

## **APPENDIX TO BILLET ITEM 1**

### **STATES OF DELIBERATION of the ISLAND OF GUERNSEY**

#### **POLICY & RESOURCES COMMITTEE**

#### **THE BAILIWICK'S PARTICIPATION IN THE UK-EU TRADE AND COOPERATION AGREEMENT**

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

24<sup>th</sup> December, 2020

Dear Sir

#### **1. Executive Summary**

##### **Headline summary**

- 1.1 On the afternoon of 24<sup>th</sup> December 2020, the UK Government and the European Parliament announced that an agreement in principle had been reached on a future relationship with the European Union ('EU'), for trade, security and other cooperation. This will be known as the Trade and Cooperation Agreement (the TCA).
- 1.2 During these negotiations the Policy & Resources Committee ('the Committee') has worked clearly, decisively and robustly to represent the Bailiwick's interests, so that in turn the United Kingdom ('UK') can seek an agreement with the EU on its behalf that meets its economic needs within the TCA. The Committee has worked closely with the States of Deliberation's Principal Committees as well as Alderney and Sark during these negotiations.
- 1.3 Following the outcome of the negotiations, which are summarised in this Policy Letter, the Committee recommends that the Bailiwick agrees to participation in the new UK-EU relationship, insofar as it will apply to the Bailiwick, in particular in respect of fisheries and the trade in goods. The treaty text for this agreement is still being finalised. However, in order to protect the constitutional relationship with the UK and provide a clear decision to the UK, it is necessary to make a decision on the principles of this agreement. This will help inform the finalising of the agreement and its subsequent ratification by the UK Parliament. In the meantime, the Committee will continue to work

closely with the UK Government to ensure the treaty text meets the Bailiwick's negotiating principles and suits the Bailiwick's needs.

- 1.4 **The UK and EU negotiations have now concluded and it is no longer possible to make any changes to the arrangement that is on offer. This means the States of Deliberation is being asked to make an important decision, one that marks a milestone in our history. While this is an important decision, it is also a binary decision. The Committee recommends that Guernsey, and the wider Bailiwick accept the terms of the TCA and asks the UK Parliament to ratify it on our behalf without consent.**
- 1.5 **Having worked closely on the negotiations, in particular over the intensive period in the last few weeks, the Committee is firmly that the agreement on offer by the EU is the best the Bailiwick could have hoped for.**
- 1.6 The Committee also takes this opportunity to mark its appreciation of the support from the States of Deliberation and Bailiwick civil servants as well as officials from Task Force Europe at Number 10, the Cabinet Office and the Ministry of Justice. This outcome is the result of many years of work and an intensive 10 months of negotiations with the additional challenges of the Covid-19 pandemic.
- 1.7 The arrangements outlined in the Policy Letter meet the Bailiwick's economic needs, replacing as far as possible the Protocol 3 relationship; and providing the basis for a stable and predictable relationship on fishing for both the Bailiwick's fishing industry and those in neighbouring regions.
- 1.8 There will be much work to meet the deadline for implementation including making relevant legislation before 31 December 2020. There will be further policy work to undertake during the course of 2021 and onwards. For instance, establishing a new border model for Sanitary and Phytosanitary ('SPS') checks before July 2021 and the progression of agri-foods policy and practices are key priorities.
- 1.9 If the States approve these Propositions, the Committee looks forward to developing the partnership with the UK and the EU as the Bailiwick moves forward to embrace this new economic relationship.

#### **Policy Letter summary**

- 1.10 In June 2016, in a referendum held in the UK on membership of the European Union EU, the majority of participants voted in favour of the UK leaving the EU. Consequently, the then Prime Minister of the UK notified the European Council

in March 2017 of the UK's intention to leave the EU<sup>1</sup>, in accordance with Article 50 of the Treaty on European Union ('TEU')<sup>2</sup>. After UK-EU negotiations, the Withdrawal Agreement<sup>3</sup> and Political Declaration were concluded and the UK left the EU ('Brexit') at 11pm on 31<sup>st</sup> January, 2020. Since then, the UK has been in a transition period, which is due to expire at 11pm on 31<sup>st</sup> December, 2020.

- 1.11 The Bailiwick of Guernsey (the 'Bailiwick') was not part of the EU; instead, it had a limited relationship with the EU – through the UK – governed by Protocol 3 to the UK's Act of Accession. When the UK ceased to be a Member State of the EU, the Bailiwick's Protocol 3 relationship with the EU also ended, subject to the terms of the UK-EU Withdrawal Agreement. For the duration of the transition period it has been as if Protocol 3 still applied, which has enabled the Bailiwick's relationships with the EU in respect of trade in goods and movement of people to continue uninterrupted.
- 1.12 Although the Bailiwick did not participate in the UK's referendum in June 2016, it has sought to engage with the challenges presented and ensure the needs and interests of the Bailiwick are fully represented by the UK Government during the negotiations, even where these differ to the UK's.
- 1.13 This Policy Letter is to:
  - update the islands' parliaments on developments relevant to the Bailiwick which have taken place since the UK left the EU on 31<sup>st</sup> January, 2020, particularly in regard to participation in the negotiations on the future UK-EU relationship;
  - ask the islands' parliaments to agree that each island (and the Bailiwick as whole) will participate to the appropriate extent in the UK/EU future relationship agreement (the TCA, in the form reached following the end of negotiations);
  - seek approval of the proposed next steps; and
  - seek authority enabling the Policy & Resources Committee, on behalf of all three Bailiwick governments, to agree and approve any necessary agreements or arrangements relating to the future relationship of the UK with the EU and/or as a result of the extension of the UK's WTO membership to the Bailiwick (the intention being that wherever possible the Committee will consult with both Alderney and Sark); and
  - direct the preparation of any necessary legislation.

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<sup>1</sup> [Letter to Donald Tusk, President of the European Council, triggering Article 50 \(29<sup>th</sup> March, 2017\)](#)

<sup>2</sup> [Text of Article 50 of the Treaty on European Union](#)

<sup>3</sup> The UK's [European Union \(Withdrawal Agreement\) Act 2020](#) was given Royal Assent on 23<sup>rd</sup> January, 2020.

- 1.14 This Policy Letter also includes information on the work undertaken within the Bailiwick to plan for the end of the transition period, as well as the additional risks arising from a 'no further negotiation outcome' ('NFNO') in order to manage and mitigate the impacts should an agreement not be reached, either for the UK or for the Bailiwick.
- 1.15 The three islands of the Bailiwick, through their parliaments or Committees, have been engaged in developing the Bailiwick's response to the UK's exit from the EU and participation in the UK's negotiations on the future UK-EU relationship.
- 1.16 Throughout the progress of the negotiations, the politicians and officers representing Guernsey and the Bailiwick have worked to the principles set out in Section 4 of Billet d'État II of 2020 ('the January 2020 Policy Letter')<sup>4</sup> that any Bailiwick involvement in an agreement for the UK-EU future relationship will:
- in its extension to and application in the Bailiwick, be relevant, proportionate and practical; and,
  - in its entirety, respect the Bailiwick's domestic autonomy and constitutional relationship with the Crown.
- 1.17 The UK has provided repeated written and verbal Ministerial and officer-level assurances, including from the current and former Prime Ministers, that the UK Government understands and respects the Bailiwick's centuries-old constitutional relationships with the Crown (Appendix 1) and that it would represent the Bailiwick's interests in the UK-EU negotiations.
- 1.18 As the transition period ends on 31<sup>st</sup> December, 2020, and as the UK Parliament is due to ratify the treaty before then, the Bailiwick's parliaments are being asked to make decisions on the principles of the UK/EU agreement as it would apply to the Bailiwick, rather than on the text of the agreement itself. There are a number of reasons for this, principally:
- The content and timing of this Policy Letter and the corresponding parliamentary debates within the Bailiwick have been affected by the timing and nature of decisions and actions by the UK's government as well as by the EU. As an agreement was only announced in principle on 24<sup>th</sup> December, 2020), the treaty text for the UK-EU future relationship agreement has not been finalised at the time of writing this Policy Letter.

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<sup>4</sup> [Billet d'État II of 2020](#) – 'The Withdrawal Agreement between the United Kingdom and European Union – Implications for the Bailiwick of Guernsey' and [Resolutions](#)

- It might seem prudent for the Bailiwick to wait until the treaty text has been finalised. However, the UK Government is due to ratify the agreement next week and has advised that when it recommends to the UK Parliament that a treaty be accepted/ratified it needs to be sure that all parts of the British family which are in scope of the treaty have decided whether to consent to be bound by the relevant provisions and, if they have consented, can comply with the obligations within that treaty. Doing so would overstep constitutional boundaries. Furthermore, if the Bailiwick decided not to seek the extension of the agreement, but the UK government approved the text of the agreement that included the Bailiwick in the territorial extent would breach existing constitutional boundaries. Avoiding such a situation is a priority for the UK Government and the Bailiwick generally, and for this particular important and high profile matter.

1.19 The principles which the Bailiwick's parliaments are being asked to make decisions about are as follows:

#### Goods relationship

1.20 Participate in the UK-EU future relationship agreement (TCA) to the extent necessary to facilitate the trade in goods only, on a chapter by chapter basis. This will enable the Bailiwick to benefit from reciprocal market access with EU markets with 'zero tariffs, zero quotas'. Participation will also reduce potential disruption for the trade in goods between the Bailiwick and the EU.

1.21 The relevant chapters relate to the trade in goods, customs and rules of origin matters (further information on the chapters and annexes is set out in section 3). The aims and purposes of those chapters are as follows:

- Chapter 1 – National Treatment and Market Access for Goods (including trade remedies): To facilitate trade in goods between the UK and the EU and to maintain liberalised trade in accordance with the provisions of the agreement.
- Chapter 2 – Rules of Origin: To lay down the provisions for determining the origin of goods for the purpose of the application of the preferential tariff treatment under the TCA.
- Chapter 3 – Sanitary and Phytosanitary ('SPS') Measures: To set out the measures that are required to ensure human, animal and plant health is protected by the individual parties while facilitating the trade and movement of agri-foods between them. This chapter includes an Annex setting out related process matters.
- Chapter 4 – Technical Barriers to Trade ('TBT'): To facilitate trade in goods by preventing, identifying and eliminating unnecessary TBTs. This

chapter includes associated Annexes. These Annexes are either relevant to current trade in goods, or areas of potential future economic opportunity and industry development. The annexes are an integral part of the chapter:

- Annex on Chemicals: To facilitate the trade of chemicals and related products, ensure high levels of protection for the environment, and human and animal health, and provide for cooperation between the UK (and the Bailiwick) and the EU responsible authorities.
- Annex on Organic Products: To set out the provisions and procedures for fostering trade in organic products in accordance with the principles of non-discrimination and reciprocity. It means recognition of equivalence by the UK (and the Bailiwick) and the EU of their respective laws.
- Annex on Motor Vehicles and Equipment and Parts thereof: To apply to trade between the UK (and the Bailiwick) and the EU of all categories of motor vehicles, equipment and parts thereof.
- Annex on Trade in Wine: To ensure that science relating to wine making, referred to as oenological practices, complies with the international standards published by the International Organisation of the Vine and Wine ('OIV').
- Annex on Medicinal Products: To apply provisions relating to the marketing of finished medicinal products for human or veterinary use, as well as intermediates, including biological products for human and veterinary use and active pharmaceutical ingredients ('API').
- Chapter 5 – Customs and Trade Facilitation: To ensure that there is compatible and effective administrative and enforcement customs procedures in place to facilitate trade whilst ensuring there is proper protection, safety and security processes in place to protect citizens, and national prohibitions and restrictions and financial interests of both the UK and the EU. (Note: the Bailiwick is not included in any aspects relating to maintaining an Authorised Economic Operators ('AEO') partnership programme, either within this Chapter or in the Annex on AEOs)
  - Protocol on Mutual Administrative Assistance in Customs Matters: To formalise and support the mutual assistance between customs authorities as agreed within the Chapter on customs and trade facilitation.

### **Fisheries relationship**

- 1.22 If the Bailiwick wishes to participate in the TCA in respect of goods, it must make a commitment to the EU on fisheries access. The terms of the agreement on fishing will also cover the Bailiwick's fisheries interests in terms of access to

waters, landing in ports, management and licensing. The agreement provides for:

- Bailiwick vessels to be able to fish in the Exclusive Economic Zones ('EEZ') of EU Member States on the same terms as UK vessels. This includes the French EEZ which is adjacent to Bailiwick waters.
- Access to the Bailiwick's territorial waters for EU vessels based on a 'pool' of a fixed level of effort which EU vessels could seek a licence to fish against. The level of effort is defined using a track record period of 10 days in any of the three 12 month periods ending on 31<sup>st</sup> January on or between 1<sup>st</sup> February, 2017 and 31<sup>st</sup> January, 2020.
- Vessels landing fresh fishery products caught in the Bailiwick's territorial seas to have between a three and five hour prior notification period for landings.
- Recognition of Bailiwick responsibility for the management of its territorial seas and for authorising vessels to fish in its waters by way of licence or otherwise.
- Governance, Dispute Resolution Mechanism and termination provisions.
  - A specialised committee/s to discuss the implementation of the agreement
  - A dispute resolution mechanism, which is reciprocal, that provides for suspension on access arrangements; application of tariffs on fisheries products and finally application of tariffs on all goods. There is a provision for arbitration of any dispute by an independent panel.
  - There is a 'sunset clause' or cooling off periods which can be activated at any stage in the first 90 days, to take effect within 30 days. Thus can be activated unilaterally by Guernsey or the EU.
  - There are general provisions which would allow amendment by mutual consent of the UK and the EU. This would require the consent of the Bailiwick in respect of any changes that would affect the Bailiwick's interests in the TCA.

### **Side declarations**

- 1.23 The TCA includes a political commitment entitled: "A declaration in respect of the Bailiwick of Guernsey and the Bailiwick of Jersey on cooperation with the European Union on the recovery of claims related to VAT, customs duties and excise duties". Essentially, it seeks to create a relationship with the EU about tax information exchange and administrative assistance regarding certain indirect taxes and ensures that this arrangement is consistent with the Bailiwick's fiscal autonomy.

- 1.24 The UK and the EU have agreed a 'Joint Political Declaration on the Countering of Harmful Tax Regimes which includes a commitment that the Parties will encourage the application of its principles in the territories for which they have special responsibilities or taxation prerogatives'.
- 1.25 This Declaration is a non-legally binding political commitment for the UK. Guernsey already meets the Organisation for Economic Co-operation and Development ('OECD') and EU Code of Conduct standards on fair taxation and tax cooperation which are referred to or inferred in the political declaration.
- 1.26 The TCA does not cover the provision of services with the EU in respect of the Bailiwick. The Bailiwick has always operated through third country arrangements with regard to trade in services with the EU. This 'third country' status does not depend on the UK's membership of the EU and will also not be directly affected by the UK's departure from the EU.
- 1.27 The agreement does not cover the movement of people for the UK or the Bailiwick, save in respect of the short term cross border supply of services. The Common Travel Area pre-dates the UK's membership of the EU and so is not directly affected by the UK's departure from the EU. The Bailiwick's future immigration policy from 1<sup>st</sup> January, 2021, has been agreed and is relevant to the needs of the islands.

## **2. Background**

- 2.1 For detailed information on the background to and progress of the negotiations, see Appendix 2.

## **3. Final outcome of negotiations between the UK and EU**

- 3.1 Having started in March 2020, the end of the negotiations was announced on 24<sup>th</sup> December, 2020. The TCA includes elements about goods and fisheries access. There are various side agreements, including those relating to aviation and road transport (haulage).

### **The goods-related aspects the TCA - application to the Bailiwick of Guernsey**

#### **Background**

- 3.2 In respect of the goods relationship, the Bailiwick agreed the, "need to maintain the free trade in goods with the EU hitherto provided under Protocol 3", as set



out in the June 2016 Policy Letter<sup>5</sup>. This was intended to ensure that the Bailiwick would be in no worse a position with respect to trade in goods compared to the UK.

- 3.3 Under Protocol 3, the EU rules on customs matters and quantitative restrictions applied to the Bailiwick under the same conditions as they applied to the United Kingdom. In the application of Protocol 3, the Bailiwick was treated as being part of the UK Member State and, therefore, as part of the EU Customs Union. It also provided the basis for alignment in regulatory standards for trade in agri-food products. It is not possible to recreate Protocol 3 through the participation in a UK-EU trade agreement, or, indeed, through any other trade agreement with new trading partners. This is because Protocol 3 directly governed the Bailiwick's relationship with the EU (including the EU's external-facing Common Commercial Policy<sup>6</sup>). With the end of Protocol 3, a new approach to the Bailiwick's inclusion in Free Trade Agreements ('FTAs') will need to be found – one that adheres to the principles of relevance, proportionality and practicality, whilst respecting the Bailiwick's autonomy. In terms of the UK-EU negotiations, this meant seeking to recreate (at least) a customs and goods-based relationship.
- 3.4 The Customs Arrangement negotiated with the UK in 2018 is a customs union<sup>7</sup> as defined by the WTO. This British Islands Customs Union provides one basis on which the Bailiwick could partake in future UK - Rest of World FTAs. The Bailiwick can also take part in any UK FTA as a territory for whose international relations the UK is responsible.
- 3.5 This provides some flexibility meaning the Bailiwick is not obliged to join all FTAs that the UK enters into; however, as part of the British Islands' Customs Union, it is bound to apply any preferential tariffs to goods imported under all UK FTAs. The Bailiwick is able to ensure its interests are served by participation in such international agreements that best suit the Islands' economic needs, without undermining the Customs Arrangement.
- 3.6 In preparation for the end of Protocol 3, consideration was given to a number of options, including how the EU manages its relationships with the European Microstates, which have various customs relationships with the EU. Monaco has a customs relationship with France and, through that, has access to EU FTAs. San Marino and Andorra both have a customs agreement with the EU, which also covers certain regulatory standards. The latter two Microstates

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<sup>5</sup> Section 3.1: [Managing the implications for Guernsey because of the UK's changing relationship with the EU - June 2016](#)

<sup>6</sup> [EU Common Commercial Policy](#)

<sup>7</sup> The WTO defines a customs union as 'the substitution of a single customs territory for two or more customs territories'.

apply the EU Common External Tariff. Through their current relationships with the EU, these Microstates (which are sovereign States) can take part in EU FTAs in a limited manner. Monaco takes part through the territorial scope of the agreement because it is part of the customs territory of the EU (as defined in the EU Treaties). San Marino and Andorra, however, benefit from joint declarations that have the effect of applying preferential tariffs agreed under the FTA (and the rules for determining eligibility for such preferential rates) directly between each of those Microstates and the EU's trading partner. While this provides a simple application of a FTA, the Microstates differ constitutionally and economically from the Bailiwick. The relationship between the Microstates and the EU does not provide an analogue for the constitutional and economic relationship between the Bailiwick and the UK.

#### The new goods relationship

- 3.7 The negotiated position is for the Bailiwick to participate in the FTA through a 'chapter by chapter' approach, which is the basis of the new goods relationship. The goods-related chapters of the TCA and are summarised below. They relate to the general principles for the trade in goods, customs and rules of origin matters as well as the rules relating to setting or recognising certain regulatory standards. This approach broadly reproduces the extent (but not the legal effect) of the Protocol 3 relationship; it has been achieved in a way that respects the Bailiwick's domestic autonomy; and, it provides for the Bailiwick to be treated as part of the UK customs territory, thus producing goods of 'UK origin'.

#### *Chapter 1 – National Treatment and Market Access for Goods (including Trade Remedies)*

- 3.8 The aim and purpose of this Chapter is to facilitate trade in goods between the UK and EU and to maintain liberalised trade in accordance with the provisions of the agreement.
- 3.9 The Chapter places obligations on the parties which ensure that both the UK and EU treat goods originating from the other party in the same way and that duties or other discriminatory measures which could be applied at the border and in practice could prohibit or restrict the movement of all types of goods, such as imports and exports, manufactured, remanufactured and repaired goods. This Chapter ensures that the UK and the EU will treat goods properly imported from either party as if they had been produced domestically.
- 3.10 The Chapter also ensures that both parties apply the relevant customs measures and any measures, or tariffs, which are applicable to goods movements from outside of the UK or EU, are treated in accordance with the

obligations as set out within the WTO General Agreement on Tariffs and Trade (GATT 1994)<sup>8</sup>.

- 3.11 Included within the Chapter is a requirement for the Parties to ensure that there is cooperation in facilitating the return of cultural property which is enshrined within the UNESCO Convention. The Bailiwick already ensures that it meets international standards and restrictions are already applied at the Bailiwick's borders. The Guernsey Border Agency ('GBA') will cooperate with other customs authorities in any circumstances which arise involving the illicit movement of cultural goods.

#### *Chapter 2 – Rules of Origin*

- 3.12 The aim and purpose of this Chapter is to lay down the provisions for determining the origin of goods for the purpose of the application of the preferential tariff treatment under the TCA. In practical terms, these rules determine the economic nationality of any goods produced and ensures that the appropriate preferential tariff is applied to those goods that are eligible for it.
- 3.13 The Chapter also specifies the rules relating to the 'cumulation of origin', which is when different goods are combined, processed or transformed into a new product. An example is in vehicle production, where a fully manufactured vehicle will contain multiple goods (parts) which may have been produced in many other countries but the final product is deemed as originating in the country of assembly if rules of origin requirements are met.
- 3.14 It is important that the Bailiwick is included alongside the UK for these cumulation rules because there are various manufacturers in the Bailiwick which produce components for goods that complete production or are combined with other goods in the UK, such as electronics, machinery and pharmaceutical devices. These goods may then be exported to the EU or the rest of the world. Ensuring cumulation between the UK and the Bailiwick aspects of production is key to achieving preferential tariff rates under FTAs and protecting the competitiveness of UK-Bailiwick supply chains in this regard.

#### *Chapter 3 – Sanitary and Phytosanitary Measures*

- 3.15 The aim and purpose of this Chapter relates to the measures that are required to ensure human, animal and plant health is protected by the individual Parties while facilitating the trade and movement of agri-foods or SPS products between them.

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<sup>8</sup> WTO - [General Agreement on Tariffs and Trade \(GATT 1994\)](#)

- 3.16 The Bailiwick already applies and enforces import and export controls of such products at the islands' borders. Ensuring that the Bailiwick is recognised as compliant with the international standards defined within this Chapter is important to maintain the Bailiwick's trading relationship with the EU.
- 3.17 The Chapter requires that when parties do apply domestic SPS measures that these are adopted in accordance with international standards and are not aimed at distorting or restricting trade. For example, in respect of animal health and welfare controls, the baseline for any definitions and references to any controls implemented in either the UK or EU, would be the World Organisation for Animal Health, often referred to as Office International des Epizooties ('OIE'), standards.
- 3.18 As far as the Bailiwick is concerned, this Chapter is in essence one of the components which allows the continuation of trade in SPS goods between the Bailiwick and the EU. The Bailiwick would adhere to, and be recognised as meeting, international obligations. Any required controls will be considered and applied appropriately by the Bailiwick authorities. Therefore, the islands maintain autonomy of the controls placed at their external borders. This Chapter will also link into, and not conflict with, any ongoing and future work to establish an agreement with the UK Government for the trade and movement of SPS products between the Channel Islands and the UK.
- 3.19 In many cases, the Bailiwick applies more stringent rules (than those in the SPS Chapter), or at least equivalent controls, at the Bailiwick's borders which are aimed at protecting the Bailiwick from specific environmental, human, animal or plant health concerns. Complying with this Chapter will not restrict any of the Bailiwick islands from applying more restrictive measures than those required by the Chapter itself, if such measures are deemed necessary. Such further measures must not be an unjustified barrier to trade, must be open and transparent, and must not be applied in a discriminatory manner. Otherwise those further measures could conflict with the obligations relating to National Treatment and Market Access for Goods.
- 3.20 Inclusion within the SPS Chapter and SPS Annex does not provide guaranteed access to the EU for any SPS products exported from the Bailiwick into the EU as there are many other border and post-border controls which the EU may apply (including third country listing, depending on the type of goods).
- 3.21 However, inclusion in this Chapter will provide consistent terms for Bailiwick producers and will ensure that the Bailiwick is recognised by the EU as being well-regulated and compliant because any controls relating domestically to high-risk SPS goods are applied consistently in accordance with the TCA.

