

STATES OF JERSEY



Jersey

DRAFT WORLD TRADE ORGANIZATION (PRIVILEGES AND IMMUNITIES) (JERSEY) REGULATIONS 202-

**Lodged au Greffe on 20th September 2021
by the Minister for External Relations and Financial Services
Earliest date for debate: 2nd November 2021**

STATES GREFFE

REPORT

Summary

On the 1st January 2021 the UK's membership of the [World Trade Organization](#) ("WTO") was extended to Jersey. In order to meet the obligations of WTO membership, Jersey must provide WTO diplomats with certain immunities and privileges, as required by the Marrakesh Agreement *Establishing the World Trade Organization (1994)*. All WTO members have legislation in place which provides for these privileges, and it should be noted that Guernsey has recently put in place similar powers. The draft Regulations, if adopted, would codify Jersey's commitment to do the same.

These draft Regulations are implementing legislation to fulfil Jersey's international obligations extended under the UK's membership of the WTO and are made under the [Privileges and Immunities \(Diplomatic, Consular etc.\) \(Jersey\) Law 1998](#) ("the 1998 Law"). The 1998 Law, *inter alia*, gives effect to the Vienna Convention on Diplomatic Relations and makes provision as to the privileges, immunities and facilities to be accorded in respect of identified international organizations.

Context

At Jersey's request, on 18th October 2019 the UK Foreign Secretary formally wrote to the WTO, notifying it of the UK's intention to extend the territorial scope of its WTO membership to Jersey. Following the end of the Brexit Transition Period, on 1st January 2021 – when the UK formally took up its independent seat at the WTO – the UK's membership was extended to Jersey.

Securing WTO extension ensures that Jersey companies have access to global rules on the trade in goods, services, and IP with WTO members – which includes the majority of countries across the globe. This represented the conclusion of a political and diplomatic process to achieve extension of the UK's WTO membership that has been an objective of the Government of Jersey for over 20 years.

The provisions within the following draft Regulations are required for Jersey to meet the obligations extended to the Island through the UK's membership. As Members will be aware, Jersey's longstanding commitment to the development and implementation of international standards is a cornerstone of the Island's reputation. Indeed, it is a commitment which this Assembly has consistently promoted and supported. The Government, I very much hope with the ongoing support of the Assembly, is committed to continuing to act and be known as a responsible jurisdiction which meets its international obligations. The adoption of these draft Regulations will be a small but important means of ensuring we sustain our approach and reputation.

The draft Regulations

Under Article VIII of the Marrakesh Agreement Establishing the World Trade Organization (1994), the WTO, its officials, and its representatives are to be granted such privileges and immunities as are necessary for the exercise of its or their function. The agreement states that these privileges and immunities shall be similar to those stipulated in the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations on 21 November 1947. The Government has therefore considered both Agreements when drafting these Regulations.

WTO member states have similar pieces of legislation granting these privileges, including the UK, through *No. 266 The World Trade Organisation (Immunities and Privileges) Order 1995*. These draft Regulations provide under Jersey law something of similar effect to the 1995 UK Order.

The Regulations, made under the powers at Article 12 of the 1998 Law, contain, in the first part, an interpretation provision; and, in the second part, privileges and immunities for the Organization including exemption or relief from taxes, rates and customs duties. In the third part, Regulation 5 make provision for the representatives and officials of the WTO, including immunity from suit and legal process and exemption in respect of personal baggage. The Regulations set out that they do not confer any privilege or immunity on a person who is the representative of Jersey, the United Kingdom or a British citizen. This is in accordance with Section 17 of the UN Specialized Agencies Convention which limits the privileges and immunities for representatives should they be nationals and permanent residents of the State. Regulation 6 outlines the privileges and immunities of the high officers of the Organization, namely the Director-General, and any Deputy Director-General or Assistant Director-General, and carries with it, similar privileges and immunities to those aforementioned. A person who is a British citizen or a resident of Jersey or the United Kingdom enjoys these privileges and immunities but only in respect of official acts performed as part of their functions. The granting of these limited provisions under this Regulation, is in accordance with both Section 21 of the UN Specialized Agencies Convention which provides privileges and immunities to high officials; and, the Vienna Convention on Diplomatic Relations which then limits these privileges and immunities, only for nationals and permanent residents of the State, to when they are carrying out official acts. Regulation 7 then sets out the privileges and immunities of other officials of the Organization (apart from those recruited locally and paid hourly) including exemption from income tax and customs and excise duties. The privileges and immunities then apply only to the extent that they have not been waived by the Member state that the person represents.

Financial and manpower implications

There are no additional resource implications that would arise from the adoption of these draft Regulations.

EXPLANATORY NOTE

These Regulations, if passed, would confer privileges and immunities upon the World Trade Organization (“the Organization”), its representatives and its officials.

