

STATES OF JERSEY



DRAFT EUROPEAN UNION (UNITED KINGDOM EXIT – MISCELLANEOUS AMENDMENTS) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 28th December 2018
by the Minister for External Relations**

STATES GREFFE



DRAFT EUROPEAN UNION (UNITED KINGDOM EXIT – MISCELLANEOUS AMENDMENTS) (JERSEY) REGULATIONS 201-

REPORT

Purpose

The new Draft European Union (United Kingdom Exit – Miscellaneous Amendments) (Jersey) Regulations 201- (the “new Regulations”) effect essential amendments to a number of pieces of legislation as a consequence of the withdrawal of the United Kingdom (the “UK”) from the European Union (the “EU”). Once the UK has left the EU on 29th March 2019 it will cease to be a member state. As such, any provisions that refer to “member states of the EU” will no longer include the UK. To preserve the intended policy effect of such provisions, the references must be amended so that they continue to operate properly, making separate reference to the United Kingdom where appropriate.

The new Regulations will be made pursuant to Article 5A of the [European Union Legislation \(Implementation\) \(Jersey\) Law 2014](#) as amended by the [European Union \(Repeal and Amendment\) \(Jersey\) Law 2018](#), which enables the States Assembly to fix deficiencies in domestic legislation arising from Brexit. The changes made by the new Regulations are minor but essential. Furthermore the changes are needed whether or not an agreement on the terms of the United Kingdom’s withdrawal is finally concluded between the UK and the EU. This is because the UK will no longer be a member state after 29th March 2019, regardless of the terms on which the UK leaves the EU (i.e. whether or not there is a withdrawal agreement and whether or not there is an implementation period).

The legislation being amended is the [Employers’ Liability \(Compulsory Insurance\) \(Jersey\) Law 1973](#), the [Supply of Goods and Services \(Jersey\) Law 2009](#), the [Data Protection \(Jersey\) Law 2018](#), the [Income Tax \(Jersey\) Law 1961](#), the [Waste Management \(Jersey\) Law 2005](#), and the [Control of Housing and Work \(Jersey\) Law 2012](#).

Regulation 1 amends the Employers’ Liability (Compulsory Insurance) (Jersey) Law 1973

The definition of “authorized insurer” includes persons authorized by the relevant authority of a member state of the EU. This must be extended to add the UK in order to continue the current policy effect of recognising insurance providers authorised under UK law.

Regulation 2 amends the Supply of Goods and Services (Jersey) Law 2009

As a result of the UK leaving the EU, the definition of “producer” needs revision. Although minor this is an important amendment. Article 1 includes within it definition of “producer” in relation to goods “...the importer of the goods into the customs territory of the European Union...” Articles 20 and 31 protect consumers who have purchased goods from false trade descriptions, but if left unchanged this protection will not cover purchases from producers importing goods into the UK. To continue to protect these consumers, the definition must be amended to include the customs territory of the UK (which includes the UK, Channel Islands and Isle of Man). This will preserve the existing policy effect of the relevant provisions.

Regulation 3 amends the Data Protection (Jersey) Law 2018

Jersey’s data protection legislation provides equivalent protection for personal data to the EU’s General Data Protection Regulation (the “GDPR”) and Law Enforcement Directive. Jersey has been assessed by the European Commission as an adequate third country for EU data protection purposes. Adequacy means that Jersey’s data protection regime provides essentially equivalent protection for personal data to that provided in EU member states. As a result it is lawful for data to flow freely between Jersey, any EU member state and any other adequate third country.

When the UK leaves the EU it will become a non-adequate third country for EU data protection purposes. The UK is undergoing an adequacy assessment from the European Commission at present, but there is a substantial risk that there will be a gap between the UK leaving the EU and becoming a third country and the European Commission concluding its adequacy assessment. Jersey organisations cannot flow data freely to non-adequate third countries without putting in place additional safeguard measures. If the Data Protection (Jersey) Law 2018 is not amended then it is likely that it will be unlawful for the free flow of data between Jersey and the UK to continue because Jersey organisations cannot send data to non-adequate third countries without putting in place additional safeguard measures. These would represent a significant burden for businesses and result in a data flow situation significantly inferior to present arrangements.

Consequently, the Regulations amend the Data Protection (Jersey) Law 2018 to exclude the UK from being treated as a third country after the UK leaves the EU. The definition of “third country” encompasses countries and territories outside the European Economic Area other than Jersey, and the amendment will exclude the UK from this category also to allow the free flow of data to continue. The amendment will be time limited, only remaining in place until the end of 2020, meaning that the UK will return to third country status under the Law after a certain date. This demonstrates Jersey’s commitment to alignment with EU standards.

Regulation 4 amends the Control of Housing and Work (Jersey) Law 2012

Article 25 includes requirements in relation to the change in ownership of an undertaking that requires a licence. There are certain exclusions, including in relation to stock exchanges where certain of these requirements need not (and in practical terms, cannot) apply. Article 22 defines a stock exchange as an exchange in a member state of the EU. Once the UK leaves the EU, this will no longer include UK exchanges and as such the definition needs to be expanded to preserve the current effect of the relevant provisions.