- 3.22 The SPS Chapter contains an integral SPS Annex, which focuses on criteria to be used by the Importing Party for Determining the Frequency of Identity and Physical Checks.
- 3.23 The aim and purpose of this Annex is to define specific arrangements between the parties on information sharing between the UK and the EU about importing and exporting SPS goods. There are high risks associated with the movements of SPS goods. This Annex specifies that information be made available by the exporting party (i.e., country) so that it can obtain authorisation from the importing party.
- 3.24 This Annex also requires both parties to share information relating to audits, frequency and severity of non-compliance detected, the past records of exporters and any scientific assessments or other pertinent information regarding the risk associated with the products.
- 3.25 Inclusion in this Annex will provide consistent terms for existing producers and will ensure that the Bailiwick remains an attractive, well-regulated and stable place for businesses to be located and remain competitive within UK and EU supply chains.

#### *Chapter 4 – Technical Barriers to Trade*

- 3.26 The aim and purpose of this Chapter is to facilitate trade in goods by preventing, identifying and eliminating unnecessary TBTs.
- 3.27 The Chapter applies to the preparation, adoption and application of all standards, technical regulations and conformity assessment procedures which may affect trade in goods between the parties. The Bailiwick's inclusion within this Chapter is important as it ensures that any goods produced in the islands are recognised and afforded protection from any unnecessary technical barriers being applied to them when they are exported from the Bailiwick into the EU. The Bailiwick is already committed to the WTO TBT Agreement<sup>9</sup> and this TCA Chapter incorporates part of that agreement. Consequently, a dispute between the UK (which, for this purpose, would also include the Bailiwick) and the EU would be resolved through the dispute resolution mechanism under the TCA (rather than the WTO's dispute resolution mechanism).
- 3.28 In all cases, goods produced within the islands (such as electronics, machinery and pharmaceutical devices) already meet the technical regulations and conformity assessment procedures of the jurisdiction they are being imported

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<sup>9</sup> As in Section 8 of [Billet d'État IV of 2019](#) – 'Extending the United Kingdom's Membership of the World Trade Organization'

globally, as this obligation falls to the importer. Bailiwick manufacturers already ensure that their products conform with health, safety, and environmental protection standards which are required for those products to be marketed and sold. Those products are marked with British Standards or CE markings to indicate conformity with those relevant standards.

- 3.29 Consideration is being given as to how to legislate (for instance via trading standards legislation), implement and resource the Bailiwick's internal market surveillance processes on non-food product safety, and the relevant pre-export conformity standards, in order to comply with the requirements of the Chapter).
- 3.30 The Bailiwick's inclusion in the TBT Chapter and the TBT Annexes does not guarantee access for Bailiwick goods to the EU for any of the manufactured products covered by the Chapter or Annexes. There are other border and market surveillance controls which the EU might apply depending on the good concerned.
- 3.31 However, inclusion in this Chapter provides consistent terms for Bailiwick producers and will ensure that the Bailiwick continues to be recognised by the EU as a well-regulated jurisdiction adhering to the terms of the TCA whilst at the same time remaining to be an attractive and stable jurisdiction for businesses to establish and be competitive within UK and EU supply chains.

#### *Technical Barriers to Trade Annexes*

- 3.32 Included within the TBT Chapter are five Annexes. The Annexes are not optional for that Chapter.
- 3.33 These Annexes relate to current trade in goods, or areas of potential future economic opportunity and industry development. In some cases, these Annexes may need additional regulatory cooperation by the Bailiwick with the relevant UK competent authorities (e.g. the Medicines and Healthcare products Regulatory Agency ('MHRA') for medicinal products). Any additional regulatory cooperation will need to be relevant, proportionate and practicable for the islands' economies and only applied for goods in which the islands trade.
- 3.34 Due to the differences between the obligations that the Bailiwick had under Protocol 3 and those that it would have if participating in the TBT Chapter and TBT Annexes, some additional regulatory legislation and operationalised domestic product monitoring will be required within the Bailiwick. This includes general measures relating to trading standards. Some measures relate

to an extant States Resolution of 2016<sup>10</sup> and others relate to the need to introduce legislation<sup>11</sup> to provide Trading Standards with powers as a 'market surveillance authority', to demonstrate equivalence of controls.

- 3.35 The States could also explore the introduction of a licensed trader scheme which would include a licence condition to meet the standards of the destination jurisdiction for goods. This would allow the Bailiwick to meet general international obligations (as well as the specific obligations of the TCA) in a way that is proportionate and manageable for the three legislatures of the Bailiwick.
- 3.36 The Annexes are an integral part of the TBT Chapter of the agreement; it is not possible to exclude any or all of the Annexes. The Annexes are forward-looking, and they may bring about greater regulatory requirements in the future as regulatory standards evolve over time in order to continue benefitting from the terms of trade provided by the Annexes. Inclusion in all of the following TBT annexes will provide consistent terms for existing and new businesses and will ensure that the Bailiwick remains an attractive, well-regulated, and stable place for businesses to establish and be competitive within UK and EU supply chains. The five TBT Annexes are detailed below.

#### *Annex on Chemicals*

- 3.37 This Annex applies to the trade, regulation, import and export of chemicals between the UK (and Bailiwick) and the EU in respect of their registration, evaluation, authorisation, restriction, approval, classification, labelling and packaging.
- 3.38 The aim and purpose of the Bailiwick's inclusion within this Annex is to facilitate the trade of chemicals and related products, ensure high levels of protection for the environment, human and animal health and provide for cooperation between the UK (and Bailiwick) and EU responsible authorities.
- 3.39 Inclusion within this Annex will ensure that current and future Bailiwick businesses can continue to export chemical products. Additional legislation will be required in the Bailiwick to ensure that goods can meet the relevant standards and continue to be exported to the EU.

#### *Annex on Organic Products*

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<sup>10</sup> [Billet d'État III of 2016](#) – 'Trading Standards Legislation' and [Resolutions](#)

<sup>11</sup> In line with Chapter III of [Regulation \(EC\) No 765/2008 of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation \(EEC\) No 339/93](#)

- 3.40 The aim and purpose of this Annex is to set out the provisions and procedures for fostering trade in organic products in accordance with the principles of non-discrimination and reciprocity. It means recognition of equivalence by the UK (and Bailiwick) and the EU of their respective laws.
- 3.41 Organic products are generally produced within farming systems that avoid the use of man-made fertilisers, pesticides, growth regulators and livestock feed additives. Irradiation and the use of genetically modified organisms ('GMOs') or products produced from or by GMOs are generally prohibited by organic legislation.
- 3.42 The Bailiwick is already compliant with the requirements of this Annex on Organics to the extent that Protocol 3 applied to regulation and labelling of organic products due to the rollover of EU legislation<sup>12</sup>. Further legislative provisions will be needed before 2021 to comply with the broader coverage of this Annex. Those requirements can be fulfilled under the powers of Brexit legislation.
- 3.43 There are currently no known Bailiwick exporters of organic products. However, inclusion in this Chapter will ensure that the Bailiwick continues to be recognised by the EU as a well-regulated jurisdiction adhering to the terms of the TCA.

*Annex on Motor Vehicles and Equipment and Parts thereof*

- 3.44 The aim and purpose of this Annex is to set out the shared objectives of trade between the UK (and the Bailiwick) and the EU of all categories of motor vehicles, equipment and parts thereof, as defined within the UN Economic Commission for Europe Consolidated Resolution on the Construction of Vehicles<sup>13</sup>.
- 3.45 The Annex ensures that the Parties refrain from introducing or maintaining a domestic technical regulation, marking, or conformity assessment procedure that diverges from the UN regulations or any other Global Technical Regulation ('GTR'). Furthermore, each Party shall ensure the required market surveillance is in place which guarantees that any motor vehicles and equipment and parts thereof, are compliant and covered by a valid UN type-approval certificate.

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<sup>12</sup> The UK has rolled over the [Agreement on Trade in Organic Products between the United Kingdom of Great Britain and Northern Ireland and the Republic of Chile](#), signed on 30<sup>th</sup> January, 2019, which will continue to apply to the Bailiwick in so far as Protocol 3 applied. However, the TCA Annex on Organics is wider than the UK-Chile Organics agreement as the TCA Annex covers the placing on the domestic market of organics products.

<sup>13</sup> [United Nations Economic and Social Council 11 July 2017](#)



#### *Annex on Trade in Wine*

- 3.46 The aim and purpose of this Annex ensures that science relating to wine making, referred to as oenological practices, and complies with the international standards published by the International Organisation of the Vine and Wine ('OIV'). The Parties to this Annex shall authorise the importation and sale for consumption of wines produced in either the UK or EU if they have been made in accordance with the OIV.
- 3.47 The Bailiwick's inclusion in this Annex relates to the production of wine, particularly the certification, labelling and marketing of wines produced in the UK and EU. Inclusion is important as it maintains the previous trading relationship with the EU and it will allow any wine production business which may establish within the Islands to have the ability to trade in any grown wine products in accordance with the OIV throughout the EU. If the Bailiwick elects not to be included within this Annex, market access to the EU for wine products would be limited and based on third country access which will be problematic.
- 3.48 Whilst currently there is no wine production in Guernsey or Alderney, wine has been manufactured in Sark in recent years and inclusion in this Annex will allow Bailiwick businesses to trade in the future with the EU, subject to meeting the compliance requirements.
- 3.49 This Annex does not impact on the general importation of wine products into the islands from the UK or EU, as it relates to the production practices.

#### *Annex on Medicinal Products*

- 3.50 The aim and purpose of this Annex is to apply provisions relating to the marketing of finished medicinal products for human or veterinary use, as well as intermediates, including biological products for human and veterinary use and active pharmaceutical ingredients ('API').
- 3.51 This Annex requires both parties to recognise and adhere to international standards relating to the technical standards, inspection regimes and guidelines used in the production of human and veterinary medicines, intermediates and API.
- 3.52 When medicinal products are manufactured, they are required to be produced and inspected to rigorous standards in accordance with General Manufactured Practice ('GMP') international standards. This Annex requires the UK and EU to exchange information and to mutually recognise certificates of GMP compliance. Any exchange of information and oversight of any medicinal production will be dealt with the relevant competent authority in the UK and EU.

- 3.53 Inclusion in this Annex – and compliance with its terms – would enable Bailiwick businesses to develop and export human, veterinary medicines, intermediates and API to the EU. In previous years, there has been some medicine production in Guernsey. This sector has significant potential, particularly in relation to API production.
- 3.54 Production and export of any human, veterinary medicine, intermediates or API will need the oversight of the UK competent authority which is the MHRA. The States of Deliberation has a wide-reaching memorandum of understanding ('MoU') with the MHRA. Any future production and export of such products would require amendments to that MoU.

#### *Chapter 5 – Customs and Trade Facilitation*

- 3.55 The aim and purpose of this Chapter is to ensure that there is compatible and effective administrative and enforcement customs procedures in place to facilitate trade whilst also ensuring proper protection, safety and security processes in place to protect citizens, and national prohibitions and restrictions and financial interests of both the UK and the EU.
- 3.56 The Chapter reinforces the cooperation between the UK (and the Bailiwick) and EU customs authorities and supports appropriate levels of compatibility of customs legislation.
- 3.57 Whilst there is mutual cooperation between the Parties, the Bailiwick's inclusion within this Chapter will ensure that its customs arrangements are compliant with the TCA. It will not impact on the Bailiwick's future Customs Arrangement with the UK or the Bailiwick's ability to manage its own borders and any future legislation regarding customs procedures.
- 3.58 Any future customs legislation will need to continue to be implemented in a non-discriminatory manner. That legislation will continue to combat fraud, provide safety and security for citizens, whilst continuing to promote legitimate trade.

#### Exclusion from the article regarding Authorised Economic Operators

- 3.59 The negotiated position is that the Bailiwick is excluded from the article about AEOs<sup>14</sup> within this Chapter on Customs and Trade Facilitation. That reservation means that the Bailiwick does not need to maintain an AEO partnership

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<sup>14</sup> Authorised Economic Operator status is an internationally recognised quality mark that shows your business's role in the international supply chain is secure and has customs control procedures that meet UK and EU standards.

programme. The AEO partnership programme is a concept based on Customs-to-Business partnership which was introduced by the World Customs Organisation (WCO)<sup>15</sup>.

- 3.60 The programme allows businesses that frequently export goods to voluntarily meet a range of criteria and work in close cooperation with customs authorities. The businesses concerned would be recognised as safe and secure business partners and fewer physical and document-based controls would be required at the Bailiwick's borders related to security & safety for goods movements.
- 3.61 As at 1<sup>st</sup> June 2018, only 626 UK businesses had been registered by HMRC as an AEO, accounting for only 4% of AEO businesses registered across the EU. Following due consideration, the Committee advised the UK Government that there would be insufficient benefits to the Bailiwick.
- 3.62 Introducing an AEO programme for the Bailiwick would require additional legislation, training of GBA officers and additional resources for implementation. Following consultation, the larger on-island businesses indicated that they would not wish to make use of either a Bailiwick or UK AEO programme. Therefore, it is not considered relevant nor proportionate to implement a Bailiwick AEO partnership programme.
- 3.63 Inclusion in the Customs and Trade Facilitation Chapter ensures compatibility between the Bailiwick's customs authority, the customs authorities within the UK, and the EU. The Bailiwick's inclusion in that Chapter does not include any aspects relating to maintaining an AEO partnership programme (either under the provisions of this Chapter or in the associated Annex on Authorised Economic Operators)).

*The Protocol on Mutual Administrative Assistance in Customs Matters*

- 3.64 The aim and purpose of this Protocol is to formalise and support the mutual assistance between customs authorities as agreed within the Customs and Trade Facilitation Chapter.
- 3.65 The Protocol requires that parties assist each other to ensure the correct application of customs legislation, particularly in regard to preventing illicit trade, investigation, and combating operations which are in breach of legislation.

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<sup>15</sup> [World Customs Organisation](#)

- 3.66 The scope of this Protocol ensures cooperation between the parties in relation to both fiscal and non-fiscal matters. The Guernsey Border Agency is working with HMRC regarding implementing the legislative requirements.
- 3.67 For the Protocol, HMRC is the competent authority across the UK and Crown Dependencies and would respond to such requests on the Bailiwick's behalf. This will require the exchange of information between the UK and the Crown Dependencies. However, most of the procedural obligations set out in the Protocol will be undertaken by HMRC.
- 3.68 The Bailiwick's inclusion within the Protocol supports the cooperation defined in the Customs and Trade Facilitation Chapter. Further discussions will continue between Bailiwick and UK to ensure that the practical elements of the Protocol are implemented ready for any request from the EU (via the UK) for assistance on a relevant customs matter.

Protocol on administrative cooperation and combating fraud in the field of Value Added Tax and on mutual assistance for the recovery of claims relating to taxes and duties. ('VAT Protocol')

- 3.69 Appended to Chapter 5 is a protocol relating to the tax information exchange on Value Added Tax ('VAT') and debt recovery for VAT, excise duties and customs duties. A version of the VAT Protocol was included by the EU in its original proposed legal text. At that time, it included administrative assistance (including exchange of information on request, the spontaneous exchange and automatic exchange of information) for VAT purposes and assistance in the recovery of claims (those claims not being restricted to VAT debts but instead applying to all direct and indirect taxes, including penalties, interest and surcharges).
- 3.70 Whilst the Bailiwick does not raise value-added goods-sales taxes, Bailiwick businesses may attract VAT and/or customs and excise liabilities in the EU. Parts of the VAT elements of this Protocol are not directly relevant for the Bailiwick and the administrative assistance required would be non-reciprocal (i.e. the Bailiwick would be providing assistance, including debt recovery in relation to VAT, but would not be receiving assistance from EU Members States).
- 3.71 This Protocol might have required the Bailiwick's competent authority to be designated as a 'liaison department' by HMRC (the UK competent authority for the purposes of this Protocol). That would have undermined the Bailiwick's fiscal autonomy and its distinct status from the UK for taxation purposes. Guernsey has established a number of tax information exchange and

cooperation agreements under entrustment from the UK<sup>16</sup>; those agreements respect Guernsey as an internationally recognised competent authority for such purposes.

- 3.27 Acceptance of this Protocol as a whole would not correspond with Guernsey's current tax cooperation policy; as the debt recovery provisions are not yet an international standard and are not being considered in the context of a bilateral comprehensive Double Taxation Arrangement ('DTA')<sup>17</sup>. This Protocol also goes beyond the Protocol 3 relationship that the Bailiwick's participation in the TCA is intended to replace/recreate.
- 3.73 The general principle of tax information exchange described in this Protocol is consistent with current policy. Guernsey also agreed to arrangements for administrative assistance in collection of tax debts (including VAT) with the UK as part of the renegotiation of the Guernsey-UK DTA in 2018.
- 3.74 Considering these principles generally, the overall policy objectives of this Protocol are in line with Guernsey's position as a cooperative jurisdiction for taxation (albeit Guernsey's policy is to negotiate debt recovery provisions as part of a comprehensive DTA). In order to provide a solution which could be acceptable for the Bailiwick and addresses the EU's requirement for cooperation (including debt recovery) in respect of the VAT regimes of the EU Member States, the negotiators offered on the Bailiwick's behalf (and with its approval) to make a non-binding political declaration to reach an arrangement with the EU that is consistent with the Bailiwick's fiscal autonomy. It is understood that Jersey intends to make the same commitment. This approach differs from that taken by the Isle of Man because it is part of the UK's VAT regime.
- 3.75 Consequently, there will be a side declaration which states:

"The Bailiwick of Jersey and the Bailiwick of Guernsey, territories for whose international relations the United Kingdom is responsible, shall endeavour to establish arrangements to cooperate with the European Union on the recovery of claims related to VAT, customs duties and excise duties within a reasonable time frame".

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<sup>16</sup> As a result of the fiscal union between Guernsey and Alderney, these agreements also apply to Alderney insofar as the 1948 Agreement applies.

<sup>17</sup> A Double Taxation Arrangement is an official international agreement (generally) between two jurisdictions on how to administer taxation rules when domestic tax laws of two jurisdictions apply simultaneously to a particular issue or taxpayer (see [Guidelines for requesting Mutual Agreement Procedure \("MAP"\) assistance in Guernsey](#), Section 1.1).

- 3.76 If the Bailiwick's parliaments are minded to participate in the TCA, negotiations for such an arrangement between Guernsey and the EU regarding VAT, customs duties and excise duties will commence with the European Commission in 2021, following the ratification of the TCA.

Joint Political Declaration on the Countering of Harmful Tax Regimes

- 3.77 The EU has placed significant weight in the negotiation on seeking a number of commitments from the UK regarding fair competition.
- 3.78 The European Parliament recommendation<sup>18</sup>, adopted in June 2020, includes a reference to tax standards as part of the 'level playing field requirements'. In that regard, the European Parliament:

"Strongly believes that the UK should adhere to the evolving standards on taxation and anti-money laundering legislation and terrorism financing within the EU acquis, as well as worldwide, including tax transparency, the exchange of information on tax matters and anti-tax avoidance measures, in order to ensure a fruitful and trust-based mutual cooperation and should address the respective situations of its Overseas Territories, its Sovereign Base Areas and its Crown Dependencies and their compliance with EU good governance criteria and transparency requirements, particularly on the exchange of tax information, tax transparency, fair taxation, anti-tax avoidance measures and on OECD standards against Base Erosion and Profit Shifting; calls, furthermore, on the EU and the UK to uphold Financial Action Task Force standards; recalls, with regard to Gibraltar, the negotiating directives and the provisions set out in the draft legal text of the EU."

- 3.79 The European Parliament will be responsible for ratifying the TCA on behalf of the EU.
- 3.80 In order to address the EU's request for a commitment on taxation matters, the UK has agreed to make a 'non-binding' political declaration on countering harmful tax regimes ('the Tax Declaration'). The Tax Declaration broadly sets out certain OECD and EU Code of Conduct standards on fair tax competition and tax cooperation. It also provides that both parties will encourage their respective dependent territories to meet these standards. While the Tax Declaration states that a zero tax rate can be a harmful factor, the statement is then qualified by the recognition that the tax regime needs to be assessed as a

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<sup>18</sup> [European Parliament recommendation of 18 June 2020 on the negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland \(2020/2023\(INI\)\)](#)

whole taking into account the factors listed in the declaration. This approach broadly follows that used by the EU Code of Conduct Group on Business Taxation for the criteria applied to third countries for the EU list of non-cooperative jurisdictions.

3.81 The Tax Declaration is intended to provide an assurance to the EU that the Single Market will not be undermined through any perceived unfair tax competition by the UK.

3.82 In addition to the general statement(s), the Tax Declaration contains a specific commitment that:

“The Participants should encourage, within the framework of their constitutional arrangements, the application of these principles in the territories for which they have special responsibilities or taxation prerogatives.”

3.83 Guernsey already follows the OECD and EU Code of Conduct standards on fair taxation and tax cooperation which are referred to or inferred in the political declaration. Guernsey has already been assessed to have developed its tax regime to meet the requirements of the listed factors (most recently with the introduction of Economic Substance Requirements where a company carries on certain relevant activities) by both the EU Code of Conduct Group on Business Taxation and the OECD Forum on Harmful Tax Practices (the most recent assessment being in June 2019).

3.84 The Tax Declaration is not legally binding, but is a political commitment. Therefore, in the event that the TCA with the EU falls away, it is no longer relevant.

### **The fishing-related aspects the TCA - application to the Bailiwick of Guernsey**

#### **Background**

3.85 The Bailiwick’s relationship with the EU under Protocol 3 covered trade in fisheries products but it did not expressly cover wider EU fisheries competencies. The EU established the Common Fisheries Policy (‘CFP’) in 1983. The Bailiwick has a neighbourhood approach considering the close proximity between Bailiwick and EU waters. The Bailiwick manages its fisheries relationship with the UK, through a Fisheries Management Agreement with the UK Government and the Devolved Administrations, agreed in 2012<sup>19</sup>.