Part 1 contains *Regulation 1*, which is an interpretation provision.

Part 2 makes provision about the Organization itself.

Regulation 2 provides that the Organization is one to which Article 12 of the Privileges and Immunities (Diplomatic, Consular, etc.) (Jersey) Law 1998 (“the Law”) applies.

Regulation 3 provides that the Organization has the legal capacities of a body corporate.

Regulation 4 sets out the privileges and immunities of the Organization.

Part 3 makes provision for the representatives and officials of the Organization.

Regulation 5 sets out the privileges and immunities enjoyed by representatives of a state that is a Member of the Organization at meetings of the Organization. The privileges and immunities apply only to the extent that they have not been waived by the Member state the person represents. It does not confer any privilege or immunity on a person who is the representative of Jersey or the United Kingdom or is the a member of the official staff of such a person, nor on any person who is a British citizen (as defined in Regulation 1). The Regulation also provides that Part 4 of Schedule 3 to the Law (which confers privileges and immunities on the official staff and family of representatives) does not apply, except in relation to alternates, advisers, technical experts and the secretaries of delegations.

Regulation 6 sets out the privileges and immunities of the high officers of the Organization, namely the Director-General, any Deputy Director-General or Assistant Director-General and any official acting on behalf of the Director-General during his or her absence from duty. The privileges and immunities apply only to the extent that they have not been waived by the Organization. A person who is a British citizen or a resident of Jersey or the United Kingdom enjoys the privileges and immunities only in respect of official acts performed as part of their functions. The Regulation also provides that Part 4 of Schedule 3 to the Law (which confers privileges and immunities on the family of high officers) does not apply apart from to spouses, civil partners and minor children of high officers.

Regulation 7 set out the privileges and immunities of other officials of the Organization (apart from those recruited locally and paid hourly). The privileges and immunities apply only to the extent that they have not been waived by the Organization.

Part 4 contains final provisions. *Regulation 8* sets out the title of the Regulations and that they come into force 7 days after they are made.



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DRAFT WORLD TRADE ORGANIZATION (PRIVILEGES AND IMMUNITIES) (JERSEY) REGULATIONS 202-

Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES make these Regulations under Article 12 of the [Privileges and Immunities \(Diplomatic, Consular, etc.\) \(Jersey\) Law 1998](#) –

PART 1

GENERAL

1 Interpretation

In these Regulations –

“British citizen” means a British citizen, a British overseas territories citizen, a British Overseas citizen, or a British National (Overseas) within the meaning of the British Nationality Act 1981 of the United Kingdom;

“Law” means the [Privileges and Immunities \(Diplomatic, Consular, etc.\) \(Jersey\) Law 1998](#);

“Member” means a member of the Organization;

“Minister” means the Minister for Treasury and Resources;

“Organization” means the World Trade Organization established by the Agreement Establishing the World Trade Organization done at Marrakesh on 15th April 1994;

“representatives of Members” means representatives, alternates, advisers, technical experts and secretaries of delegations of Members.

PART 2

THE ORGANIZATION

2 Organization is one to which Article 12 of the Law applies

Article 12 applies to the Organization.

3 Legal capacities of the Organization

The Organization has the legal capacities of a body corporate.

4 Privileges and Immunities of the Organization

The Organization has –

- (a) except in so far as in any particular case it has expressly waived its immunity, immunity from suit and legal process; but no waiver of immunity is deemed to extend to any measure of execution;
- (b) the like inviolability of official archives and premises as in accordance with the 1961 Convention Articles is accorded in respect of the official archives and premises of a diplomatic mission;
- (c) exemption or relief from taxes, other duties (whether of customs or excise) and taxes on the importation of goods;
- (d) the like relief from rates as in accordance with Article 23 of the 1961 Convention Articles is accorded in respect of the premises of a diplomatic mission;
- (e) exemption from customs duties and taxes on the importation of goods imported by or on behalf of the Organization for its official use in Jersey, or on the importation of any publications of the Organization imported by it or on its behalf, such exemption to be subject to compliance with such conditions as the Minister for Treasury and Resources may prescribe for the protection of the Revenue;
- (f) exemption from prohibitions and restrictions on importation or exportation in the case of goods imported or exported by the Organization for its official use and in the case of any publications of the Organization imported or exported by it;
- (g) relief, under arrangements made either by the Minister for Treasury and Resources or by the Agent of the Impôts, by way of refund of customs duty paid on any hydrocarbon oils (within the meaning of the [Customs and Excise \(Jersey\) Law 1999](#)) which are bought in Jersey and used for the official purposes of the Organization, such relief to be subject to compliance with such conditions as may be imposed in accordance with the arrangements.

