

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**PROJET DE LOI**

Entitled

**THE CUSTOMS AND CROSS-BORDER TRADE (GENERAL AND ENABLING PROVISIONS)  
(BAILIWICK OF GUERNSEY) LAW, 2018**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The Customs and Cross-Border Trade (General and Enabling Provisions) (Bailiwick of Guernsey) Law, 2018", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

This proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

**EXPLANATORY MEMORANDUM**

The primary purposes of the Law are to put in place a new standalone and flexible import duty regime and customs tariff following the repeal of the European Communities (Bailiwick of Guernsey) Law, 1973; to facilitate the entering into of arrangements to establish a customs territory with the UK; to allow for export duty to be charged in future; and to provide for the implementation of relevant international obligations, including in relation to safety and security. It also amends (at Schedule 1) the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 ("the Customs Law"), to ensure the Customs Law is consistent with the foregoing, and to modernise certain operational provisions.

The Law is drafted in a way to be consistent, where appropriate, with the provisions of the Taxation (Cross-Border Trade) Act 2018, which has recently been enacted. This will assist in relation to the entering into of customs arrangements with the UK, which will require relevant aspects our legislation to be closely aligned with that of the UK. The Law is also drafted with the aim of keeping operational matters within the Customs Law, while having powers relating to more fiscal matters in this Law.

It provides at Part 1 for the charging of import duty, the establishment and maintenance by Ordinance of the States of a customs tariff, and for the Bailiwick to be able to enter into customs arrangements with other countries and territories. At Part 2

it provides for the States to have the power by Ordinance to make provision for the charging of export duty.

The amendments to the Customs Law at Schedule 1 include amendments (at paragraphs 3 and 4) to provisions in that Law relating to masters' declarations and manifests, better to reflect modern operational practices, and a regulation-making power in relation to international standards in respect of safety and security (particularly in relation to the provision of information). They also include power for the States by Ordinance to introduce a civil penalty regime in respect of the enforcement of obligations under the Customs Law.

# PROJET DE LOI

ENTITLED

## **The Customs and Cross-Border Trade (General and Enabling Provisions) (Bailiwick of Guernsey) Law, 2018**

**THE STATES**, in pursuance of their Resolution of the 18<sup>th</sup> July, 2018<sup>a</sup> have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### PART 1

*Import duty, the customs tariff, and customs arrangements*

#### **Import duty.**

1. (1) Subject to the provisions of this Law (including but not limited to subsection (3)), the Customs Law, and any subordinate legislation made under them, a duty of customs (to be known as "**import duty**") shall be charged in accordance with this Part by reference to the importation of all goods into the Bailiwick.

(2) For the avoidance of doubt, import duty is a duty of customs for the purpose of the Customs Law, and shall be collected and paid as such in accordance with that Law.

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<sup>a</sup> Article IV of Billet d'État No. XIX of 2018.

(3) The States may by Ordinance specify that goods imported from specified countries or territories (including the European Union) shall not be subject to import duty.

**The customs tariff.**

2. (1) The States may by Ordinance establish and maintain in force a system ("**the customs tariff**") which –

- (a) classifies goods according to their nature, origin or any other factor,
- (b) specifies the rate of import duty applicable to goods falling within such classifications (whether by a formula or otherwise), and
- (c) contains rules for determining the amount of import duty applicable to those goods.

(2) The customs tariff may –

- (a) provide for the amount of any import duty applicable to any goods falling within any classification to be determined by reference to either or both of the following –
  - (i) the value of the goods,
  - (ii) the weight or volume of the goods or any other measure of their quantity or size,

- (b) include provision as to the meaning of any expression used in it.

(3) An Ordinance under subsection (1) may establish and maintain in force the customs tariff, in whole or in part, by providing that regulations or other instruments (or any part thereof) imposing, or making other provision in relation to, a tariff of customs duties from time to time having effect in the United Kingdom or the European Union ("**external tariff regulations**") shall have effect in the Bailiwick as they have effect from time to time in the United Kingdom or the European Union (as the case may be).

(4) An Ordinance making provision of the type specified in subsection (3) may specify amendments and modifications subject to which external tariff regulations shall have effect in the Bailiwick.

(5) Without prejudice to the generality of the foregoing, and by way of example only, an Ordinance under subsection (1), whether or not it makes provision in respect of external tariff regulations, may provide that the amount of import duty applicable to any goods shall or may be amended or adjusted in particular circumstances or cases, and by reference to –

- (a) specified goods or specified descriptions or classifications of goods,
- (b) the country or territory from which the goods originate,
- (c) the amount of import duty applicable to any goods that are subject to a quota,

- (d) the temporary lowering of the rate of import duty applicable to specified goods, and
- (e) arrangements made by –
  - (i) the Bailiwick with Her Majesty's government in the United Kingdom (including but not limited to arrangements of a type specified in section 3),
  - (ii) the Bailiwick with the government of a country or or territory outside the Bailiwick and the United Kingdom, and
  - (iii) Her Majesty's government in the United Kingdom with the government of a country or territory outside the Bailiwick and the United Kingdom.