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<sup>19</sup> [Billet d'État V of 2012](#) - 'Implementing Fishing Vessel Licensing Controls Within British Fisheries Limits Adjacent to the Bailiwick' and [Resolutions](#)

- 3.86 The Bailiwick has the legal power to license British vessels fishing in Bailiwick waters and applies management measures, such as technical controls, on a non-discriminatory basis. This ensures the waters are managed locally and fished sustainably to suit the specific needs of the region. British vessels, except those from the Bailiwick, need to demonstrate a track record, between 15<sup>th</sup> May, 2007 and 15<sup>th</sup> May, 2010 in order to obtain a Bailiwick fisheries licence. This ensures that the waters are fished by those with a genuine interest to prevent an increase in fishing effort in Bailiwick waters by British boats.
- 3.87 However, French access in Bailiwick waters was previously governed by the LFC. This permitted any French vessel to fish in a specified area of the 6-12nm outer belt off the west coast of the Bailiwick for crab and demersal fish only. This access was based on habitual fishing activity by French vessels in that area between 1<sup>st</sup> January, 1953 and 31<sup>st</sup> December, 1962. The UK denounced the LFC on 2<sup>nd</sup> July, 2017, and the withdrawal took effect on 31<sup>st</sup> January, 2020, when the UK left the EU.
- 3.88 The Bailiwick decided to extend its territorial seas from 3nm to 12nm in early 2019<sup>20</sup> and this took effect on 23<sup>rd</sup> July, 2019<sup>21</sup>. The extension ensured that the Bailiwick could exercise jurisdiction over the wider areas of waters up to 12nm. The extension guarantees that the Bailiwick's sovereignty over the area of sea is recognised internationally and opened up additional options for managing these waters once the UK had left the EU and withdrawn from the LFC.
- 3.89 The UK's withdrawal from the LFC meant that the treaty rights for French vessels to fish in the 6-12nm limits in the Bailiwick ended on 31<sup>st</sup> January, 2020. Whilst the Withdrawal Agreement extended the application of the CFP to the UK during the transition period to ensure that all rights enjoyed by EU vessels in UK waters continued while a future partnership was negotiated, that arrangement did not extend to the Bailiwick. In order to remain aligned during the transition period and so that the situation in Bailiwick waters was not contrary to the intention of the Withdrawal Agreement, the Bailiwick did not

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<sup>20</sup> [Billet d'État II of 2019](#) – 'Extending the Bailiwick of Guernsey's Territorial Seas'. Guernsey decided to extend its territorial seas at a meeting of the States of Deliberation on 1<sup>st</sup> February, 2019. Alderney decided to extend its territorial seas at a meeting of the States of Alderney on 23<sup>rd</sup> May, 2018, and a Policy & Finance Committee meeting of 15<sup>th</sup> January, 2019. Sark decided to extend its territorial seas at a meeting of the Chief Pleas of Sark on 6<sup>th</sup> February, 2019. It was agreed that extension would be sought for the Bailiwick of Guernsey as a whole. It was agreed that the States of Guernsey Policy & Resources Committee would send the formal request to the UK government for the extension of the Bailiwick of Guernsey's territorial seas.

<sup>21</sup> Order in Council ['The Territorial Sea Act 1987 \(Guernsey\) Order 2019'](#) made under the [UK's 'Territorial Sea Act, 1987'](#)



request the repeal of the UK legislation that gave effect to the LFC. This maintained the status quo in terms of French access for a limited period until 31<sup>st</sup> December, 2020. However, because the UK left the EU on 31<sup>st</sup> January, 2020, French vessels became obliged to seek express authorisation for the purposes of EU Regulation 2017/2403 on the sustainable management of external fishing fleets ('the SMEFF Regulation'). This requirement was notified to the States of Deliberation at the end of January 2020 and they responded within two weeks, in consultation with Alderney and Sark, to put in place a time-limited SMEFF regime (until 31<sup>st</sup> December, 2020). This allowed the Committee for Economic Development to issue SMEFF documents to French vessels, which in turn enabled those vessels to get SMEFF authorisation from the EU Commission and the French Government<sup>22</sup>.

- 3.90 The change in regime in the early part of 2020 caused tensions with French fishers in the region. The French fishing industry threatened to blockade ports in Normandy to prevent landings by Bailiwick vessels. The situation was calmed by the quick response from the Bailiwick, which demonstrated the Bailiwick's intent to act in good faith in the negotiations and was well received politically in France, at both regional<sup>23</sup> and national level, including by the French Agriculture Minister and in questions in the National Assembly<sup>24</sup>.

#### UK and EU position on fishing

- 3.91 The Political Declaration agreed between the UK and the EU in October 2019 stated that "within the context of the overall economic partnership the Parties should establish a new fisheries agreement on, inter alia, access to waters and quota shares."<sup>25</sup>
- 3.92 The UK and the EU also agreed to use, "best endeavours to conclude and ratify their new fisheries agreement by 1<sup>st</sup> July, 2020 in order for it to be in place in time to be used for determining fishing opportunities for the first year after the transition period"<sup>26</sup>. This milestone was not achieved.

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<sup>22</sup> There was a delay between the end of application of the LFC (31<sup>st</sup> January, 2020) and the first SMEFF document being issued (7<sup>th</sup> February, 2020) which meant a short break in access arrangements. See [Fishing Authorisations issued by Guernsey](#), issued 7<sup>th</sup> February, 2020.

<sup>23</sup> There was a delay between the end of application of the LFC (31<sup>st</sup> January, 2020) and the first SMEFF document being issued (7<sup>th</sup> February, 2020) which meant a short break in access arrangements.

<sup>24</sup> On 5<sup>th</sup> February, 2020, a French parliamentarian from the department of La Manche, Bertrand Sorre, put a [question to the French Minister of Agriculture](#) regarding fishing in Bailiwick waters from 31<sup>st</sup> January, 2020. The Minister gave a positive assessment of the close work that had taken place between the authorities in France and the Bailiwick to find and swiftly implement a solution.

<sup>25</sup> [Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom](#)

<sup>26</sup> Ibid

- 3.93 It has been clear, throughout the negotiations phase, that fishing has been a critical issue for the EU, and coastal Member States in particular. It has also been one of the most contentious and difficult issues to resolve in the negotiations. The UK and the EU starting positions were very different, leaving a significant gap to bridge to find a mutually acceptable compromise.
- 3.94 The UK has been seeking to assert its place as an independent coastal state as set out in the ‘The Future Relationship with the EU | The UK’s Approach to Negotiations’:
- “The UK is ready to consider an agreement on fisheries that reflects the fact that the UK will be an independent coastal state at the end of 2020. It should provide a framework for our future relationship on matters relating to fisheries with the EU. This would be in line with precedent for EU fisheries agreements with other independent coastal states. Trade in fisheries products should be covered by the CFTA. Overall, the framework agreement on fisheries should provide a clear basis for an on-going relationship with the EU, akin to the EU’s relationship with other coastal states, one that respects the UK’s status as an independent coastal state and the associated rights and obligations that come with this.”<sup>27</sup>
- 3.95 This approach has its foundations in the Conservative Party Manifesto from the December 2019 UK General Election.<sup>28</sup>
- 3.96 In February 2020, the European Council adopted a negotiating mandate that expressly stated that it, “outlines that the future partnership should uphold the existing reciprocal access to waters as well as stable quota shares”<sup>29</sup>. This was translated into a draft legal text published on 18<sup>th</sup> March, 2020<sup>30</sup>.
- 3.97 For the UK-EU future relationship agreement, the EU sought continued access to the UK territorial seas the same as it had enjoyed under the CFP when the UK was an EU Member State). Whilst the EU’s draft legal text permitted UK vessels to access EU waters, the EU text expressly excluded Bailiwick vessels from EU waters while seeking EU access to Bailiwick waters.

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<sup>27</sup> [HM Government: ‘Our approach to the Future Relationship with the EU’ CP211](#), published 27<sup>th</sup> February, 2020.

<sup>28</sup> [Get Brexit Done Unleash Britain’s Potential – The Conservative and Unionist Party Manifesto 2019](#) 24<sup>th</sup> November, 2019.

<sup>29</sup> [EU-UK relations: Council gives go-ahead for talks to start and adopts negotiating directives](#), 25<sup>th</sup> February, 2020.

<sup>30</sup> [Draft text of the Agreement on the New Partnership with the United Kingdom](#), 18<sup>th</sup> March, 2020.

### The Bailiwick's position on fishing

- 3.98 The Bailiwick has sought a fair fisheries arrangement. During the negotiations phase, the offer from the Bailiwick was for stable access to Bailiwick waters for the regional French fishing fleets based on a pool of effort defined by a relevant track record period of fishing in those waters, in return for continued access to regional ports for Bailiwick vessels. This would be underpinned by the goods relationship providing reciprocal market access between the UK and EU markets with 'zero tariffs, zero quotas'.
- 3.99 A fundamental requirement underpinning the arrangement is the ability for the Bailiwick to manage its territorial seas (by applying conservation measures through technical controls in the interests of sustainability) and the licensing of foreign vessels.
- 3.100 To facilitate trade, the Bailiwick is seeking access to neighbouring EU ports. This can be achieved through the designation for the purposes of the Convention on Future Multilateral Cooperation in Northeast Atlantic Fisheries ('NEAFC Convention')<sup>31</sup> and Council Regulation (EC) No 1005/2008 the Illegal, Unreported and Unregulated fishing Regulation (IUU<sup>32</sup>). The terms of trade in respect of preferential tariffs (set at zero) and customs matters will be provided for in the goods chapters of the TCA. For fisheries products that are exported, rather than landed, the non-tariff barriers will apply, subject to the terms of the SPS Chapter and underpinned by third country listings, where relevant.
- 3.101 The Committee, on behalf of the Bailiwick, alongside the governments of Jersey and the Isle of Man, worked closely with the UK government to present an offer that recognised the EU's position regarding access to its territorial waters. The islands were prepared to explore providing vessels of certain EU Member States (in the Bailiwick's case, France) access to their territorial waters. This would be through bespoke arrangements that ensure no greater effort in the Bailiwick waters, while retaining local management and licensing of French vessels.
- 3.102 The Bailiwick set the following guiding principles:

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<sup>31</sup> The [North East Atlantic Fisheries Convention](#) is an international convention covering a broad spectrum of fishing matters. It aims to ensure the sustainable management of fishing stocks and to prevent Illegal, Unreported and Unregulated (IUU) fishing.

<sup>32</sup> In accordance with [COUNCIL REGULATION \(EC\) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations \(EEC\) No 2847/93, \(EC\) No 1936/2001 and \(EC\) No 601/2004 and repealing Regulations \(EC\) No 1093/94 and \(EC\) No 1447/1999](#)

- a) **Sustainability:** the joint aims of conservation and sustainable management must underpin any future fisheries regime. In order to continue developing a sustainable fisheries regime within the Bailiwick's territorial waters, all vessels should be subject to relevant management measures.
- b) **Access:** the Bailiwick controls its territorial waters. Any access that is granted to EU vessels should not exceed existing or, where relevant, past arrangements. No action should be taken that would result in new, improved or uncontrolled access for EU fleets in Bailiwick territorial waters. Therefore, access granted must not exceed that available under existing access/treaty arrangements. Appropriate termination provisions will be required to ensure that the access is not granted in perpetuity.
- c) **Management:** the Bailiwick must continue to have the ability to manage its territorial waters in order to ensure the development of modern and sustainable fisheries within the context of wider environmental and marine planning considerations. The Bailiwick has the right to license vessels in its waters including applying any technical controls and track record requirements, and to impose spatial planning controls which they each determine should apply. Management measures will be implemented through a combination of legislation and licence conditions.

3.103 The Bailiwick was seeking access to EU waters (in particular the EEZ of France) and access to neighbouring ports (including designation for NEAFC and IUU purposes, as necessary). It was proposed that any agreement covered:

- a) access for vessels of relevant Member States (in the case of the Bailiwick, France) to specified geographical area/waters, and specified species (the areas of sea that access was permitted under the LFC and the same species, Crab and Demersal);
- b) restrictions on access (the number of EU vessels and fishing effort/maximum quantities of stocks);
- c) the evidenced track record period required;
- d) the means for cooperation, including in relation to data sharing;
- e) the process for permitting/licensing of EU vessels, fisheries management provisions and emergency procedures;
- f) flag State obligations to ensure that EU vessels comply with relevant rules when fishing under the agreements; and
- g) dispute resolution and termination articles.

3.104 The Bailiwick put forward a stable and predictable fisheries relationship that respected the islands' autonomy over their territorial seas and supported the economic balance and interdependencies of the region - in terms of protecting

the interests of the Bailiwick fishing fleet; minimising the impact on the Normandy fishing communities; and guarding both against any displaced effort. This would respect the regional relationship of mutual interest and concern in terms of sustainable access to Bailiwick waters and access to Normandy ports, and through that, the EU market. This would also reduce the risk of fisheries disputes caused by France in the short and medium term, which has been experienced in the past. A good neighbourhood relationship is important economically for trade and tourism and the development of submarine electricity cables. It also protects the islands' international reputation and the wider relationship with France.

- 3.105 The EU, on the other hand, has been seeking to grandfather the LFC rights in the abstract, namely for all French vessels in the 6-12nm outer belt to the west of the Bailiwick, limited to fishing for LFC species (crab or demersal).

#### The new fishing relationship regarding the Bailiwick

- 3.106 Following the negotiations between the UK and the EU, the following terms have been agreed. These arrangements closely reflect the Bailiwick's proposed position.

#### *Legal Form*

- 3.107 The provisions relating to the Bailiwick have been combined with those relating to the UK in a single legal text in the TCA, rather than being placed in a separate Protocol or Annex. However, specific provision has been made in respect of the Crown Dependencies, as the negotiations have resulted in different terms for them and for the UK.
- 3.108 Furthermore, the Bailiwick will be treated separately from the other Crown Dependencies and the UK for the purposes of dispute resolution. For example, a dispute involving Jersey or the Isle of Man will not lead to measures being taken by the EU against the Bailiwick. However, the Bailiwick itself will be treated as one entity for the purposes of this agreement; this means any dispute between the EU and the Bailiwick will affect the Bailiwick as a whole.

#### *Access*

- 3.109 The agreement provides for access in the territorial seas of the Bailiwick reflecting the actual extent and nature of fishing activity under treaty arrangements that existed on 31<sup>st</sup> January, 2020. In effect, this means the outer belt of the Bailiwick's territorial seas. Further, this access will be based on a 'pool' of a fixed level of effort which EU Vessels can seek a licence to fish against. This pool of effort is defined using a track record period of 10 days in any one of the three 12 month periods ending on 31<sup>st</sup> January falling between

1<sup>st</sup> February, 2017 and 31<sup>st</sup> January, 2020. This pool of effort will then need to be managed by licenses issued by Guernsey.

- 3.110 This provides a stable and predictable fisheries relationship with France, and in particular the neighbouring region, and helps the Bailiwick to manage the wider economic relationship in terms of trade and the GeM project. Importantly, it also results in a negligible economic impact at the end of the transition period, while protecting the Bailiwick waters from an increase in effort, particularly displaced French effort from other fishing areas.
- 3.111 The agreement defines UK vessels as including Bailiwick vessels<sup>33</sup>, and through this gains access to the EU EEZ on the same terms as the UK. This is important for the Bailiwick vessels which fish in the French EEZ which are adjacent to Bailiwick waters.

#### *Access to Ports and notification*

- 3.112 Access to ports cannot be provided under the TCA because it is not an EU competence. In order for its vessels to access the ports without compulsory inspections, the Bailiwick has been advised by UK Government that it will need to extend the UK's Participant Country status of the NEAFC Convention. This work will be completed by the end of 2020. The UK has been informed that France has formally requested that the Commission designate the ports of Cherbourg, Carteret and Granville. The process for extension and designation is administrative and will be completed within a couple of weeks. Unfortunately, Diélette does not have designation as a customs port or an IUU port to make it suitable for landings after the end of the transition period. However, dialogue will be maintained with the regional French authorities to seek designation of Diélette in order to return to a similar position in terms of port access as that enjoyed before the UK exited from the EU.
- 3.113 There are notification requirements for landings which are limited under the terms of the TCA. The EU has agreed to reduce these notification times for landings for IUU purposes between three and five hours. Notification for direct movements which require catch documentation, rather than landings, will need to be made between one to three hours of the products reaching their destination. These notification times are a vast improvement on the notification times without an agreement, which would be at least three working days before the estimated time of arrival at the port.

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<sup>33</sup> The definition of a [UK] vessel as “a fishing vessel flying the flag of the United Kingdom, registered in the United Kingdom, the Bailiwick of Guernsey, the Bailiwick of Jersey or the Isle of Man, and licensed by a UK fisheries administration”.

### *Management and Licensing*

- 3.114 The Bailiwick is responsible for the management and licensing of EU vessels fishing under the TCA. The management powers can be exercised as the Bailiwick considers appropriate, based on the best available scientific advice, to ensure the rational and sustainable management of the fisheries.
- 3.115 The Bailiwick is required to notify the EU of any new measure it puts in place and, as a matter of prudent management, is likely to consult with French stakeholders in any event. Management measures, such as technical controls, must be applied in a non-discriminatory manner.
- 3.116 The management will be required to be based on scientific evidence and exercised in line with the general objectives of the fisheries part of the TCA. These principles are based on international standards and general principles of sustainability and marine stewardship.
- 3.117 The Bailiwick will be responsible for licensing EU vessels granted permission to fish under the TCA in the eligible waters.

### *Governance*

- 3.118 The Bailiwick of Guernsey, Jersey and the IoM will be treated distinctly for the purposes of the dispute resolution provisions.
- 3.119 There is a specialised committee in respect of fisheries matters established between the UK and the EU to discuss implementation of this part of the agreement. The UK expects that, if this Committee wishes to discuss implementation issues of direct interest to the Bailiwick, representatives of the Bailiwick will attend the Committee to represent its own interests.
- 3.120 The Dispute Resolution Mechanism (DRM) is a reciprocal arrangement which, in the event of a dispute, provides the other party a cascade of the level of remedy. If either the EU or the UK (on behalf of the Bailiwick) alleges a breach of the fisheries provision of the TCA they will notify the respondent party of that breach. This allows time for consultation to seek to resolve the dispute. The initial step for recourse if the dispute is not resolved will be to suspend access to its waters for the other party's vessels. If this suspension does not lead to a resolution, preferential tariffs may be suspended on fisheries products from the other party. Finally, if this does not lead to a resolution, preferential tariffs may be suspended in relation to all goods. There is an arbitration process, where the complaining party must (within 14 days) request an independent arbitration panel to be established. If the arbitration panel decides there has been no breach, the respondent party may suspend certain obligations towards the complaining party. All measures taken under the DRM

must be proportionate to the alleged breach and its economic and social impact.

- 3.121 The UK has a similar DRM mechanism, but the final stage is the suspension of TCA in its entirety. As it is through the TCA that the agreement applies to the Bailiwick, such a suspension would also affect it.
- 3.122 In addition to the DRM, there is a general three year termination clause for the Bailiwick of the fisheries agreement. If the goods chapters are terminated, the fisheries provisions will also cease to apply to the Bailiwick. This is different from the UK termination clause which is nine months overall but leading to the ending of the TCA as well as all side agreements.
- 3.123 The legal text had not been finalised at the time of writing this Policy Letter. As a result of the limited time available for consideration of the final legal text ahead of the end of the transition period, a sunset clause (or cooling off period) within the first 90 days of the agreement taking into effect has been included in the agreement. This clause, which applies to each of the Crown Dependencies individually, will provide the option to exit, or seek to make limited amendments to, the agreement during the first 90 days of the agreement, should the text not align with the policy approved by the Bailiwick (based on the information available at the time of writing the Policy Letter and the parliamentary debate). In order to activate the sunset clause, the Bailiwick would need to make a representation to the UK, which would then make a representation to a joint UK-EU committee established as part of the governance arrangements for the agreement. The sunset clause could be activated by either party to the agreement, and would take effect one month from the date of notification of activation.
- 3.124 Inclusion of this clause will ensure that the Bailiwick has the opportunity to consider the final legal text, following the end of the transition period, to ensure that it satisfies the principles as agreed by the Bailiwick, in accordance with this Policy Letter. While this enables the Bailiwick to exit, or seek to make limited amendments to, the agreement if the legal text does not satisfy this test, the sunset clause can also be activated by the EU which represents a risk to the Bailiwick.
- 3.125 There are general review clauses under the TCA. A joint political body established by the TCA can amend terms of the agreement if both parties agree, and if these changes impact the Bailiwick, with the Bailiwick's consent.

*Managing the fishing effort*



- 3.126 The TCA provides that the Bailiwick has the right to establish a pool of fishing effort for French vessels within Bailiwick fishery limits. That will be based on fishing activity during a track record period.
- 3.127 Calculation of this fishing effort is a complex process and there are varying ways this can be done, such as managing the number of days that can be fished or by limiting the total vessel size and engine power permitted in Bailiwick fishery limits. The Committee for Economic Development will consider what the most appropriate method of establishing this pool of effort is in consultation with the UK Government in order to implement the TCA.

#### **4. TCA Governance Provisions**

- 4.1 The UK proposed a suite of agreements, including a FTA and various specific side agreements, on policy areas such as, inter alia, fisheries, air transport, and cooperation in the peaceful use of nuclear energy. Conversely, in accordance with Article 217 TFEU<sup>34</sup>, the EU proposed a single 'association agreement' including economic, security and other forms of cooperation between the EU and the UK.
- 4.2 The negotiated outcome will be in the form of a single agreement, the TCA which contains sections on goods and fisheries. This single framework means that the governance arrangements established in the TCA will apply across the suite of provisions within the agreement, with the exception of certain defined chapters.
- 4.3 The TCA establishes a dispute resolution mechanism which allows any disputes to be discussed through a process of consultation. A joint political body will be established to oversee the implementation and operation of the agreement, which will consist of representatives of the UK and the EU. The joint political body will be able to amend certain parts of the TCA providing an expedited process for minor changes. For example, should the Bailiwick wish to participate in the AEO Annex, this change could be given effect by the joint political body, with the Bailiwick's consent. A number of specialised committees will also be established to deal with specific aspects of the agreement.
- 4.4 If one of the parties (the UK or the EU) raises an issue on which there is a dispute, there will be a process of consultation and mediation. If the dispute is not resolved, an arbitration panel may be formed. However, some of the chapters of the TCA are expressly excluded from the dispute resolution mechanism.

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<sup>34</sup> [Article 217, Treaty on the Functioning of the European Union](#)

**5. Letter from the Lord Chancellor clarifying UK's expectation of how the UK-Bailiwick of Guernsey relationship will work to meet the obligation under the TCA**

- 5.1 The Lord Chancellor will be writing to the Committee to set out the UK's interpretation of how, at the domestic level, the UK and Bailiwick will work together to meet the obligations of the TCA. The letter reiterates that nothing in the TCA alters the constitutional relationship with the UK, through the Crown, and it does not impact the Common Travel Area. It also reaffirms that the UK Government remains committed to the principles set out in the International Identity Framework. The UK set out its commitment to continue to work closely and consult with the islands on matters relating to the TCA, in particular if the TCA is amended in the future. In respect of the VAT Protocol, the letter will clarify that the relevant declaration was made with the Bailiwick's consent and that a letter of entrustment will be forthcoming on this matter so that the commitment could be negotiated and concluded by the Bailiwick. Finally, it will set out the relationship where the TCA requires the UK to act as the interlocutor on matters where the Bailiwick is responsible for operational matters and for implementing the agreement in domestic laws and policies.