PART 3

REPRESENTATIVES, HIGH OFFICERS AND OTHER OFFICIALS

5 Privileges and immunities of representatives of Members

- (1) Except in so far as in any particular case, any privilege or immunity is waived by the Member which they represent, representatives of Members at the meetings of the Organization have –
 - (a) the like immunity from suit and legal process, the like inviolability of residence, and the like exemption or relief from taxes and rates,

- other than customs duties and taxes on the importation of goods, as are accorded to or in respect of the head of a diplomatic mission;
- (b) the like exemption and privileges in respect of the personal baggage of the representative as in accordance with paragraph 2 of Article 36 of the 1961 Convention Articles are accorded to a diplomatic agent, as if in that paragraph the reference to paragraph 1 of that Article were a reference to sub-paragraph (a) of this paragraph.
- (2) Paragraph (1) does not confer any privilege or immunity on any person as the representative of Jersey or the United Kingdom or as a member of the official staff of such a representative or on any person who is a British citizen.
 - (3) Part 4 of Schedule 3 to the Law does not operate so as to confer any privilege or immunity on –
 - (a) the official staff of a representative other than alternates, advisers, technical experts and secretaries of delegations; or
 - (b) the family of a representative or of a member of the official staff of a representative.

6 Privileges and immunities of High Officers

- (1) Except in so far as in any particular case any privilege or immunity is waived by or on behalf of the Organization, and subject to the provisions of paragraph (2) of this Regulation, the Director-General, any Deputy Director-General of the Organization or Assistant Director-General and any official acting on behalf of the Director-General during his or her absence from duty, have –
 - (a) the like immunity from suit and legal process, the like inviolability of residence, and the like exemption or relief from taxes and rates, other than customs duties and taxes on the importation of goods, as are accorded to or in respect of the head of a diplomatic mission;
 - (b) the like exemption or relief from being liable to pay anything in respect of parish rates, as is accorded to or in respect of the head of a diplomatic mission;
 - (c) the like exemption from duties (whether of customs or excise) and taxes on the importation of articles imported for the personal use of the officer or of members of his or her family forming part of his or her household, including articles intended for his or her establishment, as in accordance with paragraph 1 of Article 36 of the 1961 Convention Articles is accorded to a diplomatic agent;
 - (d) the like exemption and privileges in respect of the personal baggage of the representative or officer as in accordance with paragraph 2 of Article 36 of the 1961 Convention Articles are accorded to a diplomatic agent as if in that paragraph the reference to paragraph 1 of that Article were a reference to sub-paragraph (c) of this paragraph;
 - (e) relief, under arrangements made either by the Minister for Treasury and Resources or by the Agent of the Impôts, by way of refund of customs duty paid on any hydrocarbon oils (within the meaning of the [Customs and Excise \(Jersey\) Law 1999](#)) which are bought in

Jersey by or on behalf of the representative or officer, such relief to be subject to compliance with such conditions as may be imposed in accordance with the arrangements;

- (f) exemptions whereby, for the purposes of the [Social Security \(Jersey\) Law 1974](#) –
- (i) services rendered for the Organization by the officer are deemed to be excepted from any class of employment which is insurable employment, or in respect of which contributions are required to be paid, but
 - (ii) no person is rendered liable to pay any contribution which he would not be required to pay if those services were not deemed to be so excepted.
- (2) A person who falls within paragraph (1) who is a British citizen or who is a permanent resident of Jersey or the United Kingdom enjoys immunity from jurisdiction, and inviolability, only in respect of official acts performed in the exercise of his or her functions.
- (3) Part 4 of Schedule 3 of the Law does not operate so as to confer any privilege or immunity on any member of the family of any officer to whom this Regulation applies other than his or her spouse or civil partner and minor children.

7 Other officials

Except in so far as in any particular case any privilege or immunity is waived by or on behalf of the Organization, officials of the Organization who do not fall within Regulation 6 (other than those who are locally recruited and assigned to hourly rates of pay) enjoy –

- (a) immunity from suit and legal process in respect of things done or omitted to be done in the course of the performance of official duties;
- (b) exemption from income tax in respect of emoluments received as an officer or servant of the Organization;
- (c) the like exemption from duties (whether of customs or excise) and taxes on the importation of articles which –
 - (i) at or about the time when an official first enters Jersey as such an official, are imported for his or her personal use or that of members of his or her family forming part of his or her household, including articles intended for his or her establishment, and
 - (ii) are articles which were in the official's ownership or possession or that of such a member of his or her family, or which he or she, or such a member of his family, was under contract to purchase, immediately before he so entered Jersey,and the like privilege as to the importation of such articles as in accordance with paragraph 1 of Article 36 of the 1961 Convention Articles is accorded to a diplomatic agent.

PART 4

FINAL PROVISIONS

8 Citation and commencement

These Regulations may be cited as the World Trade Organization (Privileges and Immunities) (Jersey) Regulations 202- and come into force 7 days after they are made.