

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT CROWN DEPENDENCIES CUSTOMS
UNION (GUERNSEY) (EU EXIT) ORDER 2018

DRAFT CROWN DEPENDENCIES CUSTOMS
UNION (ISLE OF MAN) (EU EXIT) ORDER 2018

DRAFT CROWN DEPENDENCIES CUSTOMS
UNION (JERSEY) (EU EXIT) ORDER 2018

Monday 21 January 2019

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The Committee consisted of the following Members:

Chair: GRAHAM STRINGER

† Benyon, Richard (*Newbury*) (Con)
 † Blackman, Bob (*Harrow East*) (Con)
 Campbell, Mr Ronnie (*Blyth Valley*) (Lab)
 † Clarke, Mr Simon (*Middlesbrough South and East Cleveland*) (Con)
 † Dowd, Peter (*Bootle*) (Lab)
 † Garnier, Mark (*Wyre Forest*) (Con)
 Hayes, Helen (*Dulwich and West Norwood*) (Lab)
 McDonald, Stewart Malcolm (*Glasgow South*) (SNP)
 † Mann, John (*Bassetlaw*) (Lab)
 † Merriman, Huw (*Bexhill and Battle*) (Con)

† Prisk, Mr Mark (*Hertford and Stortford*) (Con)
 † Reeves, Ellie (*Lewisham West and Penge*) (Lab)
 † Smith, Jeff (*Manchester, Withington*) (Lab)
 † Stride, Mel (*Financial Secretary to the Treasury*)
 † Villiers, Theresa (*Chipping Barnet*) (Con)
 † Walker, Thelma (*Colne Valley*) (Lab)
 † Whittaker, Craig (*Lord Commissioner of Her Majesty's Treasury*)

Zoë Grünewald, Yohanna Sallberg, *Committee Clerks*

† **attended the Committee**

Second Delegated Legislation Committee

Monday 21 January 2019

[GRAHAM STRINGER *in the Chair*]

Draft Crown Dependencies Customs Union (Guernsey) (EU Exit) Order 2018

4.30 pm

The Chair: I call the Minister to move the first motion and to speak to all the instruments. At the end of the debate, I will put the question on the first motion and then ask the Minister to move the remaining motions.

The Financial Secretary to the Treasury (Mel Stride): I beg to move,

That the Committee has considered the draft Crown Dependencies Customs Union (Guernsey) (EU Exit) Order 2018.

The Chair: With this it will be convenient to consider the draft Crown Dependencies Customs Union (Isle of Man) (EU Exit) Order 2018 and the draft Crown Dependencies Customs Union (Jersey) (EU Exit) Order 2018.

Mel Stride: May I say what a pleasure it is, Mr Stringer, to serve under your chairmanship and to speak to all three orders? Today marks an important step in meeting the Government's commitment that the UK's departure from the EU delivers for the whole UK family, including the Crown dependencies. Before we move on to the orders, it is worth my briefly setting out their context with regards to the Crown dependencies and the UK's withdrawal from the European Union.

The Crown dependencies are currently part of the EU customs union. This provides the legal framework necessary for goods to move between the United Kingdom and the Crown dependencies. The Crown dependencies will therefore leave the EU's customs union alongside the United Kingdom. The three Orders in Council tabled in draft today will give effect to new customs union arrangements that will maintain our current customs relationships with the Crown dependencies after our European Union exit. Crucially, the arrangements provide that goods moving between the UK and the Crown dependencies will not be subject to import duty.

I will now move on to clarify the new customs arrangements the UK has entered into with each of the Crown dependencies. On 26 November, the Government signed new arrangements with each of the Crown dependencies, together forming a new UK-Crown dependencies customs union. These arrangements have been designed to ensure continuity for UK-Crown dependency trade when the UK leaves the EU, and impose no new direct costs or additional information requirements on businesses in the UK or the Crown dependencies. The two Channel Islands arrangements are identical in all material respects and are new agreements, whereas the new Isle of Man arrangement updates customs aspects of the existing 1979 UK-Isle of Man customs and excise agreement.

Under the UK-Crown dependencies customs union, traders moving goods between the UK and the Crown dependencies, or between the Crown dependencies themselves, will continue to pay no customs duty and face the same customs processes as they do now. It will also mean that the UK and the Crown dependencies will apply the same tariff as the UK, just as they do now under the EU customs union.

The making of these orders is a prerequisite for the making of separate regulations to implement the customs union arrangements. Once the orders are made, we will lay the regulations required to comply with the commitments made in the new arrangements—for example, a regulation to ensure that importers bringing goods into the Crown dependencies can apply for tariff information rulings. While the new customs arrangements to which these orders give effect are compatible with any future customs agreement reached with the EU, these orders and the implementing regulations must be in place when the obligations in the EU treaties cease to apply to the UK.