**6. Comparison to Guernsey's Brexit objectives**

**The Bailiwick's objectives in relation to the UK's withdrawal from the EU**

- 6.1 In the June 2016 Policy Letter, the States of Deliberation and Alderney and Sark's Policy & Finance Committees agreed a set of objectives for the (the full objectives are detailed in Appendix 3). The objectives outlined negotiating considerations for the future relationships with the UK and the EU and set out the main areas for engagement with the UK Government during the course of the UK's withdrawal from the EU. In the January 2020 Policy Letter and its Resolutions, the islands reiterated their support for those objectives as well as setting new ones for the Bailiwick's participation in any future UK-EU agreement. The table below outlines how the objectives have been met through the TCA.

**TABLE 1 - COMPARING THE BAILIWICK'S OBJECTIVES WITH OUTCOME OF NEGOTIATIONS**

<b>2016 Objectives</b>	<b>Current Status</b>	<b>UK-EU agreement, Bailiwick inclusion</b>	<b>UK-EU agreement, Bailiwick not included</b>
<b>2020 overarching objective:</b> To agree, in particular, that any agreement or protocol in respect of the Bailiwick should be underpinned by the principles of relevant, proportionality and practicality taking into account the island nature of the Bailiwick, its size and population and unique needs arising out of the same.			
<b>UK</b>			
For trade in <b>goods</b> , including agriculture and fisheries products, there is a long-standing historic trading arrangement which provides for tariff-free reciprocal trade.	No changes during transition period.  UK implementing new border model in phases from January to July 2021.  Customs Arrangement signed with the UK in November 2018 comes into effect from 1 January 2021.	Bailiwick's border model regarding SPS checks is subject to ongoing discussions with DEFRA.  <b>Any requirements will be relevant, proportionate and practical.</b>	Bailiwick's border model regarding SPS checks is subject to ongoing discussions with DEFRA.
There are no arrangements in place that make reference to trade in <b>services</b> , including financial services.	No changes to the current arrangements for trade in services, including financial services.  During the transition period data can continue to be exchanged between the Bailiwick and the UK. This will continue until the end of 2021 in the event that the UK does not receive a data protection adequacy decision from the EU by 31st December 2020.	No changes to the current arrangements for trade in services, including trade in services.  If no adequacy decision for UK by 31 <sup>st</sup> December 2020, status quo regarding the continued free-flow of personal data between the Bailiwick of Guernsey and the UK is maintained until the end of 2021.  <b>This is relevant proportionate and</b>	No changes to the current arrangements for trade in services, including trade in services.  If no adequacy decision for UK by 31 <sup>st</sup> December 2020, status quo regarding the continued free-flow of personal data between the Bailiwick of Guernsey and the UK is maintained until the end of 2021.

		<b>practical.</b>	
For <b>people</b> , the Common Travel Area should continue to apply (it predates UK Accession, and is not dependent on EU law).	CTA remains protected and unchanged.	No changes – CTA remains protected and unchanged.  <b>This is relevant proportionate and practical.</b>	No changes – CTA remains protected and unchanged, as set out in.
<b>EU</b>			
In order to maintain the status quo for Guernsey, the States of Guernsey will need to maintain the free <b>trade in goods</b> with the EU hitherto provided under Protocol 3. In principle, it is possible that this may be replaced by extending the goods provisions of any new UK/EU agreement to Guernsey, subject to the precise terms.	No change during transition period. From 1 January 2021 new regimes will be in place based on participation in the TCA.	Trade will be covered by participation in the relevant chapters of the TCA.  Landing and export of fish will be in accordance with the fisheries arrangements.  <b>This is relevant, proportionate and practical when compared to the benefits of participation in the agreement.</b>	If no participation in the TCA, trade in goods would be on WTO terms as set out in. Could lead to increased costs for businesses depending on levels of tariffs.  No fisheries agreement in place. Direct landings not possible unless relevant agreements reached with France. Indirect landings must enter the EU through a border control post.  Direct movements of EU goods into the Bailiwick will be regulated by the Bailiwick's border model.
The existing work exploring extension of the UK <b>membership of the WTO</b> should be given a higher priority. This will provide lower tariffs for any imported goods coming direct from the EU or elsewhere (not via the UK) and will	Extension of UK's WTO membership to the Bailiwick will occur on 1 January 2021, when the UK becomes an independent member of the WTO.	WTO membership underpins compliance goods aspect of the UK-EU trade agreement. The TCA provides preferential trading terms compared with WTO terms alone.  <b>This is relevant, proportionate and</b>	Trade with EU on WTO terms.

underpin an agreement on free movement of goods as well as other trading relationship.		<b>practical.</b>	
For <b>trade in services</b> , the States will seek to maintain its current position of being outside the EU, with market access on a case by case basis as a third country.	<p>No change to trade in services.</p> <p>No change to the Bailiwick of Guernsey's existing data adequacy decision.</p>	<p>No change to trade in services – Bailiwick of Guernsey continues to be treated as a third country. Bailiwick inclusion in the UK-EU agreement does not cover inclusion in any of the services chapters.</p> <p>No change to Guernsey's adequacy decision as a result of the agreement. No change to decision making process for new adequacy decision.</p> <p><b>This is relevant, proportionate and practical.</b></p>	<p>No change to trade in services – Bailiwick of Guernsey continues to be treated as a third country.</p> <p>No change to Guernsey's adequacy decision as a result of the agreement. No change to decision making process for new adequacy decision.</p>
For <b>people</b> , the States will need to seek to ensure any commitments made by the UK as part of its withdrawal agreement with respect to the grandfathering of rights of EU (non-UK) citizens in the UK and in the Channel Islands and that the legal status 'Channel Islander' (for the purposes of Protocol 3) is considered."	EU/EEA/Swiss settlement scheme in the Bailiwick of Guernsey open until 30 June 2021.	<p>EU/EEA/Swiss settlement scheme remains open until 30 June 2021 for nationals resident in the Bailiwick by 31 December 2020.</p> <p>Bailiwick of Guernsey British citizens travelling to the Schengen Area will be subject to new rules from 1 January 2021 in respect of passport rules. Immigration to the EU will be subject to EU legislation</p>	<p>EU/EEA/Swiss settlement scheme remains open until 30 June 2021 for nationals resident in the Bailiwick by 31 December 2020.</p> <p>Bailiwick of Guernsey British citizens travelling to the Schengen Area will be subject to new rules from 1 January 2021 in respect of passport rules. Immigration to the EU will be subject to EU legislation</p>

		and policies.  <b>This is relevant, proportionate and practical.</b>	and policies.
<b>States of Guernsey</b>			
Ensure the interests of Guernsey residents are taken into account by the UK / EU exit agreement. This includes ensuring that Guernsey residents/persons with EU rights do not suffer any detriment compared to those resident in the UK.  (Reiterated in January 2020 Policy Letter)	Rights of Bailiwick of Guernsey British citizens resident in an EU country are protected in the Withdrawal Agreement.	<b>This is relevant, proportionate and practical.</b>	
Ensure, where possible, the arrangements for free movement of goods described in Protocol 3 are replicated in some way. This may be through extension of the relevant part of any new UK / EU relationship. The States should also ensure that the best interests of Guernsey residents and businesses are served under that new agreement.  (Reiterated in January 2020 Policy Letter)	No change during transition period. From 1 January 2021 new regimes will be in place when Protocol 3 falls away – effects dependent on negotiation outcome.	Trade will be covered by participation in the relevant chapters of the TCA.  Landing and export of fish will be in accordance with the fisheries arrangements.  <b>This is relevant, proportionate and practical when compared to the benefits of participation in the agreement.</b>	If no participation in the TCA, trade in goods would be on WTO terms. Could lead to increased costs for businesses depending on levels of tariffs.  No fisheries agreement in place. Direct landings not possible unless relevant agreements reached with France. Indirect landings must enter EU through a border control post.  Requirements for importation and onward exportation of EU goods

			into the UK subject to new border model being discussed with DEFRA.
<p>Ensure there is no detriment to the existing, and historic, constitutional relationship between Guernsey and the UK. Work to mitigate against any risks of unintended consequences.</p> <p>(Reiterated in January 2020 Policy Letter)</p>	<p>Close working relationships have been developed with relevant UK Government Departments throughout the negotiations to ensure the constitutional relationship is understood and respected.</p> <p>CTA remains protected and unchanged.</p>	<p>CTA remains in place protecting rights of Bailiwick nationals to move freely and reside in the relevant jurisdictions and enjoy associated rights and privileges.</p> <p>Customs Arrangement ensures that the flow of goods from the UK to the Bailiwick and <i>vice versa</i> is preserved.</p> <p><b>This is relevant, proportionate and practical.</b></p>	<p>CTA remains in place protecting rights of Bailiwick nationals to move freely and reside in the relevant jurisdictions and enjoy associated rights and privileges.</p> <p>Customs Arrangement ensures that the flow of goods from the UK to the Bailiwick and <i>vice versa</i> is preserved.</p>
<p>Seek opportunities for Guernsey in any new UK trading relationship including with the EU and with other countries outside of the EU, including any new free trade agreements and exploring extension of the UK membership of the WTO.</p> <p>(Reiterated in January 2020 Policy Letter)</p>	<p>Extension of UK's WTO membership to the Bailiwick will occur on 1 January 2021, when the UK becomes an independent member of the WTO.</p> <p>Bailiwick of Guernsey included in UK 'roll over' FTAs to the extent that Protocol 3 applied.</p> <p>Bailiwick of Guernsey engaging with DIT on negotiations for new UK-third country agreements.</p>	<p>Bailiwick of Guernsey included in UK roll over FTAs and engaging with DIT in relation to negotiations of new UK FTAs.</p> <p><b>This is relevant, proportionate and practical.</b></p>	<p>Bailiwick of Guernsey included in UK roll over FTAs and engaging with DIT in relation to negotiations of new UK FTAs.</p>

## **7. What if the Bailiwick decides not to participate in the UK-EU agreement?**

- 7.1 The potential implications of the Bailiwick deciding not to take part in the TCA are set out below, both in respect of the EU and the UK. Should only part of the Bailiwick resolve not to take part, these consequences will only impact the trade in goods with the EU and the fisheries relationship with the EU (which will include fisheries trade with France) for that jurisdiction(s) only, as well as any indirect consequences for relations with the UK; it may also have implications for relations within the Bailiwick.

### The Goods Relationship

- 7.2 The Customs Arrangement with the UK means that trade between the UK and the Bailiwick can continue tariff-free regardless whether there is a deal or not, providing certainty for Bailiwick businesses. The Customs Arrangement obliges the Bailiwick to adopt the same tariff arrangements as those applied by the UK Government for goods entering any part of the UK; including any preferential tariff negotiated under a trade agreement such as the TCA. The Bailiwick can thereby benefit from any preferential arrangement for goods imported from the EU to the UK. The main impact of not taking part in the TCA, will be that the Bailiwick would not be able to benefit from the same preferential goods trading terms with the EU as those enjoyed by the UK and Bailiwick-produced goods will not be considered to be of UK origin. This will put Bailiwick businesses which export to the EU at a competitive disadvantage compared to equivalent UK businesses exporting to the EU.
- 7.3 The UK would be obliged as part of any trade agreement to protect the integrity of any shared customs arrangements (including that between the Bailiwick and the UK). The origin of any goods exported from the Bailiwick to the UK would need to be identified to ensure that the correct tariff is applied if those goods were subsequently exported to the EU.
- 7.4 For agri-foods, there are considerably higher tariffs if the Bailiwick is not part of the TCA. For example, fishery and aquaculture products such as crab and lobster can attract tariffs as high as 8% and oysters of the type cultivated and exported from the Bailiwick to the EU would be 9% and scallops 20%.
- 7.5 For industrial goods, there are strict and complex rules referred to as 'rules of origin' as well as rules on 'cumulation' of goods assembled from parts in a party to a trade agreement. The rules of origin and cumulation for third country goods entering the UK or EU will be defined in the TCA. These rules are, in part, intended to prevent third countries to the agreement benefitting from 'back doors' into the EU market. Being outside the TCA will mean that goods produced in the Bailiwick would not be considered by the EU as originating in



the UK and those Bailiwick goods would therefore have higher tariffs when exported to the EU.

### Sanitary and Phytosanitary Controls

#### *SPS Controls: Third Country Listings*

- 7.6 The EU applies strict sanitary and phytosanitary controls to relevant third country goods entering the EU (for instance on high-risk goods such as food, plants, and products of animal origin ('agri-foods')). As a third country to the EU, the Bailiwick will be subject to those third country controls for SPS goods moved or exported to the EU. As such, the treatment of some agri-foods entering the EU also depends on the Bailiwick's equivalence with certain EU standards. For certain agri-foods products, the EU's trading partners have to demonstrate equivalence to EU standards via a third country listing process. Those listings can be used in a non-negotiated outcome scenario, and can also help to underpin parts of the Chapter.
- 7.7 The Bailiwick has applied for third country listings the major SPS products that it moves to, or trades with, the EU, where such listings are available.
- 7.8 In the future, further third country listing applications can be made, if required by the Bailiwick and where proportionate to the volume and type of trade undertaken and the ongoing compliance requirements.

#### *SPS Controls: SPS Borders*

- 7.9 Following the end of the transition period, the Bailiwick and Great Britain<sup>35</sup> will operate as a single SPS zone, with measures to ensure biosecurity and maintain appropriate protection for human, animal and plant health within the zone. The Bailiwick is seeking to ensure continuity for movements and receipt of goods that reflects the Customs Arrangement that will come into effect following the end of the transition period.
- 7.10 Regardless of whether the Bailiwick participates in the TCA, Bailiwick agri-foods exports to the EU will need to enter the EU through an approved Border Control Post ('BCP'). Bailiwick exports to the EU will also need to meet any applicable EU SPS requirements (for instance documentary or physical checks, and other requirements of the applicable third country listings).
- 7.11 A Channel Islands border model and controls for the movement of SPS (and also manufactured goods) is being developed. It is considered that establishing

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<sup>35</sup> This excludes Northern Ireland

a BCP would be disproportionate for the low volumes and low risk of EU imports into the Channel Islands.

#### WTO – and the Customs Arrangement with the UK

- 7.12 The extension of the UK's WTO membership to the Bailiwick will enable the Bailiwick to trade on WTO terms with the EU in the event that it is not part of the TCA; Bailiwick trade not covered by the TCA will be covered by WTO rules in any event. This would offer trade certainty but would not eliminate tariffs from being applied to exports from the Bailiwick, which could be considerably higher than tariffs applied to goods from countries where a FTA exists. In general, FTAs offer lower maximum tariffs and preferential treatment for the parties compared to those provided for by the WTO.
- 7.13 While the operational WTO relationship will function from 1<sup>st</sup> January, 2021, it should be noted that the UK-Bailiwick customs union, which also comes into effect on 1<sup>st</sup> January, 2021, may be placed under more political tension if the Bailiwick does not participate in the TCA. That tension can be mitigated by ensuring close working relationships are maintained with the UK and by regulatory alignment where it is deemed appropriate. The UK-Bailiwick Customs Arrangement may be put at greater risk by UK political changes or a divergence in approach between the UK and EU on regulatory standards on goods.

#### The Fisheries Relationship

- 7.14 A treaty relationship on fisheries access would help to provide stability and certainty for both the Bailiwick and France, and has economic/trade, social, cultural and political benefits at the regional level. This stability is also beneficial for strategic projects. For instance, the cable project<sup>36</sup> ('GeM') with Normandy is important to Guernsey as part of the States' Energy Policy. GeM relies on cooperation from state owned enterprises (such as Électricité de France (EdF) and Réseau de Transport d'Électricité (RTE)) and therefore requires political support from the French Government. It also requires permissions to be granted at regional level, for instance to allow survey licensing and planning permission, which are precursors for GeM's progression. A positive regional relationship, particularly on fisheries matters, will be essential to help ensure support for the project and alleviate concerns.
- 7.15 In contrast, the absence of a fisheries agreement would have a significant impact. If the Bailiwick does not take part in the TCA, there will be no access arrangements for French vessels in Bailiwick waters from 11pm on 31st

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<sup>36</sup> [GeM cable project description by Guernsey Electricity](#)

December, 2020. This would put Guernsey in the position of NFNO for fisheries and the mitigation strategy would need to be activated. A temporary arrangement could be put in place, for a time limited period, to allow access for French vessels in return for French port access being maintained for Bailiwick vessels. Such a temporary arrangement would provide time to seek a bespoke solution with the regional French authorities, including establishing any new licensing and management regime for French vessels in Bailiwick waters. That approach would provide some stability, but would not provide the same certainty to the Bailiwick as a treaty arrangement and could risk the possibility of greater fisheries access being sought by another country at a later date.

- 7.16 If the Bailiwick does not participate in the TCA, fisheries products landed by Bailiwick vessels in France will be subject to tariff charges when the catch is landed. This could affect the dynamics and economics of the market and put Bailiwick vessels at a competitive disadvantage compared to French vessels fishing in the same waters for the same species.
- 7.17 The Bailiwick may benefit from some of the terms of the TCA, even if it chooses not to participate in it. Bailiwick vessels will be treated as UK vessels for the purposes of accessing EU EEZ waters. Quota allocation will be defined though the Bailiwick and UK relationship under the Fisheries Management Agreement which will be impacted by the quotas agreed under the provisions of the TCA. Port access, a Member State competence, is provided for under the TCA. France has already asked the European Commission to designate ports which can accommodate landings by non-EU vessels because they have the necessary customs or IUU status and facilities. For ports near to the Bailiwick, this includes Cherbourg and Barneville-Carteret; but Diélette is not designated for customs or IUU purposes at this stage.
- 7.18 There is a risk of hostile action if the Bailiwick does not participate in the TCA. For instance, some French fishermen would lose access to fish in Bailiwick waters, which could lead to a risk of Bailiwick vessels being denied access to land in certain ports. Hostile actions (such as port blockades, or illegal unregulated or unreported fishing) could result. Temporary fisheries access in Bailiwick waters would only provide a short-term solution to manage such risks.
- 7.19 The Bailiwick could seek a regional agreement with France. Entrustment was not granted to the Bailiwick (by the UK) to seek such an agreement whilst negotiations were ongoing for the TCA. As goods matters are an EU competence, any such regional agreement would most likely relate only to fisheries matters. Given the resources devoted to the UK-EU negotiations and any resulting implementation requirements, it may be unreasonable to expect that any regional agreement would be a quick or easy option in the very short term.

## **8. Next steps**

- 8.1 In order to ensure that the Bailiwick's autonomy and democratic processes are respected, it is necessary for the Bailiwick to indicate its desire for inclusion or otherwise in the TCA ahead of the UK Parliamentary debate. This will enable the UK Parliament to consider the final legal text and, if content, ratify it on behalf of the UK and those territories which have consented to be included in the agreement before the end of the transition period.
- 8.2 Following consideration of this Policy Letter, should the Bailiwick consent to be included in the agreement the relevant legislative requirements will be implemented to ensure that the Bailiwick is compliant with the obligations in the agreement. In order to effect inclusion within the agreement, letters will be issued through the official channel to set out the formal request from the Bailiwick; the first to request the Bailiwick's inclusion, or otherwise, based on agreement on the principles of the agreement, and a further letter to demonstrate how the Bailiwick will comply with the obligations once the final legal text has been reviewed. Further detail of the legislative requirements is set out in section 12.

## **9. Continuity arrangements**

- 9.1 In addition to the new arrangements that the Bailiwick has entered into in advance of the end of the transition period, there are a number of existing arrangements which will not change as a result of the UK's departure from the EU.

### **Immigration and mobility**

- 9.2 The Common Travel Area (CTA) is a long-standing arrangement between the UK, Bailiwick of Guernsey, Bailiwick of Jersey, Isle of Man and the Republic of Ireland. Under the CTA, British and Irish citizens can move freely between, and reside in, these islands (subject to population management controls). Without the CTA, all islanders travelling elsewhere in the British Islands or Republic of Ireland, or UK and Irish residents travelling to the islands, would have to clear through the relevant immigration entry channels on every journey. This would have placed a considerable burden on travellers and the relevant border services at both ends of the journey.
- 9.3 The CTA pre-dates the UK's membership of the EU and so is not directly affected by the UK's departure from the EU. Notably, in a joint report in December 2017, the UK and EU both agreed that the CTA would be protected and remain unchanged. Ireland will remain an EU Member State (with commitments to EU Law regarding the free movement of EU citizens), but can maintain free movement on the basis of the CTA, without compromising such

commitments. The mutual commitments to the CTA from the EU and the UK are reflected in the Withdrawal Agreement. The UK and Irish governments signed a MoU in May 2019<sup>37</sup> reaffirming their commitment to maintain the CTA, and the associated rights and privileges of British and Irish citizens, in all circumstances. The rights and privileges of the CTA will therefore continue to exist after 31<sup>st</sup> December, 2020, and the CfHA continues to work with the UK's Home Office as the UK develops its future immigration policies, including issuing any new format British passports. This is a complex area of work involving both legislative and operational changes.

- 9.4 The UK and the EU agreed early in the Brexit process that the current rights for UK citizens within the EU, and those EU/EEA/Swiss citizens living in the UK, would be protected after the UK had withdrawn from the EU. The UK and the Bailiwick introduced their respective EU settled status schemes to facilitate this. The GBA has rolled out a programme throughout the Bailiwick islands to ensure that EU/EEA/Swiss citizens resident in the islands could easily apply for settled status. The scheme ensures that current access to healthcare, work arrangements, and access to benefits and public services for EU/EEA/Swiss citizens and their family members can continue. In addition, a key success of this scheme is that the Bailiwick and UK schemes are reciprocal, so that time spent either in the Bailiwick or in the UK can count towards the years required for settled status.
- 9.5 The UK will require all EU/EEA/Swiss nationals seeking to work in the UK from 1<sup>st</sup> January, 2021 to apply to its points-based system<sup>38</sup>. In order to ensure a consistent approach across the CTA, immigration laws covering the Bailiwick run parallel with those of the UK, Jersey and the Isle of Man. However, it has also been acknowledged that each jurisdiction has different needs, and that the Bailiwick's approach to EU/EEA/Swiss nationals looking to work in the Bailiwick can be different from other CTA members. The CfHA has therefore decided to utilise its ability to vary some elements of the Island's immigration policy from the UK's. This means that the UK's points-based system will not be replicated in the Bailiwick. Instead, the CfHA will combine the process of applying for an immigration work permit with the population employment permit before applicants are granted permission to enter and work. Alderney, Sark and Herm are not currently covered under the Population Management regime and will be subject to a separate immigration work permit application process. EU/EEA/Swiss nationals who have registered on the EU Settlement Scheme are exempt from this requirement. This deviation will ensure that businesses are

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<sup>37</sup> [Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland concerning the Common Travel Area and associated reciprocal rights and privileges](#), signed in London on 8<sup>th</sup> May, 2019.

<sup>38</sup> [An Introduction for employers – UK Visas and Immigration](#), published by the UK Government on 4<sup>th</sup> December, 2020.

able to continue accessing the important EU/EEA/Swiss workforce for vital sectors such as hospitality and care homes.

- 9.6 A major change is that EU/EEA/Swiss nationals coming to the Bailiwick to work will have to apply for a visa, prior to travel. Applications must be made by the employee once the Population Management permit (or approval in principle) has been submitted through the (Guernsey) Population Management Portal. The visa application must be submitted through the UK government online system.