(6) For the avoidance of doubt, an Ordinance under subsection (1), whether or not it makes provision in respect of external tariff regulations, may make provision ancillary and incidental to the customs tariff, such as (but not limited to) the issue of licences, certificates and similar documents for purposes related to the implementation of the customs tariff or external tariff regulations.

(7) An Ordinance under this subsection (1) may provide that rulings or determinations given or made by HMRC officers, any other specified persons, or otherwise by or on behalf of the customs service or authority of any other specified country or territory, relevant to –

- (a) determining any issue as to the code in the customs tariff applicable to specified goods or goods in a specified category, or
- (b) determining the place of origin of goods for the purpose of this Part,

shall have effect in the Bailiwick.

**Specific customs arrangements with the government of a country or territory outside the Bailiwick.**

3. (1) This section applies if arrangements are entered into between–

- (a) the Bailiwick, and
- (b) the government of a country or territory outside the Bailiwick,

establishing specific customs arrangements between the Bailiwick and the country or territory.

(2) Specific customs arrangements are established between the Bailiwick and a country or territory if –

- (a) they provide that no duty is to be chargeable by reference to the movements of goods, or goods of a specified description, between the Bailiwick and the country or territory, and

- (b) they provide for the same, or substantially the same, rules for charging duty on imports of goods, or goods of a specified description, from places outside the Bailiwick or the country or territory.

(3) For the purposes of this section, "**duty**" means –

- (a) import duty, or
- (b) any duty (however described) imposed by the law of the country or territory that is of a similar character to import duty,

and "**specified**" means specified in the arrangements.

(4) The Committee may make regulations generally for carrying out any arrangements having effect in accordance with this section.

(5) Without prejudice to the generality of subsection (4), regulations made under this section may –

- (a) modify or disapply provision made under this Law or any other enactment,
- (b) treat anything done by the government of a country or territory as if done by the appropriate authority or person in the Bailiwick, and



- (c) apply or replicate, with or without modifications, provision relating to duty under the law of a country or territory as that provision has effect from time to time.
- (6) Examples of the kind of provision within subsection (5)(b) are–
  - (a) provision treating an agreement entered into by a country or territory as if it were entered into by the Bailiwick, and
  - (b) provision treating a system for determining the amount of duty established under the law of a country or territory as if it were the customs tariff mentioned in section 2.
- (7) A court or tribunal shall have due regard to –
  - (a) any arrangements having effect in accordance with this section, and
  - (b) relevant decisions of designated courts in the United Kingdom relating to such arrangements,

when considering any matter to which those arrangements are relevant.

#### *Supplementary*

#### **Valuation of goods chargeable to import duty.**

- 4. (1) For the purposes of import duty, the value of goods is the

transaction value of the goods when sold for export to the Bailiwick.

(2) For this purpose "**the transaction value**" means the total amount of the consideration –

- (a) payable for the goods, or
- (b) payable in connection with the importation of the goods into the Bailiwick,

subject to the provision of regulations made by the Committee.

(3) The Committee may make regulations making provision for treating a matter to be of a specified amount or value, and for the value of goods for these purposes to be a value other than the transaction value.

(4) By way of example, and without prejudice to the generality of the forgoing, regulations under this section may make provision dealing with –

- (a) transactions between persons who are related to, or connected with, each other in a specified way,
- (b) cases where a transaction value cannot, or cannot readily, be determined, and
- (c) cases where goods were paid for in a currency other than sterling.

**Determination of place of origin of goods chargeable to import duty.**

5. (1) For the purposes of import duty goods are to be regarded as originating from a country or territory if they are wholly obtained in that country or territory.

(2) If goods are obtained in two or more countries or territories, the goods are to be regarded as originating from the last country or territory in which substantial processing of them has taken place that is economically justified.

(3) Processing of any goods is to be regarded as substantial only if–

(a) it results in the manufacture of a new product or represents an important stage of manufacture, and

(b) it takes place in an undertaking equipped for the purpose.

(4) It is for the person making a customs declaration to show that goods originate from a particular country or territory.

(5) The Committee may make regulations making provision for the purposes of this section, including (by way of example, and without prejudice to the generality of the foregoing) provision –

(a) for determining what constitutes, or does not constitute, processing that is economically justified,

(b) for determining what constitutes or does not constitute

an important stage of manufacture,

- (c) as to cases in which goods are, or are not, to be regarded as originating from a country or territory,
- (d) as to cases in which goods are, or are not, to be regarded as being wholly obtained in a country or territory, and
- (e) as to the evidence which is to be required, or to be sufficient, for the purpose of showing that goods originate from a particular country or territory.

#### **Approvals and authorisations**

6. Section 73A (approvals and authorisations) of the Customs Law applies in relation to Ordinances and regulations under this Law as it does in relation to Ordinances, regulations and orders made under the Customs Law.

#### **Power to make general provision for the purposes of import duty.**

7. The Committee may by regulations –
- (a) make provision supplementing provision made in relation to import duty by or under this Part, the Customs Law, or any other enactment, and
  - (b) make other provision generally for the purposes of import duty.

