EXPLANATORY MEMORANDUM TO

THE CROWN DEPENDENCIES CUSTOMS UNION (ISLE OF MAN) (EU EXIT) ORDER 2019

2019 No. 257

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Revenue and Customs ("HMRC") and is laid before the House of Commons by Command of Her Majesty.

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The Isle of Man has a distinct customs relationship with the United Kingdom, which arises from the terms of the United Kingdom's accession to the European Union and allows goods to be imported into the United Kingdom from the Isle of Man free from customs duty. This relationship will cease when the United Kingdom leaves the European Union Customs Union. This Order in Council gives effect to specific provisions in customs arrangements between the UK and the Isle of Man in order to maintain the current customs relationship after the United Kingdom leaves the European Union.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 The legislative landscape for this Order, detailed in sections 6 and 7 below, is unusually complex. It should be noted that the arrangements contained in the Schedule to this Order will have effect for the purposes of import duty "despite any enactment", pursuant to section 31(4) of the Taxation (Cross-border Trade) Act 2018 (TCTA).

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

3.3 The powers under which this instrument is made cover the entire United Kingdom and the territorial application of this instrument is not limited either by the enabling Act or by the instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Financial Secretary to the Treasury Mel Stride MP has made the following statement regarding Human Rights:

"In my view the provisions of the Crown Dependencies Customs Union (Isle of Man) (EU Exit) Order 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 Section 31 of the TCTA enables the UK to give effect to customs union arrangements with another territory or territories. Under section 31(2), arrangements establish a "customs union" for the purposes of the TCTA if there is no import duty on goods moving between the two territories in question and if each territory applies substantially the same rules for charging import duty when goods are imported from outside either territory. The making of an Order in Council under section 31(4) of the TCTA is necessary to give effect to the arrangements which involve the elimination of import duty on goods imported into the UK from the other territory. In addition, the making of an Order under section 31(4) is a prerequisite for the making of regulations for the purposes of implementing the customs union arrangements, under section 31(6) (see further at 7.7).

6.2 This Order, along with the Crown Dependencies Customs Union (Guernsey) (EU Exit) Order 2019 and the Crown Dependencies Customs Union (Jersey) (EU Exit) Order 2019, marks the first use of the section 31(4) power.

6.3 The new customs arrangements are required to be in place when the UK's Treaty of Accession to the EU ceases to apply. As this scenario applies either in the event of an implementation period or in the event that a future arrangement between the UK and the EU cannot be achieved in March 2019, this Order must be made by February 2019. This will ensure that there is sufficient time to make and lay the subsequent implementing regulations under section 31(6) TCTA.

7. Policy background

What is being done and why?

7.1 The United Kingdom has three Crown Dependencies (CDs): the Bailiwick of Jersey (Jersey), the Bailiwick of Guernsey (Guernsey) and the Isle of Man. The CDs' customs relationships with the UK are currently governed by Protocol 3 of the UK's 1972 Act of Accession to the EU, as well as the 1979 Isle of Man Act and 1979 Customs and Excise Agreement between the Governments of the United Kingdom and the Isle of Man. Protocol 3 provides that the CDs are within the EU Customs Union, which involves the tariff-free movement of goods throughout the EU customs territory, including the movement of goods between the UK and the CDs. Following the UK's withdrawal from the European Union, the UK and CDs will leave the EU Customs Union and Protocol 3 will cease to apply.

7.2 Unlike Jersey and Guernsey, the Isle of Man is subject to EU value added tax (VAT) and excise directives, and is treated as being part of the UK for VAT and excise purposes, as well as being part of the EU customs territory. The basis for this is the Isle of Man Act 1979 (IoM Act), which provides for a shared VAT and excise area between the UK and the IoM. This is supported by the Customs and Excise Agreement 1979 between the Governments of the United Kingdom and the Isle of Man.

7.3 To provide for the shared objective that trade between the UK and the Crown Dependencies should not be disrupted when the UK exits the EU, the Government's policy is to form a customs union for the elimination of import duty between the UK

and the CDs. The UK has entered into arrangements with each of the Crown Dependencies to form a single Crown Dependencies Customs Union (the UK-CDs Customs Union). The UK-CDs Customs Union provides that no import duty or export duty will be payable in respect of movements of goods between the United Kingdom and the CDs, or between the CDs themselves, and that the UK and the CDs will apply a common external tariff. The latter is achieved by requiring the CDs to apply the same customs duties as the UK does to goods imported from territories outside the UK-CDs Customs Union. The arrangements establish a customs union between the UK and the CDs within section 31 TCTA. As the UK-CD customs arrangements are internal constitutional arrangements of the UK, they are not binding international agreements and the UK-CD Customs Union will not therefore qualify as a customs union as defined by the General Agreement on Tariffs and Trade, under the World Trade Organisation framework.

7.4 The UK-Isle of Man Customs and Excise Agreement 1979 forms the basis of the shared customs, VAT and excise relationships between the UK and the Isle of Man. This provides for a range of matters relating to the 'common duties' of VAT, excise duties and customs duty. For this reason, unlike Guernsey and Jersey, the Isle of Man does not require entirely new arrangements for its future customs relationship with the UK. Instead, any necessary provisions relating to the formation of the UK-CD customs union will be provided for by the arrangements which amend the existing Agreement. The Agreement already provides for the elimination of import duties between UK and Isle of Man and a common external tariff, which are the key components of a customs union under section 31 TCTA. The new arrangements restate these essential components of the Agreement in a special customs union annex. Also included in this customs union annex are new terms, for instance the UK's commitment to process applications for tariff information and origin information rulings from persons intending to import goods from outside the UK-CDs Customs Union into the Isle of Man. Pursuant to section 31(4) TCTA, the arrangements scheduled to this Order have effect for the purposes of import duty "despite any enactment".