In summary, the orders deliver on the shared objectives of the UK Government and the Governments of the Crown dependencies to ensure the continuation of our current customs relationships outside the European Union customs union. They will place our customs relationships with the Crown dependencies on a firm footing for the future, and they underline the positive collaboration that has taken place between the UK and the Crown dependencies since the 2016 referendum. I therefore commend the orders to the Committee.

4.34 pm

Peter Dowd (Bootle) (Lab): It is a pleasure to see you in the Chair, Mr Stringer. The Crown dependencies are not members of the EU but form part of the EU customs union by virtue of protocol 3 of the UK's Act of Accession to the EU, which says:

"The Community rules on customs matters and quantitative restrictions, in particular those of the Act of Accession, shall apply to the Channel Islands and the Isle of Man under the same conditions as they apply to the United Kingdom."

That is a bit of the context, but it begs the question why we are actually here today.

A press release was sent out on 26 November—I think the Minister referred to it—which said:

"The government has...signed new arrangements with...the Crown Dependencies...to maintain and reaffirm our close customs relationships."

It seems that yet again the Government have gone off, without recourse to Parliament, signing deals. In effect, we are ratifying something today that, to all intents and purposes, has already been agreed. That is typical of this whole process in relation to leaving the EU. There's the old point about asking questions first and taking action later; the Government have taken the action and then asked the questions.

That brings me nicely to a series of questions that the Minister might be able to answer. The Government's position in the press release is ambiguous. At the top, the press release says that new arrangements with the Crown dependencies will be necessary when the UK leaves the EU customs union, but later it says that the new arrangements will be compatible with any form of relationship with the EU. There is a certain ambiguity there.

I will ask a series of questions, if the Minister would be kind enough to answer them. Can he clarify something? Although the regulations are not labelled as no-deal regulations, they seem to be drafted in preparation for the UK not being in the EU and not being in the customs union—or any customs union for that matter? Would it be correct to say that, although, technically, there might be another form of Brexit that does not involve a customs union or a no-deal Brexit, it seems that the instruments are being prepared for a hard Brexit? Would the provisions still be necessary if we were in a customs union with the EU? How could the orders be affected by a customs union or a no-deal Brexit?

Why were separate statutory instruments drafted for Jersey, Guernsey and the Isle of Man, given the common features of the instruments? The fact that we are considering them as a whole prompts the question of why they were not drafted as a whole. Would it not be preferable in terms of simplicity, clarity and consistency to have one piece of coherent regulation to govern the position of the Crown dependencies?

Given the constitutional significance of the UK's relationship to the Crown dependencies, why were these matters not dealt with in legislation that could have received fuller public and parliamentary attention? Does the Minister not agree that, consistent with the broad thrust of the Supreme Court decision in the Miller case, quasi-constitutional changes ought to be carried out by the legislature via proper processes, rather than via a truncated SI process, which seems to have been truncated even further, given the statement at the end of November?

The press release indicates that there must have been discussions with the dependencies, as they have signed up to this, so perhaps the Minister could tell us what consultation has been undertaken with relevant individuals and bodies in Jersey, Guernsey and the Isle of Man on the content of the orders?

Finally, could the Minister clarify why the proviso that the UK could still charge VAT on items coming into the country is included, from what I can gather? Those are my questions, and if we could get some clarity on them from the Minister, I would be more than happy.

4.38 pm

Mel Stride: I thank the hon. Gentleman for his contribution and questions. At the heart of this, it is important to understand the process of what is occurring. The whole process begins with the Taxation (Cross-border Trade) Act 2018. Of course, the hon. Gentleman will be very familiar with that Act and with the provisions section 31 makes for setting in train the process for entering into renewed customs union arrangements with the Crown dependencies.

The process operates broadly as follows: having entered into a political agreement with the Crown dependencies, we are required to approve the draft orders, which will then go to the Privy Council. The relevant statutory instruments will then be laid under the negative procedure in the latter part of February, setting out the details of the arrangements with the Crown dependencies.

As for the hon. Gentleman's suggestion that there has been a lack of scrutiny—I think that is a fair way of summarising his position—I must strongly point out that the primary legislation to which the orders relate went through full parliamentary scrutiny, including on the Floor of the House. Indeed, he may recall that

section 31 was amended to restrict our ability to enter into a customs union with the European Union by any method other than primary legislation.

I do not think there is any ambiguity about the purpose of the orders or the statutory instruments that will follow, which is to ensure that, after our exit from the European Union in late March, we are in a position to maintain customs relationships with the Crown dependencies.