## **PART 2**

## *Export Duty*

### **Export duty.**

8. (1) The States may by Ordinance make provision for, and in connection with, the charging of a duty to customs (to be known as "**export duty**") by reference to the export of goods from the Bailiwick.

(2) An Ordinance under subsection (1) may provide for export duty to be chargeable by reference to the export of –

- (a) all goods, or
- (b) goods of a description specified in the Ordinance.

(3) An Ordinance under subsection (1) may provide for –

- (a) export duty to be chargeable in accordance with a tariff specified in the Ordinance ("**the export tariff**"),
- (b) export duty to be chargeable by reference to value, weight or volume or other measure of quantity or size, and
- (c) the value of goods and the other matters mentioned in paragraph (b) to be determined in accordance with the Ordinance.

(4) The provision that may be made by Ordinance under subsection (1) includes provision replicating, or applying, with or without

modifications, any provision made by or under Part 1, or any other enactment relating to import duty.

(5) An Ordinance under subsection (1) may amend the Customs Law for the purposes of providing for the collection and enforcement of export duty, and related purposes.

### PART 3

#### *Miscellaneous and Final*

#### **General provisions as to Ordinances and regulations.**

9. (1) An Ordinance or regulations under this Law -
- (a) may be amended or repealed by a subsequent Ordinance or regulations hereunder (as the case may be),
  - (b) may contain such consequential, incidental, supplementary, transitional, savings and other ancillary provisions as may appear to be necessary or expedient, including (without limitation) -
    - (i) provision as to the creation and punishment of offences in respect of contraventions of the Ordinance or regulation and as to the creation of new duties, obligations, liabilities, remedies, penalties, sanctions and other consequences (but subject to the provisions of subsection (2)),

- (ii) provision amending, or applying exceptions, adaptations and modifications to, any of the provisions of this Law or any other enactment,
- (iii) provision repealing, replacing, amending, extending, adapting, modifying or disapplying any rule of customary or common law.

(2) The power conferred by subsections (1)(b)(i) and (4)(e) and by any other provision of this Law to make provision as to the creation and punishment of offences does not include power -

- (a) to provide for offences to be triable only on indictment,
- (b) to authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008<sup>b</sup>, or
- (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.

(3) Any power conferred by this Law to make an Ordinance or regulations may be exercised -

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<sup>b</sup> Order in Council No. XVIII of 2009; amended by Ordinance No. XXII of 2009; and No. IX of 2016.

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases, and
- (b) so as to make, as respects the cases in relation to which it is exercised -
  - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
  - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
  - (iii) any such provision either unconditionally or subject to any prescribed conditions.

(4) Without prejudice to the generality of the foregoing provisions of this Law, an Ordinance or regulations under this Law -

- (a) may empower any committee of the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, and any other body (including, without limitation, the Royal Court and any other court of the Bailiwick), to make or issue orders, rules, regulations,



codes or guidance, for the purposes of this Law or any Ordinance or regulations made under it,

- (b) may provide that no liability shall be incurred by any specified person or body in respect of anything done or omitted to be done in the discharge or purported discharge of any of their functions under the Ordinance or regulations unless the thing is done or omitted to be done in bad faith (but may not prevent an award of damages in respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000),
- (c) may make provision for the purpose of dealing with matters arising out of or related to any EU provision or Preserved EU law,
- (d) may make provision under the powers conferred by this Law notwithstanding the provisions of any enactment for the time being in force,
- (e) may in the case of an Ordinance of the States or regulations of the Committee specify penalties, in relation to offences tried before the Court of Alderney or the Court of the Seneschal, exceeding the limits of jurisdiction for the time being imposed on those courts by section 13 of the Government of Alderney Law,

2004<sup>c</sup> or (as the case may be) section 11 of the Reform (Sark) Law, 2008<sup>d</sup>,

- (f) without prejudice to the generality of the foregoing, may make any such provision of any such extent as might be made by Projet de Loi other than any provision which imposes or increases taxation or which takes effect from a date earlier than that of the making of the Ordinance or regulations.

(5) Where the Committee proposes to make regulations applying in Alderney or Sark, it shall consult -

- (a) the Alderney Committee, or
- (b) the Sark Committee,

as the case may be; but, subject to subsection (7), a failure to comply with this subsection shall not invalidate any regulations made under this Law.

(6) Before a committee of the States of Guernsey recommends that the States of Deliberation agrees to make an Ordinance under this Law having effect in Alderney or Sark, the committee shall consult –

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<sup>c</sup> Order in Council No. III of 2005; amended by Order in Council No. XXII of 2010; No. XI of 2012; No. V of 2014; and Alderney Ordinance No. IX of 2016.

<sup>d</sup> Order in Council No. V of 2008; amended by Order in Council Nos. VI and XXVII of 2008; No. XIV of 2010; No. XII of 2011; No. XI of 2014; No. IX of 2016; No. II of 2018; Sark Ordinance Nos. II and VI of 2015; No. XI of 2017.