7.5 As the UK has entered into separate arrangements with each CD, three separate Orders under section 31(4) of the TCTA will be required to give effect to the three arrangements. The Schedule to each of the Orders sets out the text of the relevant arrangements. This Order gives effect to the UK's commitment not to charge import duty on goods imported into the UK from the Isle of Man. The other two Orders are the Crown Dependencies Customs Union (Guernsey) (EU Exit) Order 2019 and the Crown Dependencies Customs Union (Jersey) (EU Exit) Order 2019. These two Orders have broadly the same effect as this Order, albeit they relate to Guernsey and the Jersey respectively. Whilst the UK-Jersey Order and UK-Guernsey Order give effect to new arrangements, the UK-IoM Order gives effect to arrangements which amend the existing Customs and Excise Agreement 1979.

7.6 As explained in 7.2 the Isle of Man is treated as being part of the UK for VAT and excise purposes. Therefore, under this Order, goods imported into the UK from the Isle of Man will continue to be treated as domestic goods under the TCTA and not to have been imported. This means that no import duty is payable in respect of goods traded between the UK and the Isle of Man and no customs declarations are required.

7.7 As stated above in 6.1, the making of the Order is a prerequisite for the making of implementing regulations under section 31(6) of the TCTA. These regulations will be

largely technical in scope and, for instance, will include a regulation that will ensure importers bringing goods into the CDs can apply for tariff information rulings. These regulations will ensure that the UK has the legislation in place to comply with the commitments made in the arrangements and in particular for goods to continue to move between the UK and CDs as they currently do now under the EU Customs Union.

7.8 In addition, it should be noted that the arrangements also contain a number of additional provisions, including those relating to the co-operation of customs authorities and to monitoring and oversight, which do not require implementation in UK law.

7.9 This Order will come into force when the arrangements between the UK and Isle of Man come into effect. The arrangements provide that the key aspects will come into effect on a date agreed by the UK and the Isle of Man in an exchange of letters. The shared intention of the UK and the Isle of Man is that, in the event that the UK and EU do not reach agreement on a future economic partnership, the arrangements would enter into force when the UK withdraws from the EU, in March 2019. In the event of an Implementation Period, the arrangements would enter into force at the end of the Implementation Period.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it is being made to ensure the effective continuation of the current UK-Isle of Man customs relationship when the UK leaves the EU. As stated above, when the UK withdraws from the EU, current customs arrangements between the EU and the Isle of Man governed by Protocol 3 to the UK's 1972 Treaty of Accession to the EU will cease to apply.

9. Consolidation

9.1 This instrument does not amend another instrument. This instrument, together with the Crown Dependencies Customs Union (Guernsey) (EU Exit) Order 2019 and the Crown Dependencies Customs Union (Jersey) (EU Exit) Order 2019, will give effect to customs arrangements between the UK and CDs for the formation of the United Kingdom-Crown Dependencies Customs Union.

10. Consultation outcome

10.1 Since the 2016 referendum, the Government has consulted the Government of the Isle of Man on the formation of a new customs union comprising the United Kingdom, the Isle of Man, Jersey and Guernsey.

10.2 The arrangements to which this Order will give effect were entered into by Ministers on behalf of the Government of the UK and the Government of the Isle of Man. This followed joint negotiations between officials from both Governments as well as from the Governments of Guernsey and the Jersey throughout 2017 and 2018.

10.3 As part of wider Government consultation with the Crown Dependencies, the Isle of Man Chief Minister has met with the Parliamentary Under-Secretary of State for the Department for Exiting the European Union in quarterly meetings on preparations for

future UK-CD arrangements on goods since 2017 and with the Financial Secretary to the Treasury on specific matters. The VAT and Excise arrangements between the UK and the Isle of Man are separately governed by regular engagement between officials of both the UK and Isle of Man governments. This will continue separately from these arrangements.

10.4 The Order ensures the UK can maintain the current UK-Isle of Man customs relationship when the UK withdraws from the EU and therefore consultation of individuals or businesses in the UK is not considered necessary.

11. Guidance

11.1 General guidance on the relationship between the CDs and the UK can be found at: https://www.gov.uk/government/publications/crown-dependencies-jersey-guernsey-and-the-isle-of-man

11.2 This will be amended once this Order comes into force.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full impact assessment has not been prepared for this instrument as it contains no substantive changes to tax policy. This Order will give effect to customs arrangements which maintain the current UK-Isle of Man customs relationship. As this Order seeks to ensure there will be no change in the customs treatment of goods between the UK and the Isle of Man, there will accordingly be no significant impact on the (UK) public sector, charities, businesses or voluntary bodies. There are no new direct costs to businesses and no additional information requirements as a result of this Order.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses as this Order ensures that the current customs treatment of goods traded between the UK and the Isle of Man will not change following the UK's exit from the EU. This Order therefore does not create any further regulatory burdens for small businesses. No further action is necessary.

14. Monitoring & review

14.1 HMRC will monitor all aspects of this Order.

14.2 This Order does not include a statutory review clause because this measure relates to duty (Small Business, Enterprise and Employment Act 2015, section 28(3)(a)).

15. Contact

15.1 Cameron Ballester HMRC, Telephone: 03000 575564, Email: Cameron.Ballester@hmrc.gsi.gov.uk and; Rosie Kilian HMRC, Email: Rosemary.Kilian1@hmrc.gsi.gov.uk; can answer any queries regarding the Order in Council.

15.2 Alex Pienaar, Deputy Director for the Customs EU Exit policy team, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 Financial Secretary to the Treasury, Mel Stride MP, can confirm that this Explanatory Memorandum meets the required standard.