Regulation 5 amends the Waste Management (Jersey) Law 2005

There are several references to “a member state of the European Union” that need to be amended so that the Law continues to implement the requirements of the Basel

Convention and the OECD Decision correctly, as they relate to the timing of decisions regarding the import, export and transit of waste. The amendments are to references in Schedule 8 (Control Procedures for the Movement of Waste) and will ensure that once the UK is not an EU member state there is no change in the treatment of transboundary movements of waste between Jersey and the UK or in transit through Jersey. The changes either add the UK to provisions that apply to EU member states, or exclude the UK from provisions dealing with movements to countries that are not EU member states.

Regulation 6 amends the Income Tax (Jersey) Law 1961

The term “recognised stock exchange” is defined in Article 3(1). Currently UK stock exchanges are included within that term because the definition includes stock exchanges in “any member State of the European Union”. Once the UK leaves the European Union, UK stock exchanges will fall outside of this definition and so it needs to be extended to continue to include UK stock exchanges.

One of the conditions for a periodical payment to be a “qualifying maintenance payment” is that it is “made under an order of a court in Jersey or in a member State of the EU, or under a written agreement the proper law of which is the law of Jersey or of a member State of the EU” (this appears in Article 90B(1)(a)(i) and Article 90B(1)(b)(i)). Once the UK leaves, UK court orders and written agreements under UK law will fall outside the definition, and so to preserve the current effect of these provisions the definition needs to be extended.

Conclusion

The new Regulations make minor but essential amendments to ensure legislation continues to operate as intended after the United Kingdom has left the European Union.

Financial and manpower implications

There are no financial or manpower implications for the States arising directly from the adoption of these draft Regulations.

Explanatory Note

These Regulations make amendments to various Laws that refer to member states of the European Union (the “EU”). The amendments ensure that the treatment of the United Kingdom (the “UK”) by those Laws will not change when the UK ceases to be a member state of the EU.

Regulation 1 amends the Employers’ Liability (Compulsory Insurance) (Jersey) Law 1973 to ensure the definition “authorized insurer” includes a person authorized by the relevant authority of the UK as well as those authorized by the relevant authority of an EU member state.

Regulation 2 amends the Supply of Goods and Services (Jersey) Law 2009 to ensure the definition “producer” includes importers into the UK as well as importers into the EU.

Regulation 3 amends the Data Protection (Jersey) Law 2018 to treat the UK as if it is not a third country for the purpose of that Law, for the period after the exit of the UK from the European Economic Area until the end of 2020 (if the UK does exit from that Area before the end of 2020).

Regulation 4 amends the Control of Housing and Work (Jersey) Law 2012 to add the UK to the list of countries (which currently includes EU member states) whose stock exchanges are recognized for the purpose of the controls on working in Part 7 of that Law.

Regulation 5 amends Schedule 8 to the Waste Management (Jersey) Law 2005, which provides for control procedures for the movement of waste, to expand all the references to EU member states by adding references to the UK.

Regulation 6 amends the Income Tax (Jersey) Law 1961, to add the UK to the list of countries (which currently includes EU member states) whose stock exchanges are recognized for the purpose of that Law. In relation to provisions on marginal income deduction in respect of qualifying maintenance payments, the amendments also add references to the courts and laws of the UK, where there are currently 2 references to the courts and laws of EU member states.

Regulation 7 gives the title by which the Regulations may be cited, and provides for them to come into force on one or more dates and times specified by Order by the Minister for External Relations.



DRAFT EUROPEAN UNION (UNITED KINGDOM EXIT – MISCELLANEOUS AMENDMENTS) (JERSEY) REGULATIONS 201-

Arrangement

Regulation

1	Employers' Liability (Compulsory Insurance) (Jersey) Law 1973 amended	9
2	Supply of Goods and Services (Jersey) Law 2009 amended	9
3	Data Protection (Jersey) Law 2018 amended.....	9
4	Control of Housing and Work (Jersey) Law 2012 amended.....	10
5	Waste Management (Jersey) Law 2005 amended.....	10
6	Income Tax (Jersey) Law 1961 amended.....	11
7	Citation and commencement	11



DRAFT EUROPEAN UNION (UNITED KINGDOM EXIT – MISCELLANEOUS AMENDMENTS) (JERSEY) REGULATIONS 201-

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Article 5A of the European Union Legislation (Implementation) (Jersey) Law 2014¹, have made the following Regulations –

1 Employers' Liability (Compulsory Insurance) (Jersey) Law 1973 amended

In Article 1 (interpretation) of the Employers' Liability (Compulsory Insurance) (Jersey) Law 1973², in paragraph (b) of the definition “authorized insurer”, for “of a member State of the European Union to carry on in that State” there is substituted “of the United Kingdom, or of a member State of the European Union, to carry on in that country”.