(a) the Alderney Committee, or

(b) the Sark Committee,

as the case may be in relation to the terms of the proposed Ordinance; but a failure to comply with this subsection does not invalidate any Ordinance made under this Law.

(7) Regulations made by the Committee applying in Alderney or Sark cease to have effect, and an Ordinance made under this Law by the States of Deliberation applying in Alderney or Sark ceases to have effect -

(a) in Alderney if, within the period of four months immediately following the approval date, the States of Alderney resolve to disapprove the application of the regulations or Ordinance (as the case may be) to Alderney, and

(b) in Sark if, at the first or second meeting of the Chief Pleas of Sark following the approval date, the Chief Pleas resolve to disapprove the application of the regulations or Ordinance (as the case may be) to Sark.

(8) If the States of Alderney or the Chief Pleas of Sark resolve to disapprove the application of regulations or an Ordinance in accordance with subsection (7), the regulations or Ordinance cease to have effect in Alderney or (as the case may be) Sark, but without prejudice to -

(a) anything done under the regulations or Ordinance in Alderney or (as the case may be) Sark, or

(b) the making of new regulations or a new Ordinance having effect in Alderney or (as the case may be) Sark.

(9) In subsection (7), "**approval date**", in relation to regulations, means the date of their enactment by the Committee.

(10) Regulations under this Law shall be laid before a meeting of the States as soon as possible after being made; and if at that or the next meeting the States resolve that the regulations be annulled, the regulations shall cease to have effect but without prejudice to anything done under them or to the making of new regulations.

#### **Interpretation.**

10. (1) In this Law -

"**the Alderney Committee**" means the Policy and Finance Committee of the States of Alderney or such other Committee as the States of Alderney may appoint by Ordinance for the purposes of this Law,

"**the Bailiwick**" includes the States of Guernsey, the States of Alderney and the Chief Pleas of Sark,

"**Chief Officer of Customs and Excise**" has the same meaning as in the Customs Law,

"**Chief Revenue Officer**" has the same meaning as in the Customs

Law,

**"Commencement"** means the coming into force of this Law,

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

**"customs declaration"** has the same meaning as in the Customs Law,

**"the Customs Law"** means the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972<sup>e</sup>,

**"the customs tariff"**: see section 2,

**"designated courts in the United Kingdom"** 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, the Court of Session, the High Court of Justiciary, the Court of Judicature of Northern Ireland and the Supreme Court of the United Kingdom,

**"EU provision"** has the meaning given in the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018<sup>f</sup>,

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<sup>e</sup> Ordres en Conseil Vol. XXIII, p. 573; amended by Ordres en Conseil Vol. XXIV, p. 87; Vol. XXXI, p. 278; Vol. XXXIII, p. 217; Order in Council No. X of 2004; No. II of 2010; No. XIV of 2007; No. XV of 2012; Ordinance No. XXXIII of 2003; No. XXIX of 2004; No. XLVIII of 2007; No. XXXV of 2007; No. VII of 2008; No. XLIII of 2013; No. XL of 2014; No. IX of 2016; No. XXXI of 2017; G.S.I. No. 56 of 2008; G.S.I. No. 76 of 2009; G.S.I. No. 97 of 2010; G.S.I. No. 42 of 2011; G.S.I. No. 54 of 2012; G.S.I. No. 53 of 2013; G.S.I. No. 61 of 2014; G.S.I. No. 70 of 2015; G.S.I. No. 46 of 2016; and G.S.I. No. 81 of 2017.

<sup>f</sup> Approved by the States of Deliberation on the 6<sup>th</sup> June, 2018.

**"export duty"** and **"export tariff"**: see section 8,

**"external tariff regulations"**: see section 2(3),

**"HMRC Commissioners"** means the Commissioners for Her Majesty's Revenue and Customs,

**"HMRC officers"** means officers of Her Majesty's Revenue and Customs,

**"import duty"**: see section 1,

**"Preserved EU law"** has the same meaning as in the European Union (Brexit)(Bailiwick of Guernsey) Law, 2018, and

**"the Sark Committee"** means the Policy and Finance Committee of the Chief Pleas of Sark or such other Committee as the Chief Pleas of Sark may appoint by Ordinance for the purposes of this Law.

(2) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

**Repeals, consequential amendments and transitional provisions.**

11. (1) Schedule 1 (Amendments to the Customs Law) shall have effect.

(2) The amendments and repeals in Schedule 2 shall have effect.

(3) The saving and transitional provisions in Schedule 3 shall have effect.

(4) The Committee may amend Schedules 2 and 3 by regulation for the purpose of making such different or further saving or transitional provision, or such different or further amendments to other enactments in consequence of this Law, as that Committee thinks appropriate.

**Administrative provisions.**

12. The provisions of this Law are "**customs Laws**" within the meaning of section 1(1) of the Customs Law.

**Citation.**

13. This Law may be cited as the Customs and Cross-Border Trade (General and Enabling Provisions) (Bailiwick of Guernsey) Law, 2018.

