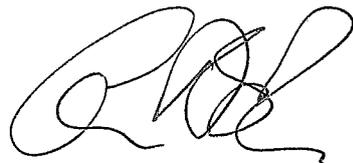
5. (1) Subject to paragraph (2), these Regulations (together with the amendments made by the Schedules) come into force on the day they are made.

(2) The amendments made to the Brexit Law by the following provisions of Schedule 2 –

- (a) paragraph 1, and
- (b) paragraphs 3(a) to (c),

come into force on exit day.

Dated this 28th day of January, 2020



G. A. ST PIER

President of the Policy & Resources Committee

For and on behalf of the Committee

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement the various agreements that effect the United Kingdom's withdrawal from the European Union, Euratom, and the European Economic Area.

The main regulations give effect to the two schedules, which themselves make substantive amendments to the European Communities (Bailiwick of Guernsey) Law, 1973 ("the 1973 Law") and the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018 ("the Brexit Law").

Schedule 1 amends the 1973 Law. These amendments give effect to the Transition Period, which is provided for in Part 4 of the EU Withdrawal Agreement. This is done by applying modifications to the 1973 Law from "TP Commencement Day" until "exit day", being the start and end dates of the Transition Period. In effect, these modifications deem the UK, and the Bailiwick, to be part of the EU to the extent provided for in the EU Withdrawal Agreement for the duration of the Transition Period. In addition, several definitions are added.

Schedule 2 amends the Brexit Law, which will, at the end of the Transition Period, repeal the 1973 Law, preserve various EU laws in domestic law, and end the supremacy of EU Law. The amendments to the Brexit Law do three main things:

- repeal the European Economic Area (Bailiwick of Guernsey) Law, 1996,
- make lasting provision for the remaining Parts of the EU Withdrawal Agreement and for the EEA EFTA separation agreement, and

- provide express recognition of the rights of EU and EEA EFTA citizens to equal treatment and the prohibition on discrimination on the grounds on nationality.

In addition, various consequential changes are made, several definitions are added, and the scope of section 5 of the Brexit Law is expanded to enable obligations arising under the various withdrawal agreements to be implemented by regulations.

These Regulations come into force on 28th January, 2020, the day they were made, with the exception of some amendments to the Brexit Law, which come into force on exit day within the meaning of that Law.

AMENDMENT OF THE 1973 LAW

1. After section 5 (Common Agricultural Policy), insert –

"Provision in respect of the Transition Period.

5A. (1) This Law, as it has effect throughout the Bailiwick immediately before TP Commencement Day, continues to have such effect on and after TP Commencement Day and until exit day so far as provided by subsection (2).

(2) This Law has effect on and after TP Commencement Day and until exit day as if –

(a) in section 1 (interpretation) –

(i) the definition of ""the Treaties" or "the Community Treaties"" –

(A) included Part 4 (implementation period) of the EU Withdrawal Treaty, other than that Part so far as it relates to, or could be applied in relation to, the Common Foreign and Security Policy, but

(B) were otherwise limited to anything which falls within those definitions as at immediately before TP Commencement Day so far as it is not excluded by regulations made on or after TP

Commencement Day under section 5 of the European Union (Brexit) (Bailiwick of Guernsey Law), 2018,

- (ii) in the definition of "**Community customs duty**", the reference to directly applicable Community provision were to such provisions so far as they are applicable to and in the Bailiwick by virtue of Part 4 of the EU Withdrawal Treaty, and
 - (iii) in the definition of "**member**" in the expression "**member State**", after "**Communities**" there were inserted "and for the purposes of this expression the United Kingdom is to be treated as if it were a member of the Communities during the Transition Period",
- (b) in section 3 (decisions on, and proof of, Treaties and Community instruments) –
- (i) the references to the Treaties included the EU Withdrawal Treaty, and
 - (ii) the words in brackets only applied so far as they are in accordance with Part 4 of the EU Withdrawal Treaty, and
- (c) references in sections 4 and 5 (customs duties and

Common Agricultural Policy) to the common customs tariff of the Economic Community, directly applicable Community provision, the exclusion of customs duties, Community arrangements and agricultural levies of the Economic Community were to such things so far as they are applicable to and in the Bailiwick by virtue of Part 4 of the EU Withdrawal Treaty.

(3) Accordingly, and unless the context otherwise requires, any enactment, as it has effect in domestic law immediately before TP Commencement Day, continues to have effect in domestic law, on and after TP Commencement Day and until exit day, subject to subsection (4).

