

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR HOME AFFAIRS

AMENDMENTS TO CUSTOMS LAW – SEIZURE AND DISPOSAL OF PERISHABLE GOODS

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled “Amendments to Customs Law – Seizure and Disposal of Perishable Goods”, dated 7th June 2021, they are of the opinion:-

1. To agree that the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 be amended to give effect to the proposals set out in section 4.1 of this Policy Letter.
2. To direct the preparation of such legislation as may be necessary to give effect to the above decision.

The above Propositions have 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.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR HOME AFFAIRS

AMENDMENTS TO CUSTOMS LAW – SEIZURE AND DISPOSAL OF PERISHABLE GOODS

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

7th June 2021

Dear Sir

1 Executive Summary

1.1 The purpose of this Policy Letter is to seek approval from the States of Deliberation to amend the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 (“the Customs Law”) in order to allow certain functions of HM Procureur or Comptroller to be delegated to appropriate Guernsey Border Agency (“GBA”) officers in relation to the sale or destruction of certain seized perishable goods. This is an important part of maintaining biosecurity post-Brexit.

2 Background

2.1 The States agreed the Bailiwick’s participation in the UK-EU Trade and Cooperation Agreement (“TCA”)¹ in December 2020. Whilst the TCA included the Bailiwick in the Sanitary and Phyto-Sanitary (SPS) chapter, the importation of SPS goods (animals, plants and food) from the EU has changed, and will continue to change during the phased implementation of SPS border controls up until March 2022. SPS goods that are imported that fail to comply with new requirements will need to be seized at the border. As COVID-related travel restrictions ease these seizures are likely to increase as a consequence when plants and food are imported from France without the necessary documentation. This is important for maintaining the integrity of the SPS territory and ensuring biosecurity which is essential for human, animal and plant health.

¹ [Billet d’État XXIX of December 2020, Article I](#)

- 2.2 In anticipation of this, the Committee *for* Home Affairs (“the Committee”) has identified a way in which to condemn certain seized perishable goods straight away, rather than have to wait the normal one month appeal period as is the case under the Customs Law at the moment. This will allow the GBA to deal with perishable goods, normally by way of destruction, soon after seizure rather than hold onto them for a month.

3 Current position

- 3.1 Schedule 1 to the Customs Law sets out the provisions relating to forfeiture. Where any goods are imported, landed or unloaded contrary to any prohibition or restriction in force the goods shall be liable to forfeiture. SPS goods imported that fail to comply with new requirements will be liable to forfeiture and seized by GBA Officers at the border. A notice of seizure must be provided to the owner of the goods at the time and that person ordinarily has one month from the date of the notice of seizure to claim that the item(s) is not liable to forfeiture. Where a claim is made relevant procedures and potential legal proceedings must occur to determine the condemnation of the item(s) or, in the case that the item(s) was not liable to forfeiture at the time of its seizure, the restoration to the importer.
- 3.2 Under Paragraph 15(b) of Schedule 1 to the Customs Law, where goods of a perishable nature have been seized, the Committee may, with the concurrence of Her Majesty's Procureur or Comptroller (“HMP/C”), sell or destroy the item(s):

*“15. Where any thing has been seized as liable to forfeiture **the Committee** may at any time if it thinks fit and notwithstanding that the thing has not yet been condemned, or is not yet deemed to have been condemned, as forfeited, with the concurrence of **Her Majesty's Procureur or Comptroller** –*

*(b) if the thing seized is a living creature or is in the opinion of **the Committee** of a perishable nature, sell or destroy it.”*

- 3.3 In the absence of any specific provision in the legislation to enable the grant of "blanket" concurrence, the Law Officers have advised that the concurrence of HMP/C would be required on each occasion any thing is seized. This would be an unworkable solution if perishable items were being seized on a frequent basis (which is likely to occur when full SPS controls are introduced on goods from the EU due to the Bailiwick's connectivity with France). It would be an inefficient use of GBA officer's and HMP/C's time to follow this process for each and every perishable item.
- 3.4 It is therefore proposed that that the Committee and HMP/C's functions should be expanded so as to enable concurrence to be given to particular descriptions or types of SPS goods and also be capable of being delegated to operational officers.

3.5 Consultation with St James' Chambers, including HMP/C, has identified that the Committee's functions can be delegated to, e.g. 'Any Customs officer' (being an officer who ultimately is responsible to the Committee) but the delegation of HMP/C functions to senior Customs officer is not possible under the current provisions.

4 Legislative Requirements

4.1 It is proposed that an amendment is made to the Customs Law to allow the functions of HMP/C in Paragraph 15 of Schedule 1 to the Customs Law to be delegated to appropriate GBA officers. At the same time, to provide future resilience and efficiency, it is also proposed that a provision be inserted for HMP/C to issue 'blanket' concurrence for certain goods, in advance of the seizure of any such goods.

4.2 It should be noted that the proposed amendment will provide only the provision for HMP/C to delegate/concur, not automatically offer it, and so in reality nothing will change from the current position until HMP/C agree to a delegation/concurrence, thus ensuring the senior level integrity of the process.

5 Compliance with Rule 4

5.1 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.

5.2 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the majority support of the Committee (Deputy Le Tissier was not present at the time this Policy Letter was agreed by the Committee).

5.3 In accordance with Rule 4(5), the Propositions relate to the Committee's purpose and policy responsibilities regarding law enforcement, including policing and customs.

5.4 Also in accordance with Rule 4(5), the Committee has consulted with the States of Alderney, Chief Pleas of Sark and the Committee *for the Environment & Infrastructure*.

Yours faithfully

R G Prow
President

S P J Vermeulen
Vice-President

M P Leadbeater

C J Le Tissier

A W Taylor

P A Harwood

Non-States Member