**Commencement.**

14. This Law shall come into force on the day appointed by regulations of the Committee; and different dates may be appointed for different provisions and for different purposes.

## SCHEDULE 1

Section 11(1)

### AMENDMENTS TO THE CUSTOMS LAW

1. (1) The Customs Law is amended as follows.
- (2) In section 1 (interpretation) –
  - (a) the definitions of "the Communities", "Community customs duty", "Community instrument", and "member" are repealed,
  - (b) in the appropriate place, insert the following definitions-

""**the Cross-Border Trade Law**" means the Customs and Cross-Border Trade (General and Enabling Provisions) (Bailiwick of Guernsey) Law, 2018,"

""**import duty**" has the meaning given in the Cross-Border Trade Law,"

""**customs declaration**": see section 15(1),"

""**the customs tariff**" has the meaning given in the Cross-Border Trade Law,"



""**special customs procedure**": see section 15(1C)," and

- (c) for the definition of "tons register", substitute –

""**tons register**" means the tons of a ship's net tonnage as ascertained and registered according to the Merchant Shipping (Registration of Ships) (Bailiwick of Guernsey) Regulations, 2009, or, in the case of ship not registered under the Merchant Shipping (Bailiwick of Guernsey) Law, 2002, ascertained in like manner as if it were to be so registered,".

- (3) For section 14 (masters' declarations), substitute –

**"Masters' declarations.**

**14.** (1) The master of every ship and the commander of every aircraft which arrives in the Island from a port or place outside the Island shall declare to the Chief Revenue Officer all goods, including stores, carried in that ship or aircraft and shall declare to the Chief Revenue Officer all goods and stores which are to be unloaded from that ship or aircraft in the Island.

(2) The declarations prescribed by this section shall, subject to subsection (4), be signed by the master of the ship or the commander of the aircraft, shall bear the date of delivery, and shall be delivered to the Chief Revenue Officer prior to any portion of the cargo of the ship or aircraft has been unloaded.

(3) Declarations made under this section shall be in such form and contain such information as the Committee may direct and shall contain—

- (a) a description of the goods liable to be declared, together with their value, number, weight or other convenient measure of quantity and the country of origin,
- (b) the number and nature of the packages containing the said goods, and confirmation of whether some or all of the goods comprise a consolidated load of goods,
- (c) the name of the ship or the registration mark of the aircraft in which the said goods have been carried to the Island,
- (d) the place at which the said goods were loaded into the ship or aircraft,
- (e) the name of the consignor, and
- (f) the name of the proprietor or consignee.

(4) The Chief Officer of Customs and Excise may enter into arrangements with any person which vary the requirements of subsections (1), (2) and (3) in respect of specified persons in specified

circumstances, provided that the Chief Officer is satisfied that such arrangements are consistent with any regulations made under section 14B.

(5) Arrangements entered into under subsection (4) must be approved by the Committee within six weeks of being entered into.

(6) The master or commander shall, at the time of making his declaration under this section, answer all such questions relating to the ship or aircraft, cargo, crew and voyage as shall be put to him by the Chief Revenue Officer, and shall produce on demand any freight notes, way bills, bills of lading or other documents relating to the carriage of the goods by the ship or aircraft.

(7) If the master of the ship or the commander of the aircraft fails to comply with the provisions of this section he shall be liable on conviction to a fine not exceeding level 4 on the uniform scale.

**Groupage declarations.**

**14A.** (1) Where, under section 14 of this Law, the master of a ship or the commander of an aircraft arriving in the Island from a port or place outside the Island declares a consolidated load of goods to be unloaded from that ship or aircraft in the Island, the proprietor of that load, and not the master of the ship or the commander of the aircraft, shall declare all the goods in that load to the Chief Revenue Officer.

(2) Declarations made under this section shall bear the date of arrival in the Island and be –

(a) signed by the proprietor of the load in question,

(b) delivered to the Chief Revenue Officer before any portion whatsoever of the consolidated load of goods may be cleared from customs charge, and

(c) in such form and contain such information as the Committee may direct.

(3) The Chief Officer of Customs and Excise may enter into arrangements with any person which vary the requirements of subsections (1) and (2) in respect of specified persons in specified circumstances, provided that the Chief Officer is satisfied that such arrangements are consistent with any regulations made under section 14B.

(4) Arrangements entered into under subsection (3) must be approved by the Committee within six weeks of being entered into.

(5) The proprietor of the load shall, at the time of making his declaration under this section, answer all questions relating to the goods as shall be put to him by the Chief Revenue Officer, and produce on demand all documents relating to the goods.

(6) If the proprietor of the load fails to comply with the provisions of this section he shall be liable on conviction to a fine not exceeding level 4 on the uniform scale.

(7) In section 14 and this section, "**consolidated load of goods**" means cargo from either one consignor to multiple consignees, or

from multiple consignors to one or more consignees.

