



Select Committee on the European Union

Uncorrected oral evidence: Brexit: Crown Dependencies

Thursday 2 February 2017

10 am

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Members present: Lord Boswell of Aynho (The Chairman); Baroness Browning; Baroness Falkner of Margravine; Lord Jay of Ewelme; Baroness Kennedy of The Shaws; Baroness Prashar; Lord Selkirk of Douglas; Lord Trees; Baroness Verma; Baroness Wilcox.

Evidence Session No. 3

Heard in Public

Questions 28 - 31

Witness

I: Robin Walker MP, Parliamentary Under-Secretary of State, Department for Exiting the European Union.

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Examination of witness

Robin Walker MP.

The Chairman: Minister, let us pass on from your very helpful responses on Gibraltar to the Crown Dependencies specifically, which as you know is the parallel study.

Q28 **Baroness Falkner of Margravine:** Coming back to the economic implications for Crown Dependencies, you will be aware that for financial services, for example, there are moves in the AIFMD, the alternative investment fund managers directive, to expand the passporting space to what are technically called third countries. The Crown Dependencies—Jersey, Guernsey and so on—come into that framework, but one of the requirements is for them to do so through regulation of a member state of reference. They have been very keen to get passporting through. Their normal route of regulatory approval would have been the UK regulators but now, of course, with Britain leaving the European Union, they need to look elsewhere in terms of member state of reference. Strategically, what discussions are you having with them? I recall that in the Prime Minister's Lancaster House speech she also commented on improved relations with the Commonwealth. There are only two other countries in the EU that are members of the Commonwealth, Malta and Cyprus. Are you directing these countries, for example, to have their financial links through other countries that are also connected to the UK through other fora—for example, Malta, rather than immediately turning to France, which would be its normal default option? That is the first part of my question.

Secondly, could you speak more broadly on how your department interacts with them? When we were taking evidence from academics who are experts in the work of these Crown Dependencies, we got a sense that they thought the UK Treasury was not always the doughtiest fighter in their corner. What is your impression of that?

Robin Walker MP: First, this issue of the AIFMD has come up at the JMC for Crown Dependencies. It was one of the issues raised at our first meeting and it is certainly something on which we are taking a conversation forward with the Treasury and other departments to ensure that their views are understood and reflected. Secondly, on the issue of regulation, we are certainly not in the position of referring any friends and allies to other countries' regulators. We are in a position of negotiating to achieve the best financial market access that we can for the UK. In that, the strength of our financial regulation and the respect that it has across Europe is a huge strength. Our regulators are understood to be highly capable and to strike the right balance in terms of being business-friendly but also ensuring the legitimacy of markets. So I would absolutely encourage the Crown Dependencies and indeed any other friendly country in the world to look to our regulators first and foremost. On the issue of third-country equivalents, we remain a member of the EU for at least the next two years and through that process we will continue to engage on those issues. It is certainly right that we should take on board the concerns of the Crown Dependencies on that front and

be pushing for the most robust regimes available but also ones that reflect their interests.

Baroness Falkner of Margravine: And do you bring Treasury access into your talks with the Crown Dependencies?

Robin Walker MP: Yes, we have had Treasury officials attend those talks. We have not had a Treasury Minister yet but that is certainly a possibility in the future. We want to ensure that there is good dialogue between them. Again, just as when I was talking about the Overseas Territories, there is an important role for the Foreign Office there. The Foreign Office has the constitutional responsibility to represent the Overseas Territories but that role sits with the Ministry of Justice when it comes to the Crown Dependencies, and it continues to play that role. As for the JMC process that I am engaged in, that is something where we have been able to facilitate access to officials from other Government departments on these key issues relating to Europe.

Baroness Falkner of Margravine: Could I just come back on equivalence and your positive view of how simple it will be for us to access European financial services as we do now as a member of the EU, because that is almost the impression I got? How do you expect us to be able to gain continuing equivalence? I will be quite specific here. You will know that at the point of departure we may well be equivalent but as standards change—regulatory standards in the EU through the FSB and other fora— we will have to constantly demonstrate that we are equivalent.