### **Services**

- 9.7 The Bailiwick has always operated through third country arrangements with regard to trade in services with the EU. This 'third country' status does not depend on the UK's membership of the EU and will also not be affected by the UK's departure from the EU, other than it being underpinned by WTO rules from 11pm on 31<sup>st</sup> December, 2020. As such, any services that the Bailiwick trades with the EU (including Guernsey's finance industry) will not be directly affected after 31<sup>st</sup> December, 2020.

### **Data protection**

- 9.8 This 'third country' status also extends to the Bailiwick's personal data protection regime, which has been recognised as having 'adequacy' status by the European Commission since 21<sup>st</sup> November, 2003. This means that the Bailiwick's data protection regime is recognised as 'essentially equivalent' to the EU's so that personal data can move freely between the Bailiwick and EU Member States. A number of global businesses are located in the Bailiwick and rely on this free movement of personal data.
- 9.9 The Bailiwick agreed to recognise the UK as an 'authorised jurisdiction' until the end of 31<sup>st</sup> December, 2020.<sup>39</sup> A further Policy Letter<sup>40</sup> and associated Ordinance<sup>41</sup> were considered in December 2020, and it was agreed<sup>42</sup> to extend that recognition for another year. This will ensure that the status quo of continued free-flow of personal data between the Bailiwick and the UK is maintained until the end of 2021, in the event that the EU does not grant the UK an adequacy decision by 31<sup>st</sup> December, 2020.

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<sup>39</sup> [Billet d'État II of 2019](#) – 'Data Protection: Data Sharing with the United Kingdom and [Resolutions](#); and [The Data Protection \(Authorised Jurisdiction\) \(Bailiwick of Guernsey\) Ordinance, 2019](#)

<sup>40</sup> [Billet d'État XXVIII of 2020](#), - 'Data Protection: United Kingdom Adequacy And Data Sharing' and [Resolutions](#), on 27<sup>th</sup> November, 2020

<sup>41</sup> [The Data Protection \(Authorised Jurisdiction\) \(Bailiwick of Guernsey\) \(Amendment\) Ordinance, 2020](#)

<sup>42</sup> Approved by Alderney's Policy and Finance Committee on 2<sup>nd</sup> November, 2020 and by Sark's Policy and Finance Committee on 2<sup>nd</sup> November, 2020.

### **Customs Arrangement signed between the States of Guernsey and HM Treasury**

- 9.10 On 18<sup>th</sup> July, 2018, the States of Deliberation considered and made Resolutions concerning a Policy Letter entitled “Customs Duties and Associated Powers Required in Respect of Brexit”. This included directing the Committee *for* Home Affairs to enter into negotiations regarding a customs arrangement with the UK when required. On 26<sup>th</sup> November, 2018, a Customs Arrangement<sup>43</sup> (‘the Customs Arrangement’) was signed between the UK government and States of Guernsey on behalf of the Bailiwick. That was reported to the States of Deliberation by the President of the Policy & Resources Committee in a statement in January 2019<sup>44</sup>. The Customs Arrangement provides that the Bailiwick will form part of a single British Islands customs territory and that common customs tariffs applicable to third countries are applied at Bailiwick borders in the same way as at any UK border. The Customs Arrangement was registered on the records of the Royal Court of Guernsey and transmitted to the other Islands on 11<sup>th</sup> March, 2019<sup>45</sup>.
- 9.11 The Customs Arrangement ensures that the free flow of goods from the UK to the Bailiwick and *vice versa*, in relation to customs tariffs, is preserved and continues to be as frictionless as possible in respect of customs procedures due to the requirement to have ‘corresponding legislation’ within scope of the Customs Arrangement. Implementing the systems and processes requires substantial legislative and operational changes much of which has been, and will continue to be, delivered by the Committee *for* Home Affairs (‘CfHA’). Relevant legislation was approved by Guernsey, Alderney and Sark’s parliaments in December 2018 and January 2019<sup>46</sup>.
- 9.12 Under the Customs Arrangement Guernsey can still set its own prohibitions and restrictions as long as they can be justified under certain protocols. The four

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<sup>43</sup> [Arrangement between the government of the United Kingdom of Great Britain and Northern Ireland and the States of Guernsey \(the government of Guernsey\) concerning the establishment and operation of the United Kingdom-Crown Dependencies Customs Union](#)

<sup>44</sup> [Statement, 30<sup>th</sup> January, 2019, to the States of Deliberation by Deputy G A St. Pier, President of the Policy & Resources Committee](#)

<sup>45</sup> [2019/254 - The Crown Dependencies Customs Union \(Guernsey\) \(EU Exit\) Order 2019](#), made 13<sup>th</sup> February, 2019.

<sup>46</sup> [The Customs and Cross-Border Trade \(General and Enabling Provisions\) \(Bailiwick of Guernsey\) Law, 2018](#) was approved by the States of Deliberation on 12<sup>th</sup> December, 2018, States of Alderney on 9<sup>th</sup> January, 2019 and Chief Pleas of Sark on 11<sup>th</sup> January, 2019. The Customs and Cross-Border Trade (General and Enabling Provisions) (Bailiwick of Guernsey) Law, 2018 (Commencement) Regulations 2019 were made on 26<sup>th</sup> March, 2019. One of the primary purposes of the Law was to facilitate the entering into of arrangements to establish a customs territory with the UK.

jurisdictions within the arrangement will form a safety and security zone and the carriers of any goods entering will be required to submit a safety and security declaration. The purpose of this is to safeguard the customs union from high level dangerous goods and security risks.

- 9.13 In accordance with the provisions of the Customs Arrangement, there was a formal exchange of letters between the Financial Secretary to the Treasury and the President of CfHA (17<sup>th</sup> and 18<sup>th</sup> December, 2020) to confirm that the effective date for the Customs Arrangement would be 31<sup>st</sup> December, 2020 at 11pm (copies of those letters are in Appendix 5).
- 9.14 In addition, certain export formalities will be required to export goods directly to the EU.

## **10. Preparing for international trade post-Brexit**

### **Extension of the UK's Membership of the World Trade Organization ('WTO')**

- 10.1 In early 2019, the States of Deliberation, States of Alderney and Chief Pleas of Sark each considered and approved a Policy Letter regarding the extension of the UK's membership of the WTO to the Bailiwick<sup>47</sup>. Each jurisdiction agreed to request the extension of the UK's membership to the Bailiwick.
- 10.2 On 18<sup>th</sup> October, 2019, the UK Secretary of State for International Trade confirmed that the UK's membership of the WTO would be extended to the Bailiwick when the UK becomes an independently represented WTO member<sup>48</sup>. The extension of the UK's WTO membership ensures that the Bailiwick has access to the international rules of fair trade for goods, and services, as well as the trade-related aspects of intellectual property. Being part of the UK's WTO membership will protect Bailiwick businesses from unfairly applied high tariffs or other discriminatory measures imposed when trading goods or delivering services across borders. Any goods exported from the Bailiwick will benefit from the WTO's core principle of 'national treatment' (NT) and 'most favoured nation' (MFN). These principles ensure that countries cannot impose discriminatory measures by implementing high tariffs or trade barriers which distort trade and cause trade injury. The Bailiwick's inclusion within the UK's WTO membership provides trading certainty for Bailiwick business which trade in goods or services with the 164 WTO member countries.

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<sup>47</sup> [Billet d'État IV of 2019](#) – 'Extending the United Kingdom's Membership of the World Trade Organization' and [Resolutions](#), approved by the States of Deliberation on 18<sup>th</sup> February, 2019, the Policy & Finance Committee of Alderney on 16<sup>th</sup> April, 2019 and the Chief Pleas of Sark on 27<sup>th</sup> March, 2019.

<sup>48</sup> [UK membership of World Trade Organization to be extended to Bailiwick](#), States of Guernsey media release, 18<sup>th</sup> October, 2019.



- 10.3 Trade certainty and protection is provided to the Bailiwick by the extension of the UK's WTO membership to the Bailiwick. That means that the Bailiwick retains the ability to trade with the EU and globally on WTO terms, irrespective of its future participation in the TCA.
- 10.4 Ensuring that the whole of the Bailiwick complies sufficiently with the WTO's international trade rules has involved working across States' Committees, the States of Alderney, Chief Pleas of Sark and industry sectors including cross border trade in services, financial services and financial services regulation, intellectual property, and the manufacturing and goods sectors. Adhering to the WTO Agreements is an ongoing obligation which will also require future policy development and implementation to take account of WTO requirements.
- 10.5 The UK's WTO membership will extend to the Bailiwick from 11pm on 31<sup>st</sup> December, 2020; the end of the UK-EU transition period. The letter from the UK's Foreign Secretary to the Director-General of the WTO, dated 15<sup>th</sup> October, 2019, is attached in Appendix 6<sup>49</sup>. In light of this, a Privileges and Immunities Ordinance will be commenced.

## **11. Free Trade Agreements**

### **Other international trade agreements or arrangements ('Rest of World' agreements)**

- 11.1 The January 2020 Policy Letter referred to the UK's continuity approach to various pre-existing international trade agreements and arrangements.<sup>50</sup> The UK will seek to become a party to those international agreements in its own right; either bilaterally with partner countries or by acceding to various relevant international agreements in its own right (rather than as part of the EU). Guidance from the UK Government explains why some agreements may not transition through the UK's trade agreement continuity programme<sup>51</sup>. There is a chance that some of the agreements will no longer extend to the Bailiwick following this process.

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<sup>49</sup> There is a Memorandum of Understanding between the Government of the United Kingdom ("the UK Government") and the States of Guernsey ("the Government of Guernsey") concerning the relationship between the United Kingdom of Great Britain and Northern Ireland ("the UK") and the Bailiwick of Guernsey ("the Bailiwick") in relation to World Trade Organization matters, dated 9<sup>th</sup> October, 2019, which sets out the intended manner in which to operate the extension of the UK's membership to the Bailiwick and future co-operation in that context. It is set out that the Memorandum does not create legal obligations between the participants and is not intended to alter or affect the constitutional relationship between the UK and the Bailiwick.

<sup>50</sup> As set out in the January 2020 Policy Letter, paragraphs 3.16 to 3.18

<sup>51</sup> [UK Guidance document, 5<sup>th</sup> November, 2019 - International Agreements if the UK leaves the EU without a deal](#)

11.2 The Committee agreed to adopt a continuity approach in relation to, “EU international agreements that apply by virtue of, and to the extent provided by Protocol 3”<sup>52</sup>. The relevant Committees in Alderney and Sark also adopted a similar approach.

11.3 Examples of types of agreements transitioned relating to Protocol 3 are given below.

#### *Customs*

11.4 Certain conventions relating to transit procedures and the simplification of formalities in trade in goods have been extended to the Bailiwick as part of the UK’s continuity programme. Where conventions were not relevant or proportionate, such as those relating to AEOs, they were not extended to the Bailiwick – but an option remains for their extension in the future.

#### *Agri-foods / Sanitary and Phytosanitary measures*

11.5 EU agreements with third parties relating to wine, organics and veterinary equivalence have been translated into UK specific agreements. DEFRA has identified a number of ‘non treaty arrangements’ that were also translated into UK-specific arrangements (for example, export health certificates). Certain agreements or arrangements had limited practical application for the Bailiwick and have not been extended to it at this time. In such instances, it is possible for the agreements to contain a ‘staggered implementation clause’ to allow for future extension.

#### *FTAs*

11.6 The UK’s continuity programme sought to roll over EU-third country trade agreements, such as FTAs, partnership agreements or economic cooperation agreements. Those Agreements help ensure trading stability for businesses by preserving existing cross-border trade arrangements (such as market access and the reduction in or elimination of tariffs or trade barriers). As of 19<sup>th</sup> December, 2020, the UK has secured 29 trade agreements with 58 countries, which will continue to apply to the Bailiwick to the extent that Protocol 3 applied. Examples of countries where Trade Agreement Continuity (‘TAC’) agreements have been concluded before 31<sup>st</sup> December, 2020 include: Canada, Egypt, Israel, Morocco, Kenya, Singapore, and Central America.

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<sup>52</sup> From the January 2020 Policy Letter, paragraph 3.17. This was agreed by the P&R Committee in March 2019.

- 11.7 The recently agreed UK-Japan Comprehensive Economic Partnership Agreement (CEPA) formed part of the UK's original trade continuity programme, however, the terms of this agreement have been renegotiated such that it fell outside of the parameters of the continuity programme. The Bailiwick's inclusion remains based on a Protocol 3 relationship for this agreement, but includes the expressed provision to extend other elements to the Bailiwick in the future, such as the cross border supply in services, financial services and digital elements.

### **New international agreements**

- 11.8 The UK's departure from the EU on 31<sup>st</sup> January, 2020 also enabled the UK to start negotiations on new international agreements. That includes negotiations for agreements with countries such as Australia and New Zealand and the USA. DIT has already asked whether the Bailiwick wishes to participate in those agreements and it has been confirmed that the islands wish their interests to be taken forward within the wider negotiations. FTA development work will continue throughout 2021 and beyond as the Bailiwick continues to develop its own international trade policy.
- 11.9 It is likely that the UK will pursue a range of other agreements focusing on topics other than free trade, and there may be opportunities for the Bailiwick to participate in those other agreements.

## **12. Legislative requirements**

- 12.1 The Bailiwick's legislative programme, co-ordinated across Guernsey, Alderney and Sark committees, implements the varied and extensive policy initiatives that are needed to prepare the Bailiwick for the UK's withdrawal from the EU and the challenges and opportunities it presents, both during and after the transition period.
- 12.2 In 2018, three Bailiwick-wide pieces of primary legislation ('the primary Brexit Laws') were approved by the Bailiwick's legislatures and brought into force in 2019 (with exception of some provisions of the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018, which are due to come into force at the end of the transition period). The primary Brexit Laws are:
- 12.3 The European Union (Brexit) (Bailiwick of Guernsey) Law, 2018 (the 'Brexit' Law) – which provides the power to disapply or amend Preserved EU law<sup>53</sup>

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<sup>53</sup> [The European Union \(Brexit\) \(Bailiwick of Guernsey\) Law, 2018](#)

- 12.4 The European Union (Amendment of Legislation) (Bailiwick of Guernsey) Law, 2018 – which provides the power to make Ordinances amending preserved EU law and EU-related law<sup>54</sup>
- 12.5 The International Trade Agreements (Implementation) (Bailiwick of Guernsey) Law, 2018 – which provides the power to make Ordinances to implement any international trade agreement, or resolve trade disputes arising therein.<sup>55</sup>
- 12.6 The primary Brexit Laws have been, and will continue to be, used to make further legislation necessary to prepare the Bailiwick for the end of the transition period, as well as to provide for the amendment or implementation of legislation as required following the end of the transition period. This will include legislation to ensure that the Bailiwick complies and remains in compliance with: the extension of the UK's membership of the WTO; the Bailiwick's participation in various continuity FTAs; the TCA; and any future FTAs.
- 12.7 In addition to the primary Brexit Laws, other legislation (often made under powers created by the primary Brexit Laws) has been prepared, amended or enacted in relation to topics such as customs, immigration, animal health, food safety, medicines, international trade (including for the purposes of international agreements), fisheries and maritime affairs, and road traffic. The Bailiwick's programme of legislative change is extensive, wide reaching and ongoing, and will continue to evolve as the UK and the Bailiwick's international trade policy develops.

### **13. Brexit Transition Fund**

- 13.1 In November 2018<sup>56</sup>, the States of Deliberation approved the establishment of a Brexit Transition Fund ('the Fund') within General Revenue with an allocation of £3m as part of the 2019 Budget Report. The Fund was established to enable the States to manage the costs of work to prepare for the UK's departure from the EU and throughout the negotiations phase, to mitigate risks and to implement required changes. The total amount allocated from the Fund to date is approximately c£1.6m.
- 13.2 There are further areas of expenditure that have not previously been highlighted which are likely to be incurred due to the changing relationship between the UK and the EU, irrespective of any UK-EU agreement(s) for their future relationship. This could include costs associated with changes to the

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<sup>54</sup> [The European Union \(Amendment of Legislation\) \(Bailiwick of Guernsey\) Law, 2018](#)

<sup>55</sup> [The International Trade Agreements \(Implementation\) \(Bailiwick of Guernsey\) Law, 2018](#)

<sup>56</sup> [Billet d'État XXIV of 2018, \(various references within the Budget Report\)](#) and [Resolutions](#)

Bailiwick's border operating model due to the end of Protocol 3 that enables the Bailiwick to trade in goods and agricultural products as though it was part of the EU, and the need to implement certain checks and introduce certain measures for goods entering and exiting the Bailiwick's Customs Union with the UK. For example, this may require further infrastructure or changes to IT systems to transition to the new arrangements. There is a likely, but currently unidentified, need for additional funding for implementation purposes after the transition period ends. Therefore, any unallocated funds will remain available subject to the same terms, conditions and restrictions as are currently applicable to enable urgent workstreams to be identified and for funding to be available as required.

- 13.3 The Fund does not include figures relating to officers' time covered by existing budgets, where part or all of those officers' working hours have been refocussed to deal with Brexit/end of transition period-related matters as and when needed (often in addition to their 'business as usual' and/or COVID-19 pandemic work).

#### **14. Guernsey's contingency planning ('No Further Negotiated Outcome' planning)**

- 14.1 The States of Guernsey, as a responsible government, has made preparations to mitigate against the risks of any NFNO situation given the prolonged uncertainty over the outcome of the negotiations and the Bailiwick's involvement in the future agreement. These plans were made in parallel to engagement on the negotiations. It has been repeatedly stated by the Committee that a disorderly UK exit from the EU was not in the Bailiwick's interests.
- 14.2 Given the short timescales for the Bailiwick, the UK and the EU to ratify and implement the agreement/TCA and the concurrent risks of the COVID-19 pandemic, the NFNO plans remain active so that the Bailiwick remains ready to respond to any issues that may arise. Governance arrangements set up to manage the response to the COVID-19 pandemic have been adapted as part of the NFNO planning to enable a quick response to developing events if required.
- 14.3 Further information on the NFNO planning has been provided in Appendix 7.

#### **15. Compliance with Rule 4**

- 15.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 15.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications. She

has advised that there is no reason in law why the Propositions should not be put into effect.

- 15.3 In accordance with Rule 4(3), the Committee has monitored, and continues to monitor, the resources it used for managing the effects of Brexit and the transition period to help mitigate and respond to any uncertain and changing operational, political and legal situations that may arise. This has meant implementing requisite legislation and assessing any opportunities that have arisen and may arise. Resources may continue to be required to ensure that the States can act swiftly to implement new arrangements after the end of the transition period. The use of resources, from across the organisation, will continue to be kept under review. Relevant Committees remain responsible for the immediate issues and for ongoing business as usual activities arising directly or indirectly from Brexit and the upcoming end of the transition period, in accordance with their mandates. To help Committees respond to the new and often unpredictable resourcing needs the Committee, having sought States of Deliberation approval, established the Brexit Transition Fund. That Fund enabled Committees to apply for funding to help manage the effects of Brexit or transition period events on their policy areas as needed. Unallocated funds will remain available subject to the same terms, conditions and restrictions as are currently applicable to enable urgent workstreams to be identified and for funding to be available as required.
- 15.4 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 Tocq was unable to attend the Committee meeting to vote due a recent illness.
- 15.5 In accordance with Rule 4(5) of the Rules of Procedure of the States of Deliberation and their Committees, the Propositions relate to the duties of the Committee because its mandate includes responsibilities to, “advise the States and to develop and implement policies and programmes relating to: (a) leadership and co-ordination of the work of the States” and “(c) external relations and international and constitutional affairs, which includes: 2. relations with the United Kingdom and other jurisdictions; 3. relations with the European Union and other supranational organisations; 4. relations with the other islands of the Bailiwick ...; [and] representing, or overseeing the representation of, and negotiating for, the Island; ...” The Committee considers that the measures outlined in this Policy Letter touch on all those aspects of its mandate.
- 15.6 The Committee was directed by the States to lead on Guernsey’s (and the wider Bailiwick’s) engagement with the UK Government for potential participation in the Bailiwick in any UK-EU future relationship agreement. The States made Resolutions in that regard in the June 2016 and January 2020 Policy Letters.

15.7 The effects of the UK's withdrawal from the EU remain a key external influence for the Bailiwick. The Committee considers that dealing with the implications of the UK's exit from the EU is one of the key strategic priorities for the States of Guernsey at this time, along with managing the COVID-19 pandemic and recovery from its impacts.

15.8 The Committee's consultation with other parties is outlined in section 16, in accordance with Rule 4(5).

## **16. Engagement and consultation on these proposals**

16.1 The Committee leads on co-ordinating the overall policy approach and draft legislation required under the primary Brexit Laws as a result of the UK's withdrawal from the EU and helps to co-ordinate the cross-Committee decision-making process. Individual Committees remain responsible for their policy areas and legislation and for driving forward any necessary amendments within their mandate. The Committee is mandated to deal with international relations, external relations and constitutional affairs. In terms of representing the Bailiwick in engagement with the UK Government in respect of the UK-EU negotiations, the Committee's responsibilities were reaffirmed by the States of Deliberation in its decisions of the June 2016 and January 2020 Policy Letters.

16.2 A governance structure to facilitate effective and timely consideration of matters and decision-making across the Principal Committees and to take into account the views of Alderney and Sark was established – FPDG and TPAP. Individual Committees could – and still can – also introduce and amend policy and legislation in the usual way for any matters which fall within their mandates and are related to the Bailiwick's response to the UK's withdrawal from the EU and consequential changes.

16.3 In view of the very short timeframe for the preparation of the Propositions attached to this Policy Letter, it has not been possible for the Committee to carry out the degree of engagement that would ordinarily be undertaken in the development of the exact wording of these policy proposals. However, the policy intent of the various Committees – and islands – concerned has been clear and at the centre of consideration during drafting.

16.4 This work relates to extant States' Resolutions and the Committee is responsible for such constitutional and external relations matters. However, the scope, scale and significance of the work during the past 4½ years to prepare and respond to the UK's withdrawal from the EU and all related matters means that the Committee has benefitted from, valued, encouraged and welcomed the close and collaborative work and enormous contributions from across the States of Guernsey – its Committees and its officers. Whilst the

Committee has led the work, it is not the result of the efforts of the Committee alone. The CfHA has undertaken a significant amount of work to ensure that the necessary customs and immigration arrangements have been in place at various points in the UK's exit, for example the establishment of the EU/EEA/Swiss settled status scheme. There has also been close working with the CfED in regard to the Bailiwick's involvement in any future economic partnership, including the rest of world agreements, and future fisheries policy.