**Security and safety: provision of information.**

**14B.** (1) The Committee may by regulations make provision in respect of the imposition of requirements on persons importing into and exporting goods from the Bailiwick, and other persons, to provide information and make declarations to the Chief Revenue Officer and other persons, for the purposes of –

- (a) in general, improving the security and safety of the importation of goods into, and the export of goods from, the Bailiwick,
- (b) in particular, giving proportionate and appropriate effect in the Bailiwick, or parts thereof, to any international agreement (or part thereof) or practice as to the secure and safe movement of goods between countries and territories having effect from time to time.

(2) Without prejudice to the generality of the foregoing, regulations under subsection (1) may specify –

- (a) information that may be required to be provided,
- (b) circumstances in which information may be required to be provided,
- (c) persons by and to whom information may be

required to be provided,

- (d) the form and manner in which information may be required to be provided,
- (e) the time in which information may be required to be provided, and
- (f) the circumstances in which a person required to provide information may challenge that requirement, and the way in which such a challenge may be made."

(4) In section 15 (entry of goods on importation), for subsections (1) and (2) substitute –

"(1) Subject to the provisions of regulations made by the Committee under subsection (1A), the proprietor or consignee of goods which are to be unloaded or which have been unloaded from a ship or aircraft arriving in the Island from a port or place outside the Island shall make entry of the same (to be referred to as a "**customs declaration**") in the manner prescribed by this section within three clear days of the unloading of the goods.

(1A) The Committee may by regulations provide that –

- (a) the provisions of subsection (1) shall not apply to goods or classes of goods specified in the regulations, and

- (b) persons specified in the regulations other than (including in addition to) the proprietor or consignee of goods shall make a customs declaration in respect of the goods, in circumstances specified in the regulations.

(1B) When making entry of goods liable to import duty under subsection (1), the proprietor or consignee (as the case may be) may also declare the goods to a special customs procedure.

(1C) In subsection (1B) a "**special Customs procedure**" means a customs procedure in relation to goods, other than a procedure providing for their release for free circulation, specified in regulations made for this purpose by the Committee.

(1D) Regulations under subsection (1C) may make such provision in relation to special Customs procedures as the Committee thinks fit, and, without prejudice to the generality of that subsection, and by way of example, regulations under that subsection may make provision in respect of—

- (a) conditions to be met by persons declaring goods for special Customs procedures (including, but not limited to, the issue of financial guarantees),
- (b) other requirements relating to special Customs procedures, and

(c) the discharge of special Customs procedures.

(2) The entries prescribed by this section shall be signed by the proprietor or consignee of the goods, shall bear the date of delivery and shall be delivered to the Chief Revenue Officer before the said proprietor or consignee takes possession of such goods.

(2A) For the avoidance of doubt, and without prejudice to the provisions of the Electronic Transactions (Guernsey) Law, 2000, in any case where a document is to be signed and delivered to the Chief Revenue Officer under a provision in section 14, section 14A or this section, the Chief Revenue Officer may, at his discretion, treat the entry of a password or any other form of digital identification as a signature for the purposes of that provision."

(5) In section 20 (duty on imported goods), after subsection (1) insert –

"(1A) Where import duty is chargeable on imported goods, in addition to the importer, each of the following persons is liable to pay that duty –

- (a) a person on whose behalf a customs declaration is made, and
- (b) a person in a category or class specified for this purpose in regulations made for this purpose by the Committee.



(1B) If two or more persons are liable to import duty in any case, those persons are jointly and severally liable to import duty in that case."

(6) For section 21 (relief from duty), substitute –

**"Reliefs from import duty.**

21. (1) The Committee may make regulations making provision for full or partial relief from a liability to import duty.

(2) Regulations under this section may provide for the relief to be given by reference to any factor, for example (and without prejudice to the generality of the foregoing) –

- (a) the nature or origin of goods or anything else by reference to which goods are classified in the customs tariff,
- (b) anything in the customs tariff by reference to which the amount of import duty applicable to goods is determined,
- (c) the purposes for which goods are imported,
- (d) the person by whom, or for whose benefit, goods are imported, and
- (e) the circumstances in which goods are imported.

(3) Regulations under this section may provide for a relief to be conditional on (by way of example and without prejudice to the generality of the foregoing) the export of goods in accordance with the applicable export provisions.

(4) In this section "relief" includes drawback allowed in respect of goods exported from the Island."

(7) In section 22 (forfeiture of goods improperly imported), after paragraph (f) insert –

"(g) any other circumstances pertain in relation to any imported goods, prescribed for this purpose by regulations made by the Committee,".

(8) After section 22, insert –

**"Fees for exercise of functions in connection with import duty.**

**22A.** The Committee may by order authorise the charging of fees in respect of the exercise of any specified function of the Chief Revenue Officer for the purposes of, or otherwise in connection with, import duty."

(9) In section 38(2), for "Community requirement" substitute "international obligation binding on the Bailiwick".

(10) In section 45, after subsection (1) insert –

"(1A) The Committee may make regulations specifying other circumstances in which an importer of goods shall be entitled to obtain from

the Committee repayment of any duty of customs paid on the importation of the goods."