Robin Walker MP: I cannot go into too much detail on future negotiations but one of the points here is that if you look at almost any international trade agreements you will see mechanisms for agreeing a degree of divergence from the starting point, and there are dispute resolution mechanisms. We will be seeking the most comprehensive agreement with the EU across a whole range of issues, including financial access, where we think there is enormous mutual benefit in maintaining that access.

Baroness Falkner of Margravine: So where would you do your dispute resolution?

Robin Walker MP: That would have to be agreed between the two parties. Before negotiations it is not possible to say "This is exactly what it will be".

Baroness Falkner of Margravine: But you envisage a different dispute resolution mechanism from the one that currently exists.

The Chairman: Minister, I wonder if we can take the question a bit wider without in any sense diminishing the importance of financial services, which is central to this. Perhaps we should ask you the pro forma question in relation to the earlier exchanges. Would you like to give a general appraisal of the political and economic implications of Brexit for

the Crown Dependencies?

Robin Walker MP: As we have approached this process, we have been very keen to hear from the Crown Dependencies. The key issues that they raise cover customs, migration, agriculture and fisheries, as well as financial services, which we have already touched on, and transport and communications. Across those issues, they have relationships with the United Kingdom and through us with the wider EU—and they also have important bilateral relationships, particularly with France, in the case of the Channel Islands. So it is important that we can take on board those key economic issues for them; there is no doubt that financial services is the most prominent issue, but to some part of the Crown Dependencies the fishing aspects will be of great concern and interest as well. We need to engage with them in all these issues and make sure that they have an understanding of the UK Government's position and also make sure that we are ready to lend them official support where they might need it to work through some of the solutions on some of these points.

The Chairman: I am just picking up what has been mentioned on some other Overseas Territories and not just Gibraltar. In the Crown Dependencies, is there generally a unity of concerns, or do they have divergent concerns as well?

Robin Walker MP: I think that there is probably a greater unity in terms of geography, where they are more similar than among the Overseas Territories, which are very widely dispersed around the world. Clearly, there are specific areas of difference. One example would be that the Isle of Man is part of the common commercial area and part of the common external tariff, whereas Jersey and Guernsey are not. So there are clearly aspects where they have a differentiated position, and we need to listen to each as well as all of them.

Q29 **Lord Trees:** Good morning, Minister. My question is really about the structures in place to enable the Crown Dependencies to communicate their views to the UK Government through the process. What are they? How might the Crown Dependencies be involved in UK negotiations in any future trade deals with the EU or, indeed, the rest of the world?

Robin Walker MP: I come back to structure, because that is important. Since the referendum, we have had a number of engagements with the Crown Dependencies. As I said on Gibraltar, there is the formal process—in this case we had a meeting that was not called a JMC but which brought together the chief Ministers of each of the Crown Dependencies and myself. Other Ministers have attended that, including Mark Garnier from the Department for International Trade, who came along to our last meeting. There have also been a series of less formal meetings. For instance, we met on the fringes of the British-Irish Council, which all the Crown Dependencies attend. The broad aims are exactly the same—to make sure that we are apprised of their concerns and ideas and make sure that we can pull in the official level support that we might need.

At our last meeting with Ministers and Crown Dependencies, a large number of UK Government departments were represented by officials, including the Home Office, Defra and the Treasury, so they could pick up some of the views and feed them into the working of their own departments. Clearly, here, as well, we are representing them constitutionally, through their connections with the Crown, in the negotiations.

Of course, what we will not be doing and cannot do is to legislate for them, because they have their own legislatures and will need to take their own action on some of the legislation required. But one thing that we have discussed at our JMCs is the potential for us to lend some support in helping to draft legislation and make sure that they understand the process of ours, so that as we go through our great repeal Bill they can look at what legislative requirements may be needed. On that type of issue, it is important that we should be as constructive as possible and ready to respond to their requests.

The Chairman: To pick up on that specific point, I think that we are beginning to turn our minds—although not in this inquiry—towards the great repeal Bill. It would be very useful if you could make a note to keep us in touch with that, and keep both Houses in touch. Clearly, there is going to be a lot of noise in relation to that Bill, and it is very important that these transposition issues, to use the shorthand, are properly rehearsed in terms of the legislatures of those countries, so there are no administrative or legislative gaps there, either.