(4) Anything falling within subsection (3) is to be read, on and after TP Commencement Day and until exit day, and so far as the context permits or requires, as if –

- (a) any reference (however expressed) to –
 - (i) Community law,
 - (ii) any particular Treaty or any part of it,
 - (iii) any Community instrument, or other document of a Community institution or of the Community, or any part of any such instrument or document,
 - (iv) any part of Community law not falling within

subparagraph (ii) or (iii),

(v) any tax, duty, levy or interests of the Community, or

(vi) any arrangement involving, or otherwise relating to, the Community of a kind not falling within subparagraph (i), (ii), (iii), (iv) or (v),

were a reference to any such thing so far as it is applicable to and in the Bailiwick by virtue of Part 4 of the EU Withdrawal Treaty,

(b) unless the United Kingdom is separately provided for, any reference (however expressed) to the area of the European Community, or of the EEA, included the United Kingdom,

(c) any reference (however expressed) to a citizen of the Community or a national of the EEA included a United Kingdom national (within the meaning given by Article 2(d) of the EU Withdrawal Treaty), and

(d) such other modifications were made as –

(i) are provided for by regulations made under section 5 of the Brexit Law, or

(ii) so far as not so provided, are necessary for any

purpose of Part 4 of the EU Withdrawal Treaty and are capable of being ascertained from any such purpose or otherwise from that Part of that Treaty.

(5) For the avoidance of doubt, references to Part 4 of the EU Withdrawal Treaty include references to any other provisions of that Treaty so far as applying to that Part.

(6) For the avoidance of doubt, any reference in an enactment to a restriction or obligation to which section 2(1) of the European Communities Act 1972 applies is to be read, on and after TP Commencement Day and until exit day, as a reference to a restriction or obligation to which section 2(1) of the European Communities Act 1972 continues to apply under section 1A of the European Union (Withdrawal) Act 2018."

2. In section 1(1) (interpretation), insert the following definitions in the appropriate place –

""the **Brexit Law**" means the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018,"

""**EU Withdrawal Treaty**" has the meaning given in the Brexit Law,"

""**exit day**" has the meaning given in the Brexit Law,"

""**TP Commencement Day**" has the meaning given in the Brexit Law,"
and

""**Transition Period**" has the meaning given in the Brexit Law,".

AMENDMENT OF THE BREXIT LAW

1. After section 1 (repeal of the European Communities Law, 1973), insert –

"Repeal of the European Economic Area Law, 1996.

1A. (1) The European Economic Area (Bailiwick of Guernsey) Law, 1996 ("the 1996 Law") is repealed on exit day.

(2) For the avoidance of doubt, regulations under section 5 may be made in respect of the 1996 Law before exit day."

2. In section 9 (provision in respect of the withdrawal agreement), insert the following before subsection (1) –

"(A1) All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the EU Withdrawal Treaty, and all such remedies and procedures from time to time provided for, by or under the EU Withdrawal Treaty, as in accordance with the EU Withdrawal Treaty are without further enactment to be given legal effect or used in the Channel Islands shall, in the Bailiwick, be recognised and available in law, and be enforced, allowed and followed accordingly, but only to the extent that the same arise in consequence of the application of the EU Withdrawal Treaty to the Bailiwick by virtue of the application of the EU Treaties to the Bailiwick under and to the extent provided for by the Protocol immediately before TP Commencement Day.

(B1) Subsection (A1) does not apply to Part 4 of the EU Withdrawal Treaty so far as sections 2 and 5A of the 1973 Law apply in relation to that Part.

(C1) All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the EEA EFTA separation agreement, and all such remedies and procedures from time to time provided for, by or under that agreement, shall, in the Bailiwick, be recognised and available in law, and be enforced, allowed and followed accordingly, as if –

- (a) Article 4(1) of the EU Withdrawal Treaty applied in relation to that agreement,
- (b) that agreement were part of EU law, and
- (c) the relevant EEA states were member States,

but only to the extent that the same arise in consequence of the application of that agreement to the Bailiwick by virtue of the application of the EU Treaties (including the EEA Agreement) to the Bailiwick under and to the extent provided for by the Protocol immediately before TP Commencement Day.

(D1) In any case where there is a conflict between the terms of the EEA EFTA separation agreement on the one hand and the EU Withdrawal Treaty on the other, as that agreement and that treaty apply and have effect in the Bailiwick or any part thereof, the terms of the EU Withdrawal Treaty shall prevail, and this section shall be construed accordingly.