(11) In section 47-

- (a) for the heading, substitute "Provision of information in relation to the value of goods liable to import duty.",
- (b) repeal subsection (1),
- (c) in subsection (2), delete "for the purpose of giving effect to the foregoing provisions of this section, and in particular for", and
- (d) repeal subsection (4).

(12) In section 48 (origin of goods), for the section heading substitute "Origin of goods – fish and other produce of the sea".

(13) For section 49 (determination of disputes as to customs duties), substitute –

**"Determination of disputes.**

**49.** (1) This section applies when there is a dispute as to –

- (a) whether any, or how much, import duty is payable in respect of goods, or
- (b) who is liable to pay import duty in respect of

goods.

(2) When this section applies the importer must pay the amount demanded by the proper officer but may, not later than three months after the date of the payment –

(a) if the dispute is in relation to the value of the goods, require the question to be referred to the arbitration of a referee appointed by the Royal Court, or, in any other case,

(b) apply to the Royal Court sitting as an Ordinary Court for a declaration as to –

(i) the amount of duty, if any, properly payable on the goods, or

(ii) the identity of the person or persons liable to pay import duty in respect of the goods,

as the case may be.

(3) The Royal Court may not under subsection (2) appoint as a referee a person who is an employee of the States or who otherwise holds a paid office under the States.

(4) The procedure on any dispute referred to a referee appointed under subsection (2) shall be such as may be determined by the

referee, and the decision of the referee shall be final.

(5) If a referee appointed under subsection (2) decides that a lesser amount or no amount was properly payable in respect of duty on the goods, the amount overpaid shall be repaid by the Committee, together with interest thereon from the date of the overpayment at such rate as the referee may determine.

(6) A sum repaid under subsection (5) shall be accepted by the importer in satisfaction of any claims in respect of the importation of the goods in question, the duty payable on the goods, and all damages and expenses incidental to the dispute other than the costs of the proceedings.

(7) When considering an application under this section, the Royal Court and referee appointed by the Royal Court shall take account of any relevant ruling that has effect in the Bailiwick by virtue of an Ordinance made under section 2 (the customs tariff) of the Cross-Border Trade Law.

(8) For the avoidance of doubt, on an application under subsection (2)(b) the Royal Court may make such Order, in addition to a declaration, as it thinks fit."

(14) After Part VII, insert –

#### "PART VIIA

#### CO-OPERATION AND INTERNATIONAL OBLIGATIONS

##### **Disclosure of information.**

**54A.** (1) The Chief Revenue Officer may disclose information relating to import duty for customs duty purposes; and in this section "**customs duty purposes**" means purposes in connection with, or otherwise incidental to, the imposition, enforcement or other regulation of import duty.

(2) A person who receives information in a disclosure made under this section may not disclose the information except with the consent of the Chief Revenue Officer (which may be general or specific), and may use it only for customs duty purposes.

(3) A person who discloses information relating to import duty other than in accordance with this section is guilty of an offence, and is liable on conviction to a fine not exceeding level 2 on the uniform scale, or three months imprisonment, or to both.

**Co-operation with other customs services.**

**54B.** The Chief Revenue Officer may co-operate with the customs service or authority of any other country or territory on matters of mutual concern in relation to customs matters, both generally and in particular with a view to securing (by the exchange of information or otherwise) –

- (a) the administration of the import duty system,
- (b) the prevention or detection of evasion or other fraud relating to import duty, and
- (c) the prevention, reduction or elimination of avoidance of a liability to import duty.

**Requirement to have regard to international obligations.**

54C. When exercising any function under this Law, the Chief Revenue Officer must have regard to -

- (a) international obligations that are relevant to the exercise of the function –
  - (i) that are binding on the Bailiwick, or any part thereof, or
  - (ii) to which Her Majesty's government in the United Kingdom is a party, and
- (b) any specific customs arrangements established between the Bailiwick and the government of a country or territory outside the Bailiwick, within the meaning of the Cross-Border Trade Law.

**Implementation of international agreements, etc.**

54D. (1) The Committee may by regulations make such provision as it considers necessary or expedient for the purpose of the implementation of any international agreement or any provision thereof concerning customs matters or the cross-border movement of goods.

(2) For the purposes of this section, an "**international agreement**" includes a convention and a treaty.

(3) Regulations made under this section may amend this Law for the purpose set out in subsection (1).

(4) Before making regulations under this section, the Committee shall consult the Policy & Resources Committee of the States of Guernsey, but a failure so to consult shall not invalidate any regulations made under this section."

(15) After section 62 (incidental provisions as to legal proceedings),  
insert –

**"Discretionary financial penalties.**

**62A.** (1) The States may by Ordinance provide for the imposition of liability to a civil penalty where a person –

- (a) engages in any conduct for the purpose of evading any duty to customs, or excise duty, or
- (b) engages in any conduct by which the person contravenes a duty, obligation, requirement or condition imposed by or under this Law and any other customs Laws and excise Laws.