Robin Walker MP: Absolutely, and it is important that we get that process right. It is also important to set out that the broad approach to the great repeal Bill is to lock in as much of the existing *acquis* as possible and keep everything as much the same as possible. The Bill will not be aimed at sweeping legislative changes; it is aimed at creating stability, first and foremost. So we will come forward with more information on that, and I am sure that we will keep both Houses, the public and the Crown Dependencies and Overseas Territories informed on that process.

The Chairman: Any idea when, Minister?

Robin Walker MP: Given the imminent publication of a White Paper on the overall strategy, I would not be surprised if it made reference to further information on the great reform Bill.

The Chairman: That is most helpful, I think.

Q30 **Lord Jay of Ewelme:** We have heard quite a lot in the evidence that we have taken about Protocol 3. The Crown Dependencies themselves tend to think that it was rather an afterthought, and those who negotiated it tend to think that it was a devilishly subtle move to leave to the end something that might otherwise have caused difficulties with member states. As part of Brexit negotiations, do you think that one option might be to leave some sort of Protocol 3, or negotiate an arrangement

whereby it continued, or its substance continued, after Brexit?

Robin Walker MP: It is difficult to see how that could work. Our efforts need to be focused on getting the best possible deal for the UK and Crown Dependencies as a whole in negotiations with the EU, so it is difficult to envisage the circumstances in which the EU would sign up to a continuation of the Crown Dependencies' EU status while the UK left. A single UK position in relation to the future relationship with the EU is vital in protecting the interests of both the UK and the Crown Dependencies in the long run. So I think our best focus is on market access and the comprehensive trade agreement which the Prime Minister has talked about and on making sure that the Crown Dependencies have as much access to that and benefits of it as possible.

Lord Jay of Ewelme: But there are some territories with specific interests and concerns, such as San Marino and Andorra, which have special arrangements as part of the variable geometry within the European Union. Can you see those as being in any way models for how the Crown Dependencies might be treated afterwards? Is there some sort of precedent there?

Robin Walker MP: There is a sort of crucial difference there, in that the prime relationships of those territories are to neighbouring EU member states around them, whereas with the Crown Dependencies their prime relationship is with the United Kingdom. So our objective should be to take that UK position and make sure that we represent the interests of the Crown Dependencies, negotiating the best arrangements that we can with the European Union. But it will be a partnership from the outside of the European Union, not something that relies on being within it.

Q31 **Baroness Prashar:** My question is about movement of people. Do you think that the UK's efforts to restrict movement of people from the European Union will have an impact on the Crown Dependencies and their ability to get people to increase their working-age population?

Robin Walker MP: The first thing to point out there is that we have been clear that the existing rules on free movement cannot continue and that we will want to reform them. But the Prime Minister has also been clear that we will want to continue to welcome people from Europe and continue to attract key talent, and we will want to continue to meet the needs of our businesses. So in designing a future immigration policy, we will have to take all those views on board.

In relation to the Crown Dependencies, Jersey, Guernsey and the Isle of Man together with the UK comprise the common travel area, which is something that we are committed to maintaining. There is no immigration control between the UK and the islands or between the islands themselves, but they form part of the border of the British Isles as a whole. As the Prime Minister said in her speech on 17 January, maintaining the common travel area is a key objective for the UK in this process, and we want to protect the ability to move freely within it,

recognising the special importance of that to people in their everyday lives—particularly in the Crown Dependencies.

The islands' legislatures make their own domestic legislation, including on migration and the right to work and live in the Crown Dependencies. The precise way in which we will control movement in future is yet to be determined, but it is something on which we have agreed to work closely with them to make sure that they are kept informed of the details of our approach. As I mentioned at our last meeting, we had officials from the Home Office there so that they could ask questions on that front. This is something that we will have to consider carefully as we move forward as part of our overall picture of controls; certainly it has come up in our discussions with the Crown Dependencies about the interests of their economies—but also the fact that they take a slightly differentiated approach to the UK, particularly on settlement rights.