2 Supply of Goods and Services (Jersey) Law 2009 amended

In Article 1 (interpretation) of the Supply of Goods and Services (Jersey) Law 2009³, in the definition “producer”, after “European Union” there is inserted “or of the United Kingdom.”.

3 Data Protection (Jersey) Law 2018 amended

In Article 1 (interpretation) of the Data Protection (Jersey) Law 2018⁴ –

- (a) in the definition “third country” in paragraph (1), after the word “means” there is inserted “, subject to paragraph (3A);”;
- (b) after paragraph (3), there is inserted –
“(3A) Despite the definition “third country” in Article 1(1), from the date (if any) on which the United Kingdom becomes a country outside the European Economic Area until (if later than that date) the end of 2020, the United Kingdom is to be treated as not being a third country for the purpose of this Law.”;
- (c) in paragraph (4), after “paragraph (1)” there is inserted “, and may amend paragraph (3A)”.

4 Control of Housing and Work (Jersey) Law 2012 amended

In Article 22(1) (interpretation of Part 7) of the Control of Housing and Work (Jersey) Law 2012⁵, in paragraph (b)(i) of the definition “recognized stock exchange”, for “any member State” there is substituted “the United Kingdom or a member State”.

5 Waste Management (Jersey) Law 2005 amended

In Schedule 8 (control procedures for the movement of waste) to the Waste Management (Jersey) Law 2005⁶ –

- (a) in paragraph 8(4)(b) of Part 2, for “is a Member State of the European Union and” there is substituted “is the United Kingdom, or a member State of the European Union, and”;
- (b) in paragraph 8(4)(c) of Part 2, for “is a Member State of the European Union and” there is substituted “is the United Kingdom, or a member State of the European Union, and”;
- (c) in the heading to paragraph 10 of Part 2, for “European Union” there is substituted “UK or EU”;
- (d) in paragraph 10(1)(b) of Part 2, for “is a Member State of the European Union” there is substituted “is the United Kingdom or a member State of the European Union”;
- (e) in paragraph 11(1)(b) of Part 2, for “is not a Member State of the European Union” there is substituted “is neither the United Kingdom nor a member State of the European Union”;
- (f) in paragraph 8(3)(b) of Part 3, for “is a Member State of the European Union and” there is substituted “is the United Kingdom, or a member State of the European Union, and”;
- (g) in paragraph 8(3)(c) of Part 3, for “is a Member State of the European Union and” there is substituted “is the United Kingdom, or a member State of the European Union, and”;
- (h) in the heading to paragraph 10 of Part 3, for “European Union” there is substituted “UK or EU”;
- (i) in paragraph 10(1)(b) of Part 3, for “is a Member State of the European Union” there is substituted “is the United Kingdom or a member State of the European Union”;
- (j) in paragraph 11(1)(b) of Part 3, for “is not a Member State of the European Union” there is substituted “is neither the United Kingdom nor a member State of the European Union”;
- (k) in paragraph 8(3)(b) of Part 4, for “is a Member State of the European Union” there is substituted “is the United Kingdom or a member State of the European Union”;
- (l) in the heading to paragraph 10 of Part 4, for “European Union” there is substituted “UK or EU”;

-
- (m) in paragraph 10(1)(b) of Part 4, for “is a Member State of the European Union” there is substituted “is the United Kingdom or a member State of the European Union”;
 - (n) in paragraph 11(1)(b) of Part 4, for “is not a Member State of the European Union” there is substituted “is neither the United Kingdom nor a member State of the European Union”.

6 Income Tax (Jersey) Law 1961 amended

In the Income Tax (Jersey) Law 1961⁷ –

- (a) in Article 3(1) (general provisions as to interpretation), after paragraph (a) of the definition “recognized stock exchange” there is inserted –
 - “(aa) the United Kingdom;”;
- (b) for Article 90B(1)(a)(i) (marginal income deduction in respect of qualifying maintenance payments) there is substituted –
 - “(i) is made under an order of a court in Jersey or in the United Kingdom or in a member State of the EU, or under a written agreement the proper law of which is the law of Jersey or of the United Kingdom or of a member State of the EU;”;
- (c) for Article 90B(1)(b)(i) there is substituted –
 - “(i) is made under an order of a court in Jersey or in the United Kingdom or in a member State of the EU, or under a written agreement the proper law of which is the law of Jersey or of the United Kingdom or of a member State of the EU.”.

7 Citation and commencement

- (1) These Regulations may be cited as the European Union (United Kingdom Exit – Miscellaneous Amendments) (Jersey) Regulations 201-.
- (2) These Regulations come into force on such day or days, and time or times, as the Minister for External Relations may by Order appoint.

-
- ¹ *chapter 17.245*
² *chapter 05.225*
³ *chapter 05.800*
⁴ *L.3/2018*
⁵ *chapter 18.150*
⁶ *chapter 22.950*
⁷ *chapter 24.750*