(2) An Ordinance under this section may, without prejudice to the generality of the foregoing –

- (a) specify the amount of liability in particular circumstances,
- (b) specify circumstances in which no liability arises,



- (c) specify that the Committee may originally or on review reduce a penalty otherwise owing to such amount (including nil) as it thinks proper, and specify matters the Committee must or may take into account when exercising that discretion,
- (d) specify how demands for payment of penalties are to be made,
- (e) specify time limits for payments of penalties,
- (f) make provision to ensure that a person may not be prosecuted in respect of conduct in respect of which the person has received a demand for payment of a penalty,
- (g) make provision in relation to reviews and appeals of decisions, and
- (h) make such other provision as the States thinks fit."

(16) After section 73 (power to pay rewards), insert –

**"Approvals and authorisations.**

**73A.** (1) This section applies in relation to approvals granted to any person under an Ordinance, regulations or an order made under this

Law (in this section, "**secondary legislation**"), unless the secondary legislation in question make alternative provision.

(2) In this section, references to an approval include an authorisation.

(3) Without prejudice to the generality of subsection (1), secondary legislation may –

- (a) require an application for approval to be made in a specified form and to contain specified information,
- (b) specify cases in which an application for approval may not be made,
- (c) disapply or simplify specified requirements in relation to things required or authorised to be done by authorised persons (in relation to which see subsection (4)),
- (d) require the Chief Revenue Officer to consider, within a specified period, whether or not an application, or purported application, for approval is, as a result of provision made under paragraph (a) or (b), one that falls to be determined,
- (e) confer on an applicant a right of appeal,

- (f) require the Chief Revenue Officer to notify a person making a purported application for approval that, as a result of provision made under paragraph (a) or (b), the purported application does not fall to be determined,
- (g) make further provision about the notification,
- (h) make provision about the circumstances in which an approval granted by the Chief Revenue Officer shall be treated as if it had never been granted, and
- (i) make provision about the amendment, suspension or revocation of approvals.

(4) By way of example and without prejudice to the generality of the foregoing, secondary legislation may –

- (a) specify the criteria to be applied in determining whether or not any person should be an authorised person,
- (b) specify those criteria by reference to professional standards of competence or by reference to any other relevant matter,
- (c) make provision for a person's status as an

authorised person to be subject to compliance with conditions specified in the regulations or in the authorisation, and

(d) establish different classes of authorised person."

(17) For section 79, substitute –

**"Orders and regulations.**

79. (1) Regulations and orders under this Law -

(a) may be amended or repealed by subsequent regulations hereunder, and

(b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the Committee or the Policy & Resources Committee (as the case may be) to be necessary or expedient,

and regulations under this Law shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of a new order or regulations (as the case may be).

(2) Any power conferred by this Law to make regulations or orders may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised -
  - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
  - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
  - (iii) any such provision either unconditionally or subject to any conditions specified in the regulations or order."

## SCHEDULE 2

### Section 11(2)

#### REPEALS AND CONSEQUENTIAL AMENDMENTS

##### *Repeals*

1. The Import Duties (Bailiwick of Guernsey) Act, 1932<sup>g</sup> is repealed.

##### *EU Customs Duties*

2. (1) Any Preserved EU law that imposes or otherwise applies in relation to any EU customs duty ceases to have effect.

(2) In subparagraph (1), "EU customs duty" includes anti-dumping duty, countervailing duty, safeguard duty, and any duty imposed in consequence of an international dispute.

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<sup>g</sup> Ordres en Conseil Vol. IX, p. 279; amended by Ordres en Conseil Vol. IX, p. 382; Vol. XIII, p. 448; Vol. XV, p. 466; Vol. XVIII, p. 182; Vol. XIX, p. 119; Vol. XXII, p. 560; Vol. XXIII, p. 188; Vol. XXIV, p. 278; Ordinance No. XXXIII of 2003; and No. IX of 2016.

## SCHEDULE 3

### Section 11(3)

#### TRANSITIONAL AND SAVING PROVISIONS

##### *General*

1. (1) Subject to the provisions of this Schedule, anything done or having effect as if done (excluding the making of subordinate legislation) under or for the purposes of any provision repealed or revoked by this Law has effect as if done under or for the purposes of any corresponding provision of this Law, or any subordinate legislation made under this Law.

(2) Where a person commits an offence under a provision repealed by this Law –

(a) before Commencement, or

(b) partly before and partly after Commencement,

that person shall be charged and proceeded against under that provision as if it had not been repealed.

##### *Determination of disputes as to payment of import duty*

2. A requirement or application made under section 49 of the Customs Law made before Commencement in respect of which no determination has been made before Commencement shall be determined under that provision as if it had not been repealed.

### *Reliefs Orders*

3. Subject to paragraph 4, Orders made under section 21 of the Customs Law before the commencement of this Law shall continue to have effect as if they were regulations made under section 21 of the Customs Law as amended by this Law, and shall be construed accordingly.

4. For the avoidance of doubt, regulations made under section 21 of the Customs Law as amended by this Law may provide that an Order made under section 21 of the Customs Law before the commencement of this Law shall cease to have effect on the coming into force of the regulations.