The hon. Gentleman asked why there are separate statutory instruments for each of the Crown dependencies. The answer is that there are separate agreements; the Crown dependencies are jurisdictions in their own right, so it is only right and proper that there be a statutory instrument for each. In the case of the Isle of Man, as he will know, we are effectively amending an arrangement that was entered into in 1979—a distinct approach from the arrangements with the other Crown dependencies.

4.42 pm

Peter Dowd: The Minister referred to section 31 of the Taxation (Cross-border Trade) Act. We tried to press the Government on it time after time, but what does it actually refer to? It does not restrict a customs union to just the overseas territories. In fact, I think that is why the Government have left it completely unamended: because it is a backstop—another backstop—to the potential for a customs union. If they were that persistent about not having a customs union, they would have made it clear that clause 31 did not apply to territories in relation to the European Union.

There is an important question that we never resolved during the passage of the Act, although we spent a fair amount of time discussing it. The EU customs union is worth the best part of £15 trillion or £16 trillion, but we are now going down the path of having a customs union with the four territories named in the orders, and possibly with 10 other Crown dependencies and territories. The total GDP of all those territories is not £17 trillion; I do not think it even comes to £17 billion—it is more like £15 billion. We are in the bizarre scenario of going from a customs union of £15 trillion to a customs union of an infinitesimal percentage of that. That is a real shame.

The other aspect of the matter is that most of the people affected by the arrangement did not have a vote in the referendum. They did not vote to come out of the customs union; effectively, it is being forced on them. The Government often say that they do not like forcing Crown dependencies and overseas territories to do anything, but in this case they are forcing them out of a customs union of £16 trillion.

There is a huge amount of ambiguity in this measure, both in the technical sense and the political sense. Given that ambiguity, the answers I have had from the Minister today do not convince us that we should support these proposals.

4.45 pm

Mel Stride: I thank the hon. Gentleman for his further points. However, it is important to note that the scope of section 31, which he referred to early in his remarks, is in respect of measures relating to the Crown dependencies. These orders give effect to arrangements entered into with Crown dependencies, and therefore they obviously do not affect the overseas territories.

[*Mel Stride*]

Some of the points that the hon. Gentleman has made in this debate were made at the time the 2018 Act went through this House. At that time, I made it very clear that one of the uses to which we would almost certainly put the powers under section 31 was exactly what we are doing today: to enter—under certain circumstances—into customs union arrangements with the Crown dependencies.

As to the latter part of the hon. Gentleman's points around whether we should or should not remain a member of the European Union's customs union, that is, once again, probably outside the scope of our considerations today, but there has been, and no doubt will continue to be, considerable debate about it outside of this Committee.

Question put.

The Committee divided: Ayes 9, Noes 5.

Division No. 1]

AYES

Benyon, rh Richard	Prisk, Mr Mark
Blackman, Bob	Stride, rh Mel
Clarke, Mr Simon	Villiers, rh Theresa
Garnier, Mark	Whittaker, Craig
Merriman, Huw	

NOES

Dowd, Peter	Smith, Jeff
Mann, John	
Reeves, Ellie	Walker, Thelma

Question accordingly agreed to.

Resolved,

That the Committee has considered the draft Crown Dependencies Customs Union (Guernsey) (EU Exit) Order 2018.

DRAFT CROWN DEPENDENCIES CUSTOMS UNION (ISLE OF MAN) (EU EXIT) ORDER 2018

Motion made, and Question put,

That the Committee has considered the draft Crown Dependencies Customs Union (Isle of Man) (EU Exit) Order 2018.—(*Mel Stride.*)

The Committee divided: Ayes 9, Noes 5.

Division No. 2]

AYES

Benyon, rh Richard	Prisk, Mr Mark
Blackman, Bob	Stride, rh Mel
Clarke, Mr Simon	Villiers, rh Theresa
Garnier, Mark	Whittaker, Craig
Merriman, Huw	

NOES

Dowd, Peter	Smith, Jeff
Mann, John	
Reeves, Ellie	Walker, Thelma

Question accordingly agreed to.

DRAFT CROWN DEPENDENCIES CUSTOMS UNION (JERSEY) (EU EXIT) ORDER 2018

Motion made, and Question put,

That the Committee has considered the draft Crown Dependencies Customs Union (Jersey) (EU Exit) Order 2018.—(*Mel Stride.*)

The Committee divided: Ayes 9, Noes 5.

Division No. 3]

AYES

Benyon, rh Richard	Prisk, Mr Mark
Blackman, Bob	Stride, rh Mel
Clarke, Mr Simon	Villiers, rh Theresa
Garnier, Mark	Whittaker, Craig
Merriman, Huw	

NOES

Dowd, Peter	Smith, Jeff
Mann, John	
Reeves, Ellie	Walker, Thelma

Question accordingly agreed to.

4.51 pm

Committee rose.