- 16.5 The Law Officers of the Crown have also been consulted and have provided extensive legal advice and legislative drafting throughout the consideration of the issues described in this Policy Letter.
- 16.6 There has been frequent and detailed engagement between the governments of the Bailiwick and the UK Government in relation to the UK's withdrawal from the EU – in regard to the legal separation (in January 2020), the future relationship negotiations and planning for 'No Further Negotiated Outcome' risks. The UK Government has been reminded repeatedly that the Bailiwick needs to make its own decisions about its participation (or otherwise) in the UK-EU future relationship agreement and that the Bailiwick will need to ensure it has its own legislation to meet its commitments under the Withdrawal Agreement (during the transition period) and for the future (from 31<sup>st</sup> December, 2020 onwards).
- 16.7 As it did throughout the process leading to the UK's legal separation from the EU (from 2016 until 31<sup>st</sup> January, 2020), the Committee has continued to work with the States of Alderney and the Chief Pleas of Sark to ensure that both those islands were informed and engaged throughout the negotiations phase for the UK-EU future relationship. Issues referred to in this Policy Letter have also been discussed in previous meetings of the Bailiwick Council, the Alderney Liaison Group and the Sark Liaison Group. Alderney and Sark's governments are represented on FPDG, SCG and TCG which cover the negotiations phase and preparations for the end of the transition period (whether the Bailiwick is involved in any UK-EU future relationship agreement or not).
- 16.8 The Alderney and Sark political representatives on FPDG and their senior officials agreed that this Policy Letter could be used for consideration by the parliaments in Alderney and Sark. Due to the timescales, it is intended that the Policy Letter will be considered on or about the same date in all three Bailiwick parliaments.
- 16.9 The Committee and its officials have worked closely throughout with counterparts in Jersey and the Isle of Man. The same approach has been taken by other Committees working on topics under their own mandates.

Yours faithfully



P T R Ferbrache  
President

H J Soulsby  
Vice-President

M A J Helyar  
J P Le Tocq  
D J Mahoney

**RECENT CORRESPONDENCE WITH THE UK PRIME MINISTER/HMG ABOUT THE UK'S  
WITHDRAWAL FROM THE EU**

- A1.1 Since the UK left the EU on 31<sup>st</sup> January, 2020, and throughout the transition period, there has been regular engagement and correspondence with the UK Government to ensure that the Bailiwick's interests were understood and fully represented during the negotiations with the EU.
- A1.2 The Bailiwick's opening position for participation in any future UK-EU agreement was set out ahead of the UK's exit, when a letter was sent from the Chief Minister to the UK Prime Minister, the Rt. Hon. Boris Johnson MP, in December 2019<sup>57</sup>. The letter outlined the existing, historic, constitutional relationship between the Bailiwick and the UK, through the Crown, and welcomed assurances from the UK that the Bailiwick would continue to be engaged throughout the process as the UK sought a future relationship with the EU. It also confirmed that participation by Guernsey in any future UK-EU agreement would need to be fair practical and proportionate to the size and economy of the island.
- A1.3 In January 2020, the need for continued engagement between the Bailiwick and the UK Government throughout the transition period and the UK-EU negotiations was reaffirmed in a letter to the Chancellor of the Duchy of Lancaster, the Rt. Hon. Michael Gove MP. On 31<sup>st</sup> January, 2020 the Chancellor of the Duchy of Lancaster provided assurances on this matter:
- “This Government remains committed to negotiating for the whole of the UK and the British family it represents. We will continue to engage closely with you and advocate for your interests, as we strive to secure a deal that works for all of us.”
- A1.4 On 2<sup>nd</sup> March, 2020, a joint letter was sent to the Chancellor of the Duchy of Lancaster setting out aspirations of the Bailiwick of Guernsey, Jersey and the Isle of Man for participation in any future UK-EU agreement. This was in response to the publication on 27<sup>th</sup> February of the UK's approach to the negotiations. The overriding objectives, as set by each of the islands, were summarised as including:
- “Setting our own priorities; retaining autonomy of our own laws; maintaining our tax sovereignty and continuing to set our own fiscal policies; keeping the Common Travel Area; being in control of our own waters; and managing our

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<sup>57</sup> [Letter from the Chief Minister of Guernsey to the UK Prime Minister, 13<sup>th</sup> December, 2019](#)

own borders.”

A response to this letter was received from the Paymaster General, the Rt. Hon. Penny Mordaunt MP, on 12<sup>th</sup> March, 2020 which confirmed the UK’s commitment to respecting the constitutional relationship between the Bailiwick and the UK, through the Crown:

“As we emphasised in the UK Public Mandate<sup>58</sup>, the UK remains unchanged in its commitment to seek outcomes which support your security and economic interests and also reflect your unique characteristics. We have a shared recognition and appreciation of the historical relationship between the UK and the Crown Dependencies, and the UK takes its constitutional responsibilities seriously in this regard.”

- A1.5 On 31<sup>st</sup> March, 2020 Guernsey’s Minister for External Relations wrote to the Paymaster General to confirm the Bailiwick’s position for participation in any UK-EU agreement. This included reference to seeking permission to be entrusted by the UK to negotiate directly with France in regard to a regional solution for fisheries matters. On 15<sup>th</sup> April, 2020 the Paymaster General responded to this request, and reaffirmed the UK’s commitment to reaching an agreement on fisheries that would be suitable for the Bailiwick.

“I note your request to be entrusted by the UK Government to negotiate directly on fisheries matters with Normandy and Brittany. I would like to reassure you that the UK Government is committed to reaching an agreement with the EU on fisheries which works for all parts of the UK and wider British family, and protects the interests of the Crown Dependencies, including allowing for the possibility of neighbourhood agreements.

The UK Government, at Guernsey’s request, has sent a note verbale to France expressing our interest in a neighbourhood agreement on Guernsey waters. We do not expect a reply from them until discussions on any fisheries framework agreement with the EU have progressed. The UK and EU remain committed to undertaking best endeavours to agree that framework by 1<sup>st</sup> July, 2020.”

- A1.6 On 27<sup>th</sup> April, 2020, the Paymaster General provided further assurances that the UK negotiating team would ensure that the Bailiwick’s interests would be represented in the course of the negotiations:

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<sup>58</sup> The UK published “[The Future Relationship with the EU – the UK’s Approach to Negotiations](#)” on 27<sup>th</sup> February, 2020. Paragraph 11 states “The Government will act in these negotiations on behalf of all the territories for whose international relations the UK is responsible. In negotiating the future relationship between these territories and the EU, the UK Government will seek outcomes which support the territories’ security and economic interests and which reflect their unique characteristics.”

“My officials have taken this information...into account to ensure we continue to seek to represent your interests comprehensively during negotiations with the Commission.”

...

“They have particularly emphasised that the Crown Dependencies are part of the UK’s historic customs territory by law and constitution, underlining the necessity of your inclusion in the customs arrangements within the CFTA.”

- A1.7 The UK have provided assurances throughout the transition period, in respect of the UK-EU negotiations, that the Government recognises the historic constitutional relationship between the Bailiwick and the Crown. On 1<sup>st</sup> May, 2020, the Parliamentary Under-Secretary of State for Justice, Alex Chalk MP, reaffirmed the UK’s commitment to representing the Bailiwick’s interests and to the principles of the constitutional relationship:

“This Government recognises and values the historic relationship between Guernsey and the Crown. I am glad the Prime Minister's recent recognition of this relationship has assured you that our position on this remains unchanged.

As you noted in your letter, on 3<sup>rd</sup> February, 2020 the Prime Minister set out that the Government will be acting on behalf of all the territories for whose international relations it is responsible in its negotiations with the EU. This Government takes its constitutional responsibilities towards the Crown Dependencies very seriously. We respect your autonomy in domestic matters and we look forward to working together on matters of mutual interest. We will continue to engage with you in a collaborative and transparent way as we seek to represent your interests, and the interests of the whole British family, during the EU negotiations as well as negotiations for new Free Trade Agreements with other countries in the rest of the world.”

- A1.8 On 29<sup>th</sup> May, 2020 the Paymaster General again provided assurances to Guernsey’s Minister for External Relations that the UK Government was committed to representing the interest of the Bailiwick in the ongoing negotiations with the EU:

“I am fully aware of the key interests you with the UK to put forward on your behalf to the EU. To echo your comments, the UK remains committed to seeking the best outcome we can for the whole British family and upholding the long-standing and highly valued relationships between the UK and the Crown Dependencies.”

- A1.9 On 19<sup>th</sup> August, 2020, following a number of negotiating rounds between the UK and the EU, the Paymaster General confirmed that the UK was continuing to seek to secure the best possible outcome for the Bailiwick in the negotiations,

which would meet the objectives agreed by the States of Deliberation in June 2016 and again in January 2020:

“We will...focus our attention and efforts on securing the best possible goods-based arrangement for your jurisdictions. As you have also highlighted, fisheries is a key focus area and we remain committed to working with you to develop and present a credible offer to the EU which is compatible with the interests of all your jurisdictions and the UK.”

A1.10 In September 2020, the Chief Minister wrote to the Lord Chancellor, the Rt. Hon. Robert Buckland QC MP, on the impact of the Internal Market Bill in relation to the Bailiwick of Guernsey. The Lord Chancellor responded in October 2020<sup>59</sup>, reaffirming the UK’s commitment to representing the Bailiwick’s interests and to the principles of the constitutional relationship.

“I can assure you of the UK Government's support for the longstanding constitutional position that the UK Parliament should not legislate for the Crown Dependencies on domestic matters without the Crown Dependencies' consent.”

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<sup>59</sup> 14<sup>th</sup> October, 2020, Media release - [Lord Chancellor reiterates UK Government commitment to protecting Bailiwick autonomy](#)

**BACKGROUND TO THE NEGOTIATIONS**

- A2.1 From 1<sup>st</sup> January, 1973 until 31<sup>st</sup> January, 2020, the Bailiwick had a special relationship with the EU that was set out in Protocol 3 to the UK's Act of Accession to the European Community (1972) ('Protocol 3'). Throughout this time, the Bailiwick was regarded as a territory for whose international relations the UK Member State was responsible. Under Protocol 3, the Bailiwick was effectively part of the EU Customs Union and the common market, later Single Market, so far as it related to the free movement of certain goods. The detailed rules setting out the conditions with respect to trade in agricultural products (which included fish and fish products) were set out in EC Regulation 706/73<sup>60</sup>. Protocol 3, amongst other things, also required the Bailiwick to treat all natural and legal persons of the EU in the same way and to respect the principle of non-discrimination. Otherwise, the Bailiwick was not bound by other aspects of the Single Market.
- A2.2 Outside the formal Protocol 3 relationship, the Bailiwick was treated as a 'third country' by the EU. As a third country, and due to the Bailiwick's location and close trading relationships with both the UK and other EU Member States, the Bailiwick voluntarily implemented appropriate EU legislation and applied relevant international standards to facilitate such relationships.
- A2.3 In June 2016, the UK held a referendum on the following question "Should the United Kingdom remain a member of the European Union or leave the European Union?" The outcome of the referendum was for the UK to leave the EU. That led to a sequence of events<sup>61</sup> and negotiations between the UK and EU, which resulted in a Withdrawal Agreement and Political Declaration<sup>62</sup> being agreed between them. The UK ceased to be a Member State of the EU at 11pm on 31<sup>st</sup> January, 2020. At the same time, the transition period (until 11pm on 31<sup>st</sup> December, 2020) commenced, in accordance with the Withdrawal Agreement. The Political Declaration set out the political aspirations of the UK and EU and the intended framework<sup>63</sup> for the future UK-EU relationship, but was not binding in itself.

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<sup>60</sup> [Regulation \(EEC\) No 706/73 of the Council of 12 March 1973 concerning the Community arrangements applicable to the Channel Islands and the Isle of Man for trade in agricultural products](#)

<sup>61</sup> As outlined in Sections 1 (paragraphs 1.1 – 1.3) and 2 of the January 2020 Policy Letter.

<sup>62</sup> [The EU-UK Withdrawal Agreement](#) 12<sup>th</sup> November, 2019 and UK legislation to bring the Withdrawal Agreement into effect in [The European Union \(Withdrawal Agreement\) Act 2020](#)

<sup>63</sup> The revised Political Declaration made clear that the future UK/EU relationship should have a 'comprehensive and balanced' Free Trade Agreement at its core, alongside agreements on security and wider areas of cooperation.

- A2.4 The Bailiwick has never been a part of the UK or the EU. When the UK ceased to be a Member State of the EU, the Bailiwick's Protocol 3 relationship with the EU also ended. However, the terms of the Withdrawal Agreement provided that there would largely be continuity for the duration of the transition period, which for the Bailiwick meant it was as though Protocol 3 still applied. This has enabled the Bailiwick's relationships with the EU for trade in goods and movement of people to continue. For fisheries, the UK decided to withdraw from the London Fisheries Convention ('LFC') which, therefore, ceased to apply to the Bailiwick from 11pm on 31<sup>st</sup> January, 2020.<sup>64</sup> The Bailiwick legislated unilaterally to ensure continuity of French access to its territorial seas for a temporary period in order that the UK-EU future relationship negotiations could continue from a stable platform.
- A2.5 The mandated responsibilities of the Policy & Resources Committee (the 'Committee') include advising the States and developing and implementing policies and programmes relating to external relations and international and constitutional affairs. Members of the Committee have provided updates<sup>65</sup> to the States about the progress of the UK's withdrawal from the EU, the future relationship and the implications for the Bailiwick. The most recent statement to the States was delivered at a Meeting on 16<sup>th</sup> December, 2020<sup>66</sup>. Due to the sensitive nature of the negotiations for the UK's withdrawal from the EU and for the UK-EU future relationship, it has not been possible to provide frequent or detailed public updates at all stages.
- A2.6 Other States Committees also hold mandated policy responsibilities for the management and operation of elements of the Protocol 3 relationship, principally these include the: Committee *for* Home Affairs, the Committee *for the* Environment & Infrastructure, the Committee *for* Health & Social Care, the Committee *for* Economic Development, and the Committee *for* Employment & Social Security.
- A2.7 The principal Laws that give effect to the UK's withdrawal from the EU and allow the Bailiwick to manage or mitigate the consequences – both during and after the transition period – have already been enacted. A further Law has been enacted in preparation for the Bailiwick choosing to be part of the UK's global free trading future based on WTO membership and free trade agreements with international partners. Further legislation under these Laws may be necessary in respect of: any ongoing consequences of Brexit and the

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<sup>64</sup> [The London Fisheries Convention](#) is an international agreement relating to fishing rights in the coastal waters of Western Europe. It provides full rights of access to fishing grounds between the 6-12 nautical mile for fishermen of contracting parties that had fished in those waters between 1953 and 1962.

<sup>65</sup> [Brexit Updates given in the States of Deliberation – 2016 to 2020](#)

<sup>66</sup> [Statement, 16<sup>th</sup> December, 2020, to the States of Deliberation by Deputy P T R Ferbrache, President of the Policy & Resources Committee](#)

end of the transition period (including future alignment with UK legislation rather than EU law); WTO commitments; obligations under existing free trade agreements; and, preparing to be part of new free trade agreements. These laws are discussed in greater detail in Section 12 of the Policy Letter. Many of the same challenges and opportunities exist in Guernsey, Alderney and Sark, and the measures are intended to apply to the whole Bailiwick.

### **Transition Period**

- A2.8 The transition period was intended to be a time during which the UK-EU relationship could change from that of the UK being a Member State of the EU to one based on a new agreement. The UK's preference was to seek a relationship based on a 'classic' free trade agreement ('FTA'), rather than a closer relationship involving either one or both of the EU Customs Union and the EU Single Market.
- A2.9 In accordance with the terms set out in the Withdrawal Agreement<sup>67</sup>, EU rules and regulations have continued to apply to the UK throughout the transition period, maintaining the same rights and obligations as if it were still a Member State of the EU. At the end of January 2020, when the UK was no longer a member of the EU, it could begin trade negotiations with the EU and any other countries, territories, or trade blocs. Such agreements cannot be put into effect, however, until the end of the transition period.
- A2.10 Similarly, under the terms of the Withdrawal Agreement, the same rights and obligations have applied to the Bailiwick throughout the transition period as if Protocol 3 still applied. The States of Deliberation acknowledged the territorial extent of the Withdrawal Agreement as including the Bailiwick in Resolution 2a of the January 2020 Policy Letter.
- A2.11 The Withdrawal Agreement allowed for the transition period to be extended by agreement. However, the UK Government was clear that it would not seek or agree to such an extension<sup>68</sup>.
- A2.12 During the transition period, continued French fishing access to Bailiwick waters has been permitted voluntarily by the Bailiwick, underpinned by the legislation which previously gave effect to the LFC and authorisation documents

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<sup>67</sup> The details of the Withdrawal Agreement and Political Declaration were set out in Section 4 (paragraphs 4.1-4.40) of the January 2020 Policy Letter.

<sup>68</sup> The European Union (Withdrawal Agreement) Act 2020 included a provision which prohibited UK from seeking an extension to the transition period (section 33).



required for the purposes of the EU's SMEFF<sup>69</sup> regime. This interim arrangement was put in place to govern access by French fishing vessels to fish in local waters from 11pm on 31<sup>st</sup> January, 2020 when the previous arrangement under the LFC ceased to apply to the Bailiwick waters (and to those of the wider UK and the Isle of Man), as in the terms of the UK's unilateral decision to withdraw from the LFC. In January 2020, the Bailiwick legislated quickly to enact regulations to provide so-called SMEFF documents, which enabled France to meet its own EU obligations, calmed regional tensions and enabled UK-EU future relationship negotiations to continue from a stable platform. The current arrangements will end automatically at 11pm on 31<sup>st</sup> December, 2020 at which point the legislation which previously gave effect to the LFC will be revoked by the UK.

### **Negotiations**

- A2.13 The first round of negotiations for the UK-EU future relationship commenced on 2<sup>nd</sup> March, 2020. Successive negotiation rounds continued throughout the year, with an announcement about the outcome on 24<sup>th</sup> December, 2020. Successive negotiation rounds continued throughout the year, with an announcement about the outcome on 24<sup>th</sup> December, 2020. The COVID-19 global pandemic affected these negotiations, as the UK and EU had to divert resources to cope with the immediate health emergency and resulting economic downturn. National lockdowns introduced in the UK and across Europe in mid-March 2020, and at various points thereafter, restricted the ability of the negotiating teams to travel and hold face-to-face meetings. Some negotiating rounds were postponed and others have taken place remotely via video conference. Despite some concerns over the viability of completing the negotiations amidst a global pandemic, the UK remained committed to completing the negotiations before the end of 2020. From the Bailiwick's perspective, there were some disadvantages in a move to virtual meetings (as it could sometimes be more difficult to convey certain viewpoints), but also some advantages as the meetings could be held more frequently and more quickly (compared to travel off-island) which suited the fast-paced nature of the negotiations.

#### UK opening position

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<sup>69</sup> [Regulation \(EU\) 2017/2403 of the European Parliament and of the Council of 12 December, 2017 on the sustainable management of external fishing fleets, and repealing Council Regulation](#) ('the SMEFF Regulation')

A2.14 Prior to the appointment of the current UK Prime Minister in July 2019, the UK Government, under the Rt Hon Theresa May MP, was pursuing a “deep and special partnership”<sup>70</sup> with the EU governed by a broad Association Agreement.

A2.15 Following the appointment of the current UK Prime Minister, the approach changed in favour of a lighter relationship, based on a FTA (alongside a number of side agreements, as required). This position was laid out by the Conservative Party in its Manifesto<sup>71</sup> for the December 2019 General Election, which set the new vision for the UK’s future relationship with the EU and laid out some of the core objectives. The vision set out in the Manifesto was one in which the UK would be able to, amongst other things, take back control of the UK’s Trade Policy; introduce an Australian-style points-based immigration system; raise standards in areas like workers’ rights, animal welfare, agriculture and the environment; and ensure the UK is in full control of its fishing waters. Then, on 27<sup>th</sup> February, 2020, the UK Government published ‘Our approach to the Future Relationship with the EU’<sup>72</sup> setting out its objectives/vision for the future relationship before the UK-EU negotiations began. Therefore, the intention was to deliver a future relationship with the EU through a FTA.

#### The EU’s opening position

A2.16 Following the UK’s exit from the EU in January 2020, the Council of the European Union adopted a decision on 25<sup>th</sup> February, 2020 to enable the start of negotiations on a new partnership with the UK<sup>73</sup>. The Council also nominated the Commission as EU negotiator and adopted the negotiating directives which set the scope of the future partnership<sup>74</sup>. The mandate covered areas such as trade, fisheries, foreign policy, security and defence, law enforcement and judicial cooperation in criminal matters.

A2.17 On 18<sup>th</sup> March, 2020, the Commission published a draft legal text covering the future EU-UK partnership<sup>75</sup>. This set out the negotiating directives that had been approved by the Council of the European Union in February 2020.

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<sup>70</sup> UK Prime Minister’s [Florence speech: a new era of cooperation and partnership between the UK and EU](#), 22<sup>nd</sup> September, 2017.

<sup>71</sup> [Get Brexit Done Unleash Britain’s Potential – The Conservative and Unionist Party Manifesto 2019](#) 24<sup>th</sup> November, 2019.

<sup>72</sup> [Our approach to the Future Relationship with the EU](#) – documents published by the Prime Minister’s Office, 10 Downing Street 27<sup>th</sup> February, 2020.

<sup>73</sup> [Council decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement](#) – Published by the Council of the European Union on the 13<sup>th</sup> February, 2020.

<sup>74</sup> [Directives for the negotiation of a new partnership with the United Kingdom of Great Britain and Northern Ireland](#) – Published by General Secretariat of the Council of the European Union, 25<sup>th</sup> February, 2020.

<sup>75</sup> [Future EU-UK Partnership: European Commission publishes draft legal text](#), 18<sup>th</sup> March, 2020.

A2.18 The recommended decision of the Council authorising the opening of negotiations with the UK on 13<sup>th</sup> February, 2020, also suggested that the legal basis of partnership should be based on Article 217<sup>76</sup> of the TFEU which provided for “agreements establishing an association involving reciprocal rights and obligations, common action and special procedure” or association agreements. This is wider than just a FTA which can be concluded under Article 207 TFEU. The EU negotiating directives state that the envisaged future EU and UK economic relationship should be: an “ambitious, wide-ranging and balanced economic partnership” and “comprehensive, encompassing a free trade agreement as well as wider sectoral cooperation”<sup>77</sup>.

A2.19 On 18<sup>th</sup> June, 2020, the European Parliament adopted a set of recommendations on the “negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland”<sup>78</sup>. Those recommendations covered a series of important subjects in a comprehensive manner such as: the general principles; the implementation of the Withdrawal Agreement; the economic partnership; trade and level playing field; specific sectorial issues; foreign affairs and security; and key aspects of governance. It provided the European Parliament’s assessment of priorities for the future economic partnership.

A2.20 It has been a guiding principle from the EU perspective that any future agreement with the EU should not give the UK, and by extension the Crown Dependencies, a better outcome than the UK’s membership of the EU

#### The Bailiwick of Guernsey’s opening position

A2.21 Having considered a Policy Letter in June 2016 which recognised the UK’s referendum outcome to withdraw from the EU (‘the June 2016 Policy Letter’)<sup>79</sup>, the States agreed their high-level objectives for Guernsey’s future relationship with the UK and the EU. These objectives are set out in Appendix 3. In the

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<sup>76</sup> Article 217 of the [Treaty on the Functioning of the European Union](#) - The Union may conclude with one or more third countries or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure. For the purposes of the Council’s decision regard is to be given to Article 217, in conjunction with Article 218(3) and (4) which describe the procedure for negotiating and concluding agreements with third countries.

<sup>77</sup> [Directives for the negotiation of a new partnership with the United Kingdom of Great Britain and Northern Ireland](#) – Published by General Secretariat of the Council of the European Union, 25<sup>th</sup> February, 2020, p.8.