(E1) Every enactment passed or to be passed in the Bailiwick (including this Law) shall be construed and have effect subject to the foregoing provisions of this section.

(F1) For the avoidance of doubt, on and after exit day –

- (a) Union citizens (within the meaning of Article 2 of the EU Withdrawal Treaty) and family members (within the meaning of Article 9 of the EU Withdrawal Treaty) falling within Article 10 of the EU Withdrawal Treaty, and
- (b) EEA EFTA nationals (within the meaning of Article 2 of the EEA EFTA separation agreement) and family members (within the meaning of Article 8 of the EEA EFTA separation agreement) falling within Article 9 of the EEA EFTA separation agreement,

enjoy the right to equal treatment and freedom from discrimination on the grounds of nationality in accordance with the Brexit Agreements, but only to the extent that the same arise in consequence of the application of the Brexit Agreements to the Bailiwick by virtue of the application of the EU Treaties (including the EEA Agreement) to the Bailiwick under and to the extent provided for by the Protocol immediately before TP Commencement Day."

3. In consequence of paragraphs 1 and 2 –

- (a) in section 2 (saving for EU provisions on exit day), insert "and the 1996 Law" after "the 1973 Law",
- (b) in section 3(b) (Preserved EU law), insert "and are specified as such by such an Ordinance" at the end,

- (c) in section 4(1) and (3) (status of Implementation Law and other enactments implementing EU provisions), insert "and the repeal of the 1996 Law by section 1A" after "the 1973 Law by section 1",
- (d) in section 5(2) (power to disapply, amend etc. Preserved EU law and other provisions), insert "and the 1996 Law" after "the 1973 Law", and
- (e) in section 9(1) (provisions in respect of the withdrawal agreement) –
 - (i) insert "further" after "such", and
 - (ii) insert "or the 1996 Law" after "the 1973 Law".

4. In section 5 (power to disapply, amend etc. Preserved EU law and other provisions) –

- (a) at the end of paragraph (c), delete "or", and
- (b) at the end of paragraph (d), insert "or", and after paragraph (d), insert –
 - "(e) make such provision as it considers to be necessary or expedient for the purposes of –
 - (i) the implementation of the Brexit Agreements or any obligations under

them,

- (ii) supplementing the effect of section 5A of the 1973 Law or section 9 of this Law in relation to the Brexit Agreements, or
- (iii) otherwise dealing with matters arising out of, or related to, the Brexit Agreements (including matters arising by virtue of section 5A of the 1973 Law or section 9 of this Law and those Agreements).".

5. In section 11(4) (general provisions as to Ordinances and regulations), after paragraph (f) insert –

"(fa) may restate, for the purposes of making the law clearer or more accessible, anything that forms part of domestic law by or under –

- (i) the EU Treaties or the Brexit Agreements,
- (ii) the 1973 Law or the 1996 Law,
- (iii) this Law, or
- (iv) the Implementation Law,".

6. (1) In section 12(1) (interpretation), insert the following definitions at the appropriate place –

""**the 1996 Law**": see section 1A(1),",

""**Brexit Agreements**" means either one or both of the EU Withdrawal Treaty and the EEA EFTA separation agreement,",

""**EEA Agreement**" has the meaning given in Article 2(a) of the EEA EFTA separation agreement,",

""**EEA EFTA separation agreement**" means the Agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom's membership of the EU (as that Agreement is modified from time to time),",

""**EU Withdrawal Treaty**" means the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community under Article 50(2) of the Treaty on European Union which sets out the arrangements for the United Kingdom's withdrawal from the EU (as that Agreement is modified from time to time),",

""**the Protocol**" means Protocol No. 3 to the Treaty of Accession,",

""**the relevant EEA states**" means Norway, Iceland, and Liechtenstein,",

""**TP Commencement Day**" means such day and time as the Policy & Resources Committee may by regulations appoint,"

""**Transition Period**" means the transition or implementation period provided for by Part 4 of the EU Withdrawal Treaty and beginning on TP Commencement Day and ending on exit day," and

""**the Treaty of Accession**" means the treaty referred to in paragraph 1(a) of Schedule 2,".

(2) In the definition of "the withdrawal agreement" in section 12(1) (interpretation), insert "and (for the avoidance of doubt) includes the Brexit Agreements" at the end.