Baroness Prashar: But have they any specific concerns themselves? I hear what you are doing, but have the Crown Dependencies raised any concerns?

Robin Walker MP: We have discussed the fact that they would want to see a system that allows them to continue to attract key talent. The needs of their economies are, let us face it, very similar to the needs of our economies with regard to people working in the tourism industry, where they need to be able to attract people with language skills. Those are things that we will have to deal with and take into account as we look to design a future UK immigration policy and we will want to work closely with them to make sure that we understand their views and concerns. But it is important to recognise that they are able to bring in their own legislation to take a slightly different approach to the UK as a whole, as long as they maintain the common travel area and freedom of movement within that.

The Chairman: Thank you. Are there any other comments from colleagues, or anything that the Minister wishes to add at this stage?

Robin Walker MP: It has been a very useful discussion. One thing that I have been very pleased about is how we have been able to have very constructive discussions with the Crown Dependencies and with Gibraltar. We have had very regular engagement. One thing that I should probably mention, which is useful and which I have always tried to do through this process, is that when we have key announcements such as the Prime Minister's speech or today's publication of the White Paper, I always try to make sure that I reach out to the Chief Ministers of Gibraltar and of the Crown Dependencies to make sure that we get their feedback quickly and that we take their views on board. That is important, and we should certainly keep up that regular contact, as well as the formal processes for engagement, which are hugely important.

Lord Jay of Ewelme: Do you think that so far, on reflection, the Brexit process has led to closer relationships with the Crown Dependencies than there have been before?

Robin Walker MP: That is an interesting question. It has certainly from my perspective been very useful to learn about the relationship. Previously, my only contact with the Crown Dependencies was through membership of BIPA, where I was able to meet some of their representatives. But we have been able to engage them with a range of departments on some of the issues of concern to them, which has to be a positive thing. But I am sure that the Foreign Office with the Overseas Territories and the Ministry of Justice for the Crown Dependencies have all those contacts. From my perspective, I have seen a lot more of it through this process, and I found it a useful process in understanding how they engage across Government.

The Chairman: Thank you for that. It occurs to me that the spirit in which you and your officials are engaging on this is at least as important as the details, although the details themselves are very important. It is only this week that some of us became aware through evidence that we have received that Alderney and Sark, albeit that they are in one Bailiwick with Guernsey, are discrete Crown Dependencies. I take it that their interests are attended to and can be represented to you as well.

Robin Walker MP: Absolutely.

The Chairman: Can I leave with one final comment, although it is not necessary for you to respond to it yet? As a continuing relationship develops over this challenging period, it occurs to me that inevitably your department by definition is focused on leaving the European Union and conducting negotiations on behalf of the UK and its family to get there. That is fully understood. It also may be that one or two aspects of what I would term the internal or domestic relationship between the United Kingdom and the Dependencies or the Overseas Territories, or Gibraltar or the devolved nations—although that is a wider issue—may require attention later. As it were, things will be thrown up by the process of testing. Can we have your assurance that at least, partly through your own good offices in your department but also ongoing with the other departments that have continuing mentoring or sponsorship responsibility, that will be addressed, and the Government's mind will not be closed, if it makes sense to give more entrustment, to move to that—even if it is not formally or specifically an EU issue?

Robin Walker MP: That is a very good point. Those conversations and that understanding of the interests and concerns of the various territories that we are discussing here is understood, and respective Ministers at the Foreign Office and the Ministry of Justice are constantly engaged in that. To the extent that my department can facilitate that, that is absolutely what we should be doing. Yes, we are set up to deal with this specific process, but our interest is at the end the continued success of the United Kingdom beyond this process. So we will certainly be keen to support them in their role—both the Ministry of Justice with regard to the Crown Dependencies and the Foreign Office with regard to the Overseas Territories—to make sure that the people of those territories are properly looked after and the UK does a good job on their behalf.

The Chairman: On that positive note, Minister, I thank you on behalf of the Committee. I am sure that we will see you again in the coming months on this and other matters.