<sup>78</sup> [European Parliament recommendation of 18 June 2020 on the negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland \(2020/2023\(INI\)\)](#)

<sup>79</sup> ‘[Urgent Proposition’ at the States’ Meeting of 29 June 2016](#) – ‘Managing the Implications for Guernsey because of the UK’s Changing Relationship with the EU’ and [Resolutions for Billet d’État XX - 29th June 2016](#)

Resolutions relating to a Policy Letter in January 2020, which, in particular, acknowledged the Withdrawal Agreement, its application to the Bailiwick, and the transition period ('Resolutions of the January 2020 Policy Letter')<sup>80</sup>, the States reaffirmed the negotiating objectives when they directed that "the Bailiwick's interests continue to be represented to the UK during any negotiations in relation to the UK-EU future relationship". The States also resolved in January 2020 that any agreement or protocol in respect of the Bailiwick should be "underpinned by the principles of relevance, proportionality and practicality taking into account the island nature of the Bailiwick, its size and population, and unique needs arising out of the same"<sup>81</sup>. The Policy & Finance Committees of both Alderney and Sark approved this approach.

#### Bailiwick of Guernsey governance structure – negotiations phase

- A2.22 The Committee was directed by the States of Deliberation to lead on Guernsey's participation in the UK-EU negotiations on the future relationship<sup>82</sup>. Alderney and Sark's Policy & Finance Committees considered the same January 2020 Policy Letter and also approved that Guernsey's Policy & Resources Committee lead the negotiations phase for the Bailiwick.
- A2.23 The many facets of the future relationship negotiations crossed all States of Deliberation Principal Committee mandates. Therefore, it was vital to ensure that there were arrangements in place to support the Committee as it carried out engagement with the UK Government on behalf of the Bailiwick. The Committee considered that a collaborative approach<sup>83</sup> was essential so that it could make its case most effectively such that the UK, in turn, could carry out the best possible negotiations on the Bailiwick's behalf<sup>84</sup>. A governance structure<sup>85</sup> was established to facilitate effective and timely consideration of matters and decision-making across the Principal Committees and to enable Alderney and Sark to participate directly through that structure (as well as other channels of communication to set out their needs and interests).
- A2.24 Two new groups were formed in January 2020 to offer support, advice and guidance during the negotiations phase. In broad terms, the Future Partnership

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<sup>80</sup> [Billet d'État II January 2020](#) and [Resolutions](#) of the January 2020 Policy Letter.

<sup>81</sup> [Billet d'État II January 2020](#) and [Resolutions](#) of the January 2020 Policy Letter.

<sup>82</sup> Resolutions of the June 2016 and January 2020 Policy Letters

<sup>83</sup> The collaborative approach proved beneficial during the pre-Brexit phase (before 31<sup>st</sup> January, 2020) when the Committee was supported in its role by the Brexit Group and the Brexit Transition Group (as set out in paragraphs 4.53, 9.2-9.3 and Appendix 5 of the January 2020 Policy Letter). Participation of Committee representatives in the Brexit Group and Brexit Transition Group also enabled the Principal Committees which were directly engaged in work relating to Brexit to be well briefed.

<sup>84</sup> As outlined in paragraph 4.50 of the January 2020 Policy Letter.

<sup>85</sup> As outlined in paragraph 4.52 and 9.8 of the January 2020 Policy Letter.

Delivery Group ('FPDG') is the political group and the Trade Policy Advisory Panel ('TPAP') is the business representative group:

- The FPDG comprising representatives of the Policy & Resources Committee and each Principal Committee, the States of Alderney, Chief Pleas of Sark and senior civil servants. The FPDG is the political group, providing political governance on engagement between the Committee and the UK Government in relation to the UK-EU negotiations (and negotiations the UK has or may enter into with other countries). FPDG also took on the political responsibility for NFNO planning.
- The TPAP enables engagement with industry and external stakeholders. It is tasked to consider the operational elements of the negotiations, and whilst it does not have any decision-making function it acts as a sounding board on the impacts of certain strategic decisions and a critical friend to any negotiating strategy.

A2.25 FPDG and TPAP have met generally on a fortnightly basis (with some additional meetings as required) and considered issues that have arisen during the negotiations phase. Following the General Election in Guernsey in October 2020, the newly constituted Committee acted quickly to re-establish the two groups (by asking the Principal Committees to nominate their representatives and alternates) and to ensure that any new members of the groups were fully briefed and able to take on responsibility for representing their Committees, and the policy areas within their mandates, as a matter of priority.

A2.26 The Bureau des Iles Anglo-Normandes ('BIAN') (a joint office of the governments of Guernsey and Jersey based in Normandy representing the interests of the Channel Islands in France) and the Channel Islands Brussels Office ('CIBO') (a joint office of the governments of Guernsey and Jersey representing Channel Island interests with the EU) have provided advice to the Committee and the FPDG throughout the negotiations in regard to any implications for political relationships. BIAN and CIBO have also supported continued engagement with French and EU partners to ensure that the Bailiwick's positions are understood and respected (details of this engagement are outlined in Appendix 4).

#### Representing the Bailiwick's interests during the negotiations phase

A2.27 The islands of the Bailiwick are self-governing dependencies of the Crown, with their own directly elected legislative assemblies, their own administrative, fiscal and legal systems, and their own courts of law. However, neither the Bailiwick, nor any of its constituent jurisdictions, are sovereign States. The UK has responsibility for the formal international relations of the Bailiwick, as it does

for Jersey, the Isle of Man and the Overseas Territories. Usually, the UK Government negotiates international agreements on behalf of the Bailiwick<sup>86</sup>, either at the request of the Bailiwick (or any of its constituent jurisdictions) or if the Bailiwick agrees to such a suggestion by the UK Government. Generally, international agreements which apply to the UK can be extended to all or any of the islands at the time of ratification, accession or at a later date.

A2.28 The UK Government and Guernsey signed an International Identity Framework ('the Framework') in 2008<sup>87</sup>. The Framework seeks to develop Guernsey's international identity through an agreed set of principles with the UK. In particular, the Framework states that "the UK will not act internationally on behalf of Guernsey without prior consultation" and that "the UK recognises that the interests of Guernsey may differ from those of the UK, and the UK will seek to represent any differing interests when acting in an international capacity."

A2.29 Accordingly, the Bailiwick has not been directly represented at the UK-EU negotiations but has, instead, been represented by the UK negotiations team. This might be considered a risk because of the potential difficulty in ensuring that the Bailiwick's interests are fully understood and therefore accurately presented by the UK negotiators, and, in turn, well understood by the EU. However, the UK negotiating team has been in frequent (often daily) contact with Guernsey officials and has engaged with the Bailiwick throughout the process to check and confirm the interests of the islands. This enabled Guernsey officials to remind the UK government of the need to align outcomes for the Bailiwick in the negotiations with the objectives and Resolutions from the States of Deliberation in the June 2016 and January 2020 Policy Letters, share information, and provide input into some of the UK-EU negotiations. Throughout this year, Guernsey has continued to build on strong relationships at Ministerial and official level across various UK Government Departments.

A2.30 The UK Government is responsible for representing the Bailiwick's interests in these negotiations even where they differ from those of the UK. The UK Government has repeatedly acknowledged this responsibility (as set out in

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<sup>86</sup> The States of Guernsey has sought agreement from the UK Government, acting on behalf of the Crown, to enable Guernsey to negotiate certain international agreements directly with other countries, rather than being represented in the negotiations by the UK. Entrustment has been used on various occasions, including in relation to tax transparency agreements, an asset sharing agreement with the US and, more recently, for Guernsey to enter into a social security agreement with Latvia, which was signed in September 2020.

<sup>87</sup> [Framework for developing the international identity of Guernsey](#) – signed between Guernsey and UK governments on 18<sup>th</sup> December, 2008

Appendix 1) and has publicly stated that it is negotiating with the EU “on behalf of the entire British family, including the Crown Dependencies”<sup>88</sup>.

A2.31 Officials from across the States of Guernsey have been working closely, with the UK Government through the governance unit at the Cabinet Office and Task Force Europe (the negotiating team at No. 10 headed up by Lord Frost). Political liaison on negotiating matters has been handled through engagement with the Paymaster General, the Rt Hon. Penny Mordaunt MP. There have also been meetings with other Ministers, including the Lord Chancellor. Guernsey (and, when required, Alderney and Sark) officials have also been working closely with counterparts in other UK Government Departments, primarily: the Ministry of Justice (MoJ), the Department for Business, Energy and Industrial Strategy (BEIS), the Department for International Trade (DIT), the Department for Environment, Food and Rural Affairs (DEFRA), HM Treasury (HMT), HM Revenue and Customs (HMRC) and the Foreign, Commonwealth and Development Office (FCDO).

A2.32 The Bailiwick has no representation in the UK Parliament and its residents generally have no right to vote in UK elections or referendums<sup>89</sup>. The Bailiwick’s parliaments and its residents did not participate in the UK’s decision to leave the EU, or, by extension, the ending of Protocol 3 and its impact on the Bailiwick’s trade relationship with the EU. Whilst the States of Deliberation noted the UK Government’s intention to trigger Article 50 and to initiate the process of the UK leaving the EU, in March 2017<sup>90</sup>, the States did not signal approval or support then or at any other time the UK leaving the EU and the consequential ending of Protocol 3. The Bailiwick has sought to maximise opportunities and minimise risks from the effects on it of the UK’s departure from the EU.

### **Sark & Alderney**

A2.33 The Committee has, on behalf of the Bailiwick, led the engagement with the UK Government in respect of its negotiations with the EU<sup>91</sup> to ensure that the interests of the entire Bailiwick are understood by the UK Government, including when the interests of the three islands of the Bailiwick may differ.

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<sup>88</sup> [Letter from the Prime Minister](#), the Rt Hon Boris Johnson MP, to the Chief Minister of Guernsey, Deputy Gavin St Pier, 9<sup>th</sup> September, 2019).

<sup>89</sup> [Voting if you move or live abroad](#) certain requirements apply to enable those who have moved or live abroad from the UK to vote e.g. eligibility for those registered to vote in the UK within the last 15 years.

<sup>90</sup> [Billet d’État VI of 2017](#) – ‘Acknowledging the Triggering of Article 50 of the Treaty of European Union in Respect of ‘Protocol 3’ and [Resolutions](#).

<sup>91</sup> As set out in the January 2020 Policy Letter and its Resolutions. Approved by States of Deliberation on 8<sup>th</sup> January, 2020. Approved by Alderney’s Policy & Finance Committee on 23<sup>rd</sup> January, 2020. Approved by Sark’s Policy & Finance Committee on 20<sup>th</sup> January, 2020.

The Committee continues to work with the States of Alderney and the Chief Pleas of Sark to ensure that both islands are kept updated on the progress of the negotiations to enable them to provide input on their own position. Liaison between Alderney, Sark and other States of Deliberation Committees occurs for technical and operational matters, or where shared legislation, policy or practice exists or could be beneficial.

- A2.34 Sark and Alderney are represented on FPDG to ensure their interests are known and understood. Issues have been discussed in meetings between the islands of the Bailiwick – including when appropriate in the Bailiwick Council, the Alderney Liaison Group and the Sark Liaison Group – as well as in less formal fora as matters arise.
- A2.35 Furthermore, Sark and Alderney officials have attended officer-level working groups with UK Government Departments on a variety of matters.
- A2.36 It has been emphasised repeatedly to the UK Government that the final decision about whether each jurisdiction will be included in the scope of any UK-EU agreement will be for each of the Bailiwick's three parliaments.



**GUERNSEY'S OBJECTIVES IN RELATION TO THE UK'S WITHDRAWAL FROM THE EU<sup>92</sup>**

**Negotiating considerations - relationship with the UK**

- (i) For trade in **goods**, including agriculture and fisheries products, there is a long-standing historic trading arrangement which provides for tariff-free reciprocal trade.
- (ii) There are no arrangements in place that make reference to trade in **services**, including financial services.
- (iii) For **people**, the Common Travel Area should continue to apply (it predates UK Accession, and is not dependent on EU law).

**Negotiating objectives: relationship with the EU**

- (i) In order to maintain the status quo for Guernsey, the States of Guernsey will need to maintain the free **trade in goods** with the EU hitherto provided under Protocol 3. In principle, it is possible that this may be replaced by extending the goods provisions of any new UK/EU agreement to Guernsey, subject to the precise terms.
- (ii) The existing work exploring extension of the UK **membership of the WTO** should be given a higher priority. This will provide lower tariffs for any imported goods coming direct from the EU or elsewhere (not via the UK) and will underpin an agreement on free movement of goods as well as other trading relationship.
- (iii) For **trade in services**, the States will seek to maintain its current position of being outside the EU, with market access on a case by case basis as a third country.<sup>93</sup>
- (iv) For **people**, the States will need to seek to ensure any commitments made by the UK as part of its withdrawal agreement with respect to the grandfathering of rights of EU (non-UK) citizens in the UK and in the Channel Islands and that the legal status 'Channel Islander' (for the purposes of Protocol 3) is considered."

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<sup>92</sup> ['Urgent Proposition' at the States' Meeting of 29 June, 2016](#) – 'Managing the Implications for Guernsey because of the UK's Changing Relationship with the EU' ('the January 2016 Policy Letter') and [Resolutions](#)

<sup>93</sup> This may be as a third country seeking market access separately to the UK or as a third country taking part in any future UK/EU relationship alongside the UK.

### Main areas for engagement with the UK Government for the States of Guernsey

In order to ensure that Guernsey's interests are best served in the negotiations with the UK it will need to ensure it monitors and engages with the UK Government to:

- (i) Ensure the interests of Guernsey residents are taken into account by the UK / EU exit agreement. This includes ensuring that Guernsey residents/persons with EU rights do not suffer any detriment compared to those resident in the UK;
- (ii) Ensure, where possible, the arrangements for free movement of goods described in Protocol 3 are replicated in some way. This may be through extension of the relevant part of any new UK / EU relationship. The States should also ensure that the best interests of Guernsey residents and businesses are served under that new agreement;
- (iii) Ensure there is no detriment to the existing, and historic, constitutional relationship between Guernsey and the UK. Work to mitigate against any risks of unintended consequences; and
- (iv) Seek opportunities for Guernsey in any new UK trading relationship including with the EU and with other countries outside of the EU, including any new free trade agreements and exploring extension of the UK membership of the WTO.

**PROGRESS REPORT ON ENGAGEMENT BETWEEN GUERNSEY AND THE REST OF THE BAILIWICK, JERSEY AND THE ISLE OF MAN, THE UK AND THE EU TO DECEMBER 2020**

- A4.1 An update on engagement from the November 2017 States’ debate was included in the January 2020 Policy Letter. Since then, regular engagement with external partners has continued. At the Bailiwick level this has involved regular consultation with Alderney and Sark on matters of mutual concern, such as fishing and territorial seas. Future partnership updates have been a standing item on the agenda for meetings of the Bailiwick Council, held quarterly, whilst political representatives from Alderney and Sark have been part of the FPDG. Legislation has been drafted to be applicable to the whole Bailiwick to enable all its islands to be prepared for the end of the transition period.
- A4.2 Guernsey continues to work alongside Jersey and the Isle of Man, where relevant, to engage with a wide range of UK government departments and policy areas. Joint meetings with the UK government occur regularly at political and officer level, particularly through the Cabinet Office for the UK-EU negotiations during 2020. There have also been helpful discussions with the Ministry of Justice, which has responsibility in Whitehall for Channel Islands and Isle of Man topics and is the main point of contact in the UK Government for the Channel Islands and the Isle of Man.
- A4.3 When the UK formally left the EU on 31<sup>st</sup> January, 2020, the Department for Exiting the European Union (DExEU) was disbanded and responsibility for the negotiations came under the Cabinet Office.<sup>94</sup> The Rt. Hon. Penny Mordaunt MP, Paymaster General, became the minister responsible for the Channel Islands and Isle of Man in the negotiations, meeting remotely with representatives of the islands on several occasions. This engagement has helped to deepen understanding between the Guernsey and UK governments and ensured that the views and interests of the Bailiwick are accurately and appropriately conveyed to the UK Government and its negotiators.
- A4.4 In September 2019, the UK Prime Minister stated that UK Government is “unambiguous in supporting the constitutional position that the UK Parliament should not legislate on your behalf” and reconfirmed the UK’s commitment to engage with the Bailiwick throughout and beyond the Brexit process. There has not been further correspondence with the Prime Minister, the Rt. Hon Boris Johnson MP since the Chief Minister sent him a letter in December 2019. However, the Committee has written to members of the UK Cabinet Office where appropriate – two examples are given here (further information in Appendix 1).

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<sup>94</sup> Robin Walker MP was the Parliamentary Under Secretary of State at DExEU with responsibilities in regard to Channel Island and Isle of Man matters from July 2016 to July 2019. James Duddridge MP took over this role following a UK Cabinet reshuffle, and was in the post until the end of January 2020, when responsibility moved to the Cabinet Office and the Paymaster General, the Rt Hon Penny Mordaunt MP.

- A4.5 Guernsey has also sought to engage on the topic of the UK-EU future relationship within other forums as opportunities have arisen. A virtual British-Irish Council ('BIC') summits took place in November 2020. The All Party Parliamentary Group on the Channel Islands generally meets three times a year, most recently on 2<sup>nd</sup> November, 2020. There has also been engagement through a wide network of parliamentary contacts in the UK, mostly virtually this year due to the pandemic.
- A4.6 The Channel Islands have joint offices in Brussels and in Caen to ensure continuity of relations between the islands and the EU and French authorities. Guernsey representatives continue to build and maintain relationships with contacts within the EU (both the EU as a whole and its individual nations), providing opportunities to raise awareness of the implications of Brexit for the Bailiwick. In March 2020, the Chief Minister of Guernsey<sup>95</sup> and Minister for External Affairs of Jersey visited Brussels and met with Permanent Representatives to the EU (ambassadors) of France, Slovakia and Latvia; MEPs from France and Finland; and the EU Justice Commissioner Didier Reynders.
- A4.7 The Bailiwick also hosts occasional visits from Ambassadors (from EU Member States) to the UK, which provide further opportunities to strengthen relations. Since March 2020, due to the COVID-19 pandemic, no visits have been hosted, but virtual meetings have taken place with the Ambassador of Iceland, Acting Ambassador of New Zealand and the new Ambassador of the European Union to the UK.
- A4.8 Engagement with France has also been important and has been undertaken at a regional level (with Normandy and Brittany) to underpin relationships at a national level. In May 2020 the Minister for External Relations<sup>96</sup> attended a virtual annual summit with the department of Ille et Vilaine, where the existing cooperation agreement was renewed for a further three years, and in September 2020 he attended a virtual annual summit with Normandy and La Manche which provided the latest opportunity to discuss regional concerns about the end of the transition period and future relationship with the EU, for example relating to fishing and territorial seas.

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<sup>95</sup> The President, Policy & Resources Committee, uses the title Chief Minister when outside the island.

<sup>96</sup> The member of the Policy & Resources Committee with responsibility for external relations, who has been authorised by the Committee for ease of understanding by other jurisdictions to be known outside the island as the Minister for External Affairs.

**FORMAL EXCHANGE OF LETTERS BETWEEN THE FINANCIAL SECRETARY TO THE TREASURY  
AND THE PRESIDENT OF THE COMMITTEE FOR HOME AFFAIRS**

Deputy Rob Prow  
President of the Committee for Home Affairs  
Sir Charles Frossard House  
La Charroterie  
St Peter Port  
Guernsey  
GY1 1FH

17 December 2020

Dear Deputy Prow,

I have the honour to propose to you that the ARRANGEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE STATES OF GUERNSEY (THE GOVERNMENT OF GUERNSEY) CONCERNING THE ESTABLISHMENT AND OPERATION OF THE UNITED KINGDOM-CROWN DEPENDENCIES CUSTOMS UNION (the ARRANGEMENT) should take effect on 31 December 2020 at 23:00 GMT.

I have the further honour to propose that, if the above is acceptable to the States of Guernsey, this letter together with your reply will constitute our agreement to 31 December 2020 at 23:00 GMT as the effective date for the ARRANGEMENT, in accordance with paragraph 19 of the ARRANGEMENT.

Yours sincerely,

*[signed]*

RT HON JESSE NORMAN MP

RT Hon Jesse Norman MP  
Financial Secretary  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ

18<sup>th</sup> December 2020

Dear Financial Secretary,

I have the honour to acknowledge receipt of your letter of 17<sup>th</sup> December 2020, which reads as follows:

“Dear Deputy Rob Prow, President of the Committee for Home Affairs,

I have the honour to propose to you that the ARRANGEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE STATES OF GUERNSEY (THE GOVERNMENT OF GUERNSEY) CONCERNING THE ESTABLISHMENT AND OPERATION OF THE UNITED KINGDOM-CROWN DEPENDENCIES CUSTOMS UNION (the ARRANGEMENTS) should take effect on 31 December 2020 at 23:00 GMT.

I have the further honour to propose that, if the above is acceptable to the States of Guernsey, this letter together with your reply will constitute our agreement to 31 December 2020 at 23:00 GMT as the effective date for the ARRANGEMENT, in accordance with paragraph 19 of the ARRANGEMENT.”

I am able to confirm that the contents of your letter of 17<sup>th</sup> December 2020 are acceptable to the States of Guernsey, and therefore that this letter together with your letter constitute our agreement to 31 December 2020 at 23:00 GMT as the effective date for the ARRANGEMENT, in accordance with paragraph 19 of the ARRANGEMENT.

Yours sincerely

*[signed]*

**Deputy Rob Prow**  
**President**  
Committee *for* Home Affairs

**APPENDIX 6**

**LETTER FROM THE UK FOREIGN SECRETARY TO THE DIRECTION-GENERAL OF THE WTO,  
DATED 15<sup>TH</sup> OCTOBER, 2019**

15th October 2019

FOREIGN & COMMONWEALTH OFFICE  
King Charles Street  
London  
SW1A 2AH

His Excellency Robert Azevêdo  
Director-General, World Trade Organization  
Centre William Rappard  
Rue de Lausanne 154  
1211 Geneva 21

Your Excellency,

I have the honour to refer to the Agreement establishing the World Trade Organization, done at Marrakesh on 15 April 1994, ("the Agreement") to which the United Kingdom of Great Britain and Northern Ireland deposited its instrument of ratification on 30 December 1994 and which it extended to the Isle of Man by a communication dated 3 March 1997.

I have the honour further to notify you that the Government of the United Kingdom of Great Britain and Northern Ireland hereby extends the application of the ratification of the Agreement by the United Kingdom to the Bailiwicks of Guernsey and Jersey, for whose international relations the United Kingdom is responsible.

The Government of the United Kingdom of Great Britain and Northern Ireland considers that the extension of the Agreement to the Bailiwicks of Guernsey and Jersey will come into effect on the date on which the United Kingdom exits the European Union, or in the event of transition period being agreed between the European Union and the United Kingdom, at the end of that period. The Government of the United Kingdom of Great Britain and Northern Ireland will notify the Director General when this date is established.

I avail myself of this opportunity to renew to you the assurances of my highest consideration.

Your thanks,

Dominic Raab,  
THE RT HON DOMINIC RAAB MP

**OVERVIEW OF NO FURTHER NEGOTIATED OUTCOME PLANNING**

The NFNO work has built on the preparations for a ‘no deal’ Brexit undertaken in 2019 and early 2020<sup>97</sup> and also on the response to the COVID-19 pandemic, which has had parallels such as including possible supply chain disruption. The information and advice has been regularly updated and shared with the public and business via the States of Guernsey website and communications.

During the negotiations phase, the Committee identified likely negotiation outcomes and the main risks associated with these scenarios.

<b>Risk area</b>	<b>High Level Summary of Risk</b>	<b>High Level Summary of Mitigation Actions</b>
Commercial Fishing	Disruption linked to fisheries access and port access.	<ul style="list-style-type: none"> <li>• Liaison with the BIAN office, CIBO, UK Government (DEFRA/MMO) and Normandy/Brittany authorities to understand emerging UK, French and EU risks.</li> <li>• Published States of Guernsey Guidance advice<sup>98</sup> regarding key landing and exporting requirements following the end of the transition period.</li> <li>• Direct liaison by Sea Fisheries Officers with the Bailiwick Fishing industry in Guernsey, Sark and Alderney.</li> <li>• Issuance of SMEFF authorisations to eligible French vessels for an initial three month period ahead of licensing arrangements being in place.</li> <li>• Amendments to the Sea Fisheries Licensing (BoG) Law, 2012 to grant licences to EU fishing vessels.</li> </ul>
Access to Preferential Tariffs	Importers and exporters may not be eligible to claim preferential tariffs when trading with the EU.	<ul style="list-style-type: none"> <li>• Bailiwick to be included within the UK’s WTO membership, which will ensure that MFN tariffs are applied.</li> <li>• Trade advice and support to businesses from CfED and GBA.</li> <li>• Publication of Customs and Business Guidance.</li> <li>• Publicly available tariff and customs-related guidance<sup>99</sup>.</li> </ul>

<sup>97</sup> As set out in Paragraphs 5.1, 5.2 and 5.3 in the January 2020 Policy Letter.

<sup>98</sup> [Fishing and Aquaculture; Landing or exporting fresh fish and shellfish to the EU after 31st December 2020](#)

<sup>99</sup> [Information for Businesses](#)



Export trade into the EU of high risk goods which need to be approved by the EU through the third country process.	Export Trade with EU in certain products (e.g. live animals, products of animal origin (POAO), and seeds); and in pet travel, more restricted than under Protocol 3.	<ul style="list-style-type: none"> <li>• Trade advice and support to businesses from CfED, OEHPR and GBA.</li> <li>• Liaison with DEFRA to ensure the Bailiwicks interests are included within the UK's third country listings application to the EU.</li> <li>• Publication of Customs and Business Guidance.</li> </ul>
Customs declarations	Delays in customs clearance of goods.	<ul style="list-style-type: none"> <li>• Trade advice and support to businesses from CfED and GBA, with specialised training and advice offered to Customs and logistics agents.</li> <li>• Publication of Customs and Business Guidance.</li> </ul>
Supply chain risks	Potential for additional regulatory checks at border leading to backlogs	<ul style="list-style-type: none"> <li>• Well established formal Supply Chain Cell which includes all key shipping and logistics agents to understand emerging supply chain risks.</li> <li>• Trade advice and support to businesses from CfED, OEHPR and GBA.</li> <li>• Publication of Customs and Business Guidance.</li> </ul>
Import trade into the EU of high risk goods which need to clear through Border Control Posts (BCPs)	Certain high risk goods will need to be cleared through a BCP prior to import into Bailiwick.	<ul style="list-style-type: none"> <li>• Trade advice and support to businesses from CfED, OEHPR and GBA.</li> <li>• Development of an approved border model for movements of goods between Bailiwick with DEFRA to anticipated to be implemented in 2021.</li> <li>• Publication of Customs and Business Guidance.</li> </ul>
Immigration	EU identification cards will no longer be accepted for entry to UK. The number of EU visitors to	<ul style="list-style-type: none"> <li>• Public messaging has been issued to inform EU nationals of the new requirements for entry into the Bailiwick.<sup>100</sup></li> <li>• The onus is on EU nationals to ensure that they are correctly documented prior to travel. However, during summer 2021, a communications campaign on passport border requirements for EU nationals will be run by</li> </ul>

<sup>100</sup> [Guidance for EU nationals and employers](#), New arrangements for European Union nationals from January 2021

	the Bailiwick may reduce if obtaining a passport becomes more burdensome than using ID cards.	the UK government, which the Bailiwick will also benefit from.
Passports	Bailiwick residents will need to have at least six months validity on passports to be able to travel to EU.	<ul style="list-style-type: none"> <li>Public messaging from the GBA has occurred and featured in local media to advise local residents of this risk<sup>101</sup>.</li> <li>New passports are not issued with additional time added to them, so this avoids this risk occurring in respect of newly-issued passports.</li> </ul>
Visas	EU Nationals coming to work will require correct entry visas to travel into the UK and Crown Dependencies.	<ul style="list-style-type: none"> <li>When the joint Population Management and Immigration work permit is issued, both the EU national employee and their employer will be advised that a visa must be obtained prior to travel, with information made available<sup>102</sup>.</li> </ul>
Concurrent risks	Concurrent risks of COVID-19 and winter pressures (i.e. healthcare and extreme weather).	<ul style="list-style-type: none"> <li>Contingency planning has occurred to take into account concurrent risks; relevant structures meet regularly and are well-placed to communicate and assess emerging cross-cutting risks.</li> <li>Regular centralised political and officer briefings and email updates on existing Brexit/end of transition period matters and emerging issues.</li> <li>Ongoing briefings from officers directly to their own Committee.</li> </ul>

The States of Guernsey, and the wider Bailiwick, continue to work to ensure that their contingency planning is closely aligned to the UK Government's planning where appropriate. This is particularly significant in areas outside the Bailiwick's control and/or where the Bailiwick has an interdependence with the UK. In some cases, the Bailiwick will need to rely on the UK's minimisation of any disruption to the flow of

<sup>101</sup> [Passports](#), regarding the new information and process for 2021

<sup>102</sup> [Guidance for EU nationals and employers](#)

goods and services that are essential to the economy and the functionality of the islands.

Officials have worked closely with UK Government Departments, including the Ministry of Justice, to prepare for the potential scenarios.

In terms of decision-making, the Civil Contingencies Authority (CCA) has the powers to invoke laws or regulations in if an emergency situation arises or is about to arise. In non-emergency situations the Committees (in Guernsey, Alderney and Sark) will make decisions in relation to their respective mandates. The members of the FPDG also have delegated decision-making powers (on behalf of the Committee which they represent on the FPDG) for use in exceptional circumstances where a decision falls outside the mandate of the CCA, but cannot be considered sufficiently quickly through Committee structures. The FPDG has additionally taken on an oversight role for the end of the transition period. The Strategic Coordinating Group (SCG) and Tactical Coordinating Group (TCG) are officer-level groups which were set up for the response to the COVID-19 pandemic and have been broadened to include end of transition period planning and response. The SCG and/or its members will report to Committees and the CCA as appropriate and will consider a diverse range of D20 Bailiwick issues.

**SUMMARY OF POLICY LETTERS CONSIDERED BY THE STATES OF DELIBERATION IN  
RELATION TO THE UK'S WITHDRAWAL FROM THE EU**

A4.1 Since 2016, the States of Deliberation has on a number of occasions considered matters relating to the UK's departure from the EU. Below are the Policy Letters relating to this issue, as considered by the States of Deliberation in Guernsey and also by Alderney and Sark's assemblies or committees.

**A4.2 June 2016 – “Managing the implications for Guernsey because of the UK's changing relationship with the EU” – Policy & Resources Committee**

The first Brexit Policy Letter<sup>103</sup> set the high level objectives for Guernsey and the potential for new opportunities following the UK's exit. This Policy Letter was approved by Alderney's Policy & Finance Committee, and by Sark's Policy & Performance Committee (July, 2016)<sup>104</sup>.

**A4.3 March 2017 – Acknowledging the Triggering of Article 50 of the Treaty on European Union in Respect of ‘Protocol 3’**

In March 2017, the States of Deliberation considered a Policy Letter<sup>105</sup> that ensured due parliamentary process by formally acknowledging the UK's withdrawal from the EU. It recognised the impact this will have on the Bailiwick and directed further work be undertaken to repeal or amend the European Communities (Bailiwick of Guernsey) Law 1973, in addition to the provision of necessary resources to ensure Committees can react appropriately in the best interests of the Bailiwick. This Policy Letter was also approved by Alderney's Policy & Finance Committee and by Chief Pleas of Sark (April 2017).<sup>106</sup>

**A4.4 June 2017 – “Implementation of International Sanctions Measures” – Policy & Resources Committee**

This Policy Letter<sup>107</sup> was debated on 7<sup>th</sup> June, 2017 and an additional Policy

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<sup>103</sup> [‘Urgent Proposition’ at the States’ Meeting of 29 June 2016](#) – ‘Managing the Implications for Guernsey because of the UK's Changing Relationship with the EU’ and [Resolutions for Billet d’État XX - 29th June 2016](#)

<sup>104</sup> Approved by Sark's Policy & Performance Committee on 12<sup>th</sup> July, 2016 and approved by Alderney's Policy & Finance Committee on 19<sup>th</sup> July, 2016. A statement recognising the UK's decision to leave the EU was made by the President of the States of Alderney at its meeting on 20<sup>th</sup> July, 2016<sup>104</sup>,

<sup>105</sup> [Billet d’État VI of 2017](#) – ‘Acknowledging the Triggering of Article 50 of the Treaty on European Union in Respect of “Protocol 3”’ and [Resolutions](#).

<sup>106</sup> Approved by Alderney's Policy and Finance Committee on 25<sup>th</sup> April 2017 (acknowledged by the States of Alderney on 24<sup>th</sup> May, 2017) and by Chief Pleas of Sark on 26<sup>th</sup> April 2017.

<sup>107</sup> [Billet d’État XI of 2017 – ‘Implementation of International Sanctions Measures’](#) and [Resolutions](#)

Letter was considered on 12<sup>th</sup> December, 2018<sup>108</sup>. The Policy Letters described the necessary changes required to ensure that the Bailiwick retained the ability to implement effective and robust sanctions measures after the UK leaves the EU and made various other improvements to the sanctions framework. The 2017 Policy Letter was approved by Alderney's Policy & Finance Committee on 26<sup>th</sup> July, 2017. The subsequent Projet, entitled The Sanctions (Bailiwick of Guernsey) Law 2018<sup>109</sup>, was approved by the States of Deliberation (December 2018), the States of Alderney (January 2019) and the Chief Pleas of Sark (January, 2019).

#### **A4.5 November 2017 – “Protecting the interests of the Bailiwick of Guernsey as the UK leaves the EU” – Policy & Resources Committee.**

In November 2017, the States of Deliberation considered the third Brexit Policy Letter<sup>110</sup> which set out the rationale for repealing the European Communities (Bailiwick of Guernsey) Law 1973, for implementing relevant EU measures into domestic law and other legislative provisions to provide continuity and certainty during the Brexit process. This was approved by Alderney's Policy & Finance Committee and by Sark's Chief Pleas on (December 2017)<sup>111</sup>. The States agreed that legislation should be prepared to repeal the European Communities (Bailiwick of Guernsey) Law 1973.. The Law Officers of the Crown prepared the relevant legislation – three Projets de Loi entitled The European Union (Brexit) (Bailiwick of Guernsey) Law, 2018<sup>112</sup>; The European Union (Amendment of Legislation) (Bailiwick of Guernsey) Law, 2018<sup>113</sup>; and The International Trade Agreements (Implementation) (Bailiwick of Guernsey) Law, 2018<sup>114</sup>. All three Projets have been approved by all three Bailiwick parliaments and were granted Royal Sanction in 2018 and 2019.

<sup>108</sup> [Billet d'État XXVII of 2018](#) – ‘Implementation of International Sanctions Measures’ and [Resolutions](#)

<sup>109</sup> Legislation approved by the States of Deliberation on 12<sup>th</sup> December, 2018, the States of Alderney on 9<sup>th</sup> January, 2019 and the Chief Pleas of Sark on 11<sup>th</sup> January, 2019.

<sup>110</sup> [Billet d'État XXI of 2017](#) – ‘Protecting the Interests of the Bailiwick of Guernsey as the UK Leaves the EU and [Resolutions](#)

<sup>111</sup> Alderney's Policy and Finance Committee on 5<sup>th</sup> December, 2017 and by Sark's Chief Pleas on [7<sup>th</sup> December, 2017](#)

<sup>112</sup> [The European Union \(Brexit\) \(Bailiwick of Guernsey\) Law, 2018](#) - approved by the States of Deliberation at its meeting of 6<sup>th</sup> June, 2018; approved by the Chief Pleas of Sark at its meeting of 4<sup>th</sup> July, 2018; approved by the States of Alderney at its meeting of 12<sup>th</sup> September, 2018 (after having been deferred from its meeting of 25<sup>th</sup> July, 2018).

<sup>113</sup> [The European Union \(Amendment of Legislation\) \(Bailiwick of Guernsey\) Law, 2018](#) - approved by the States of Deliberation at its meeting of 24<sup>th</sup> October, 2018; approved by the States of Alderney at its meeting of 12<sup>th</sup> September, 2018; it was considered by the Chief Pleas of Sark at a meeting of 11<sup>th</sup> January, 2019.

<sup>114</sup> [The International Trade Agreements \(Implementation\) \(Bailiwick of Guernsey\) Law, 2018](#) approved by the States of Deliberation at its meeting of 6<sup>th</sup> June, 2018; approved by the Chief Pleas of Sark at its meeting of 4<sup>th</sup> July, 2018; approved by the States of Alderney at its meeting of 25<sup>th</sup> July, 2018.

**A4.6 July 2018 – “Customs Duties and Associated Powers Required in Respect of Brexit” – Committee *for* Home Affairs.**

This Policy Letter<sup>115</sup> sought a flexible framework of primary legislation to facilitate the imposition of customs requirements on imported and exported goods. The Policy Letter was approved by Alderney’s Policy and Finance Committee on 12<sup>th</sup> June, 2018. Subsequently, on 26<sup>th</sup> November, 2018, a Customs Arrangement was signed between the States of Guernsey and the UK on behalf of the Bailiwick’. The Customs and Cross-Border Trade (General and Enabling Provisions) (Bailiwick of Guernsey) Law, 2018 was then drafted by the Law Officers of the Crown<sup>116</sup>. The legislation was approved by the States of Deliberation (December 2018)<sup>117</sup>, the States of Alderney (January 2019) and Chief Pleas of Sark (January 2019).

**A4.7 December 2018 – “Road Transport and Driving Licence Implications for Driving in Europe Post-Brexit and other related matters” – Committee *for the* Environment & Infrastructure**

This Policy Letter<sup>118</sup> covered the extension of the UN Convention on Road Traffic, 1968 to ensure that Bailiwick residents would be able to legally drive in certain EU/EEA Member States in the event of a no deal being reached between the UK and EU on road traffic matters after the UK exited the EU. This Policy Letter was approved by Alderney’s Policy & Finance Committee on (January 2019)<sup>119</sup>. Relevant legislation was put in place so that the Convention could be extended by 29<sup>th</sup> March, 2019.

**A4.8 January 2019 – “Extending the Bailiwick of Guernsey’s Territorial Seas” – Policy & Resources Committee**

This Policy Letter<sup>120</sup> recommended the extension of the Bailiwick of Guernsey’s territorial seas from 3 nautical miles to 12 nautical miles to give the three jurisdictions of the Bailiwick of Guernsey greater control over activities in the 3-12 nm area. Alderney decided to extend its territorial seas at a meeting of the

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<sup>115</sup> [Billet d’État XIX of 2018](#) – ‘Customs Duties and Associated Powers Required in Respect of Brexit’ and [Resolutions](#)

<sup>116</sup> Projet approved by the States of Deliberation 12<sup>th</sup> December, 2018, States of Alderney 9<sup>th</sup> January, 2019 and Chief Pleas of Sark 11<sup>th</sup> January, 2019.

<sup>117</sup> Resolutions of [Billet d’État No XXVII dated 12th December, 2018](#).

<sup>118</sup> [Billet d’État XXVII of 2018](#) – ‘Road Transport and Driving Licence Implications for Driving in Europe Post-Brexit and Other Related Matters’ and [Resolutions](#)

<sup>119</sup> This was not relevant for Sark, as Sark residents register vehicles and acquire driving licences in Guernsey, as stated in Paragraph 14.1 of the relevant Policy Letter. The Policy Letter was not considered by Sark’s Government on that basis and was approved by [Alderney’s Policy and Finance Committee on 15<sup>th</sup> January, 2019](#)

<sup>120</sup> [Billet d’État II of 2019](#) – ‘Extending the Bailiwick of Guernsey’s Territorial Seas’ and [Resolutions](#)

States of Alderney in May 2018 and by Alderney's Policy & Finance Committee in January 2019<sup>121</sup>. Sark agreed to extend its territorial seas at a meeting of the Chief Pleas of Sark in February, 2019<sup>122</sup>.

The possibility of extending the territorial seas had been under consideration in the Bailiwick for decades. Until 2018/19, it had not proved possible for the three Bailiwick jurisdictions to reach a common position in order for the islands to approach the UK collectively to request extension of the territorial sea around the entire Bailiwick. However, there was increased impetus due to the UK's decision to withdraw from the EU and the UK's decision to withdraw from the London Fisheries Convention 1965 ('LFC'). As a result of the collaborative work by the Bailiwick islands, the territorial seas were extended by an Order in Council on 23<sup>rd</sup> July, 2019<sup>123</sup>.

#### **A4.9 January 2019 – “Data Protection: Data Sharing with the United Kingdom” – Committee for Home Affairs**

Also in January 2019, the Committee for Home Affairs submitted a Policy Letter<sup>124</sup> to the States to seek approval of the UK as an authorised jurisdiction for the purposes of the Data Protection (Bailiwick of Guernsey) Law, 2017 as well as approval of an additional ordinance, namely the Data Protection (Authorised Jurisdiction) (Bailiwick of Guernsey) Ordinance, 2019. These steps were necessary to ensure that the status quo regarding the continued free-flow of data between the Bailiwick and the UK is maintained in the event of a no-deal Brexit or NFNO. The Policy Letter and the enclosed Ordinances were approved by Guernsey (January 2019), by Alderney (March 2019) and Sark (April 2019).<sup>125</sup>

#### **A4.10 February 2019 – “Extending the United Kingdom's Membership of the World Trade Organization” – Policy & Resources Committee**

This Policy Letter<sup>126</sup> recommended that the islands request the extension of the UK's Membership of the WTO, including the obligations that extension would confer on the Bailiwick and dispute resolution mechanisms. The matter was

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<sup>121</sup> [Official Report of the States of the Island of Alderney, 23<sup>rd</sup> May, 2018](#); [Alderney's Policy & Finance Committee Agenda, 15<sup>th</sup> January, 2019](#)

<sup>122</sup> [Extraordinary Meeting of the Chief Pleas of Sark held on 6<sup>th</sup> February, 2019](#)

<sup>123</sup> Order in Council [‘The Territorial Sea Act 1987 \(Guernsey\) Order 2019’](#) under the [UK's ‘Territorial Sea Act, 1987’](#)

<sup>124</sup> [Billet d'État II of 2019](#) – ‘Data Protection: Data Sharing with the United Kingdom’ and [Resolutions](#)

<sup>125</sup> Ordinances approved by Alderney's Policy & Finance Committee on 19<sup>th</sup> March, 2019 and by Sark's Policy & Finance Committee on 16<sup>th</sup> April, 2019.

<sup>126</sup> [Billet d'État IV of 2019](#) – ‘Extending the United Kingdom's Membership of the World Trade Organization’ and [Resolutions](#)

considered and approved in Guernsey (February 2019), Sark (March 2019) and Alderney (April 2019)<sup>127</sup>.

**A4.11 January 2020 – “The Withdrawal Agreement between the United Kingdom and European Union - Implications for the Bailiwick of Guernsey” – Policy & Resources Committee**

This Policy Letter<sup>128</sup> provided an update on Bailiwick-related developments that had taken place in advance of the UK’s exit from the EU, sought approval of the next steps and directed preparation of any necessary legislation. It was considered and approved in Guernsey, Sark and Alderney (January 2020)<sup>129</sup>.

**A4.12 November 2020 – “Brexit and Biometric Data: Extending Relevant Provisions of UK Immigration Acts – Committee for Home Affairs and Policy & Resources Committee” – Committee for Home Affairs and Policy & Resources Committee.**

The Policy Letter<sup>130</sup> asked for sections 1, 2, 4, 5, 7 and 10 from the Immigration and Social Security Co-ordination Act 2020, to be extended to the Bailiwick in a modified form. The Immigration and Social Security Co-ordination Act 2020 contains provisions ending the free movement of EEA nationals, protecting the status of Irish citizens and providing for consequential, transitional and savings provisions to be made. As the Bailiwick is part of the Common Travel Area with the United Kingdom, the Isle of Man, the Bailiwick of Jersey and the Republic of Ireland, the Committee for Home Affairs recommended that relevant provisions of the 2020 Act be extended to the Bailiwick in order that they may have similar effect in the Bailiwick. The Policy Letter was approved in Guernsey (October 2020), Alderney (October 2020) and Sark (November 2020)<sup>131</sup>.

**A4.13 December 2020 – “Data Protection: United Kingdom Adequacy and Data Sharing” – Committee for Home Affairs**

The Policy Letter<sup>132</sup> sought approval for matters in the draft Ordinance, namely “The Data Protection (Authorised Jurisdiction) (Bailiwick of Guernsey)

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<sup>127</sup> Approved by States of Deliberation on 28<sup>th</sup> February, 2019. Approved by Alderney’s Policy & Finance Committee on 16<sup>th</sup> April, 2019 and by Chief Pleas of Sark on [27<sup>th</sup> March, 2019](#).

<sup>128</sup> [Billet d’État II of 2020](#) – ‘The Withdrawal Agreement Between the United Kingdom and European Union – Implications for the Bailiwick of Guernsey’ and [Resolutions](#)

<sup>129</sup> Approved by Alderney’s Policy & Finance Committee on 23<sup>rd</sup> January, 2020 and by Sark’s Policy & Finance Committee on 20<sup>th</sup> January, 2020.

<sup>130</sup> [Billet d’État XXVII of 2020 Article I](#) – ‘Brexit and Biometric Data: Extending Relevant Provisions of UK Immigration Acts’ and [Resolutions](#)

<sup>131</sup> Approved by Alderney’s Policy & Finance Committee on [29<sup>th</sup> October, 2020](#) and by Sark’s Policy & Finance Committee on 2<sup>nd</sup> November, 2020.

<sup>132</sup> [Billet d’État XXVIII 16<sup>th</sup> December, 2020](#) - ‘Data Protection: United Kingdom Adequacy And Data Sharing’ and [Resolutions](#), by Alderney’s Policy and Finance Committee (outside a formal Committee meeting due to urgency) on 2<sup>nd</sup> November, 2020 and by Sark’s Policy and Finance Committee on 2<sup>nd</sup> November, 2020



(Amendment) Ordinance, 2020. The Ordinance ensures that the status quo regarding the continued free-flow of personal data between the Bailiwick of Guernsey and the United Kingdom (“UK”) will be maintained for a further year in the event that the UK does not receive an adequacy decision in respect of data protection from the EU by 31<sup>st</sup> December, 2020. The Policy Letter and Ordinance were approved in Guernsey (December 2020), Policy Letter approved by Alderney’s Policy and Finance Committee Members and by Sark’s Policy & Finance Committee (November 2020).