

The Earl of Kinnoull
Chair of the European Union Committee
House of Lords
London
SW1A 0PW

11 November 2020

Dear Lord Kinnoull

Thank you for your letter of 29 October 2020, offering an opportunity to update the House of Lords EU Committee. In December 2016, Guernsey's then Chief Minister Deputy Gavin St Pier gave evidence to the Committee on the implications of Brexit for the Crown Dependencies. This enabled Guernsey's government to outline a number of areas of interest and potential concern that had arisen from the UK's decision to leave the EU, including the constitutional responsibility of the UK to represent the interests of the Crown Dependencies during the withdrawal and future relationship negotiations, even where these interests differed from those of the UK.

Since the publication of the EU Committee's report in March 2017, the UK left the EU at the end of January 2020 and the negotiations for the future relationship between the UK and EU are now reaching their final stages as the end of the transition period approaches. The relationships with the EU on 1 January 2021 will be different from that which has previously existed, both for the UK and the Crown Dependencies.

Guernsey (and the Bailiwick) is preparing for various possible outcomes. As the negotiations between the UK and the EU continue, focus remains on a negotiated agreement between the UK and EU which includes the Bailiwick to some extent. The Bailiwick has been consistent in its messaging that a 'no deal' outcome is not in our best interests. Guernsey's government had advised the former UK Prime Minister (letters [September 2018](#) and [April 2019](#)) of this, and it continues to be the Bailiwick's position.

Guernsey's government has been, and continues to, work closely with the islands of Alderney and Sark to ensure their particular interests are fully represented in discussions with the UK and therefore with the EU. The Bailiwick reserves its final decision on inclusion within the scope of any UK-EU agreement until each of its three parliaments have had an opportunity to consider the final legal text. It will be important that sufficient time is allowed for each of the islands to undertake their own parliamentary processes before the end of the transition period so that full consideration can be given to any agreement that is presented to them.

During both the Brexit process and the subsequent negotiations on the UK-EU future relationship, Guernsey has been working with various departments across the UK Government to help inform the negotiations for the Bailiwick's inclusion in any agreement. Engagement has consistently highlighted the UK's responsibility to represent the interests of all the governments of the Bailiwick, even where these interests differ from each other and the UK's. Notably, there has been consistent engagement during the future relationship negotiations, in particular with the Cabinet Office and Task Force Europe, DEFRA, BEIS and DIT, at both official and political level. This has included a number of recent meetings with the Paymaster General, as Minister in the Cabinet Office with responsibility for representing the Crown Dependencies' interests in the UK-EU negotiations. In these late months of the transition period, it is important that this level of engagement is maintained.

Work has also taken place to ensure that the Bailiwick is prepared for the changes that will result from the UK's decision to leave the EU, irrespective of the outcome. One example is the [extension of the UK's own membership of the World Trade Organization](#) to the Bailiwick with effect from the end of the UK-EU transition period. The Bailiwick of Guernsey and the UK have also signed a Customs arrangement (26 November 2018) which means that they will be part of the same customs area from the end of the UK-EU transition period. This will ensure that the Bailiwick, along with Jersey and the Isle of Man, will be treated as part of the UK's customs area and that trade between the Islands and the UK should continue, uninterrupted, without Customs tariffs and without new checks at the borders.

Internal structures within the Bailiwick, established to manage the implications of a possible 'no deal exit' for the UK in January 2020, remain in place in case the UK-EU future relationship negotiations do not result in an agreement. The Bailiwick is also putting in place mitigations for the possibility that an agreement is reached between the UK and EU but for some reason that agreement does not include the Bailiwick or is not approved by the islands' legislatures.

Discussions to include the Bailiwick within the future UK-EU relationship have focussed on a goods relationship that mitigates, as far as possible, the impact caused by the end of the Protocol 3 relationship. Fishing continues to feature prominently given the geographic location of the Bailiwick and the importance of this issue for the existing regional relationships with Normandy and Brittany. Due to the particular relationships the Bailiwick has with the neighbouring French regions, the islands' interests in fisheries matters do not always align completely with the UK's. The Bailiwick is seeking a reciprocal stable and predictable fisheries relationship regarding access to waters and trade in fisheries products. The Bailiwick's future relationship with the EU will need to recognise the size and scale of the Bailiwick's economy, and should be underpinned by the principles, set by resolution of our parliament, of relevance, proportionality and practicality.

The UK Government has said that it is negotiating a future relationship with the EU on behalf of the entire British family, including the Bailiwick of Guernsey; this commitment has been confirmed to the Bailiwick in writing (including in a [letter from the Prime Minister in September 2019](#)). The UK Government has a constitutional responsibility to represent the Bailiwick's interests internationally even where these differ from those of the UK, and it is vital that the UK Government continues to represent the Bailiwick's interests fully and robustly as negotiations conclude.

At the same time, any new relationship between the UK and the EU must protect the Bailiwick's constitutional relationship with the Crown and its other relationships with the UK, including government, commerce, social and environmental considerations. It is important during these times of significant change that the constitutional relationship between the Bailiwick and the Crown is not adversely affected. That historic relationship and the autonomy of the islands of the Bailiwick to make their own legislation must continue to be respected.

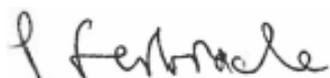
Guernsey continues to develop its own international identity under the direction of its government and in line with the framework agreed with the UK in [2008](#). The framework recognises the appropriateness of Guernsey having greater independence for international relations. The UK Government has provided assurances of its commitment to respecting the historic constitutional relationship, including the longstanding constitutional position that the UK parliament does not legislate for the Bailiwick on domestic matters without its consent (including in a letter from the [Prime Minister in September 2019](#) and most recently in reassurances given by the [Lord Chancellor in October 2020](#)).

Unfortunately, contrary to this longstanding position, a Permissive Extent Clause (PEC) has been included in the UK's Fisheries Bill even though the Bailiwick has not agreed to it. That PEC is intended to provide for certain provisions of the Bill to be extended to the Channel Islands or the Isle of Man for the purpose of implementing international obligations. The islands of the Bailiwick declined the offer to insert that clause because they can, have and will legislate to implement in domestic law any international agreement, as for existing international obligations. It is the Bailiwick itself which is responsible for ensuring that it fulfils all the international obligations to which it has agreed to be bound and international treaties should not be extended to the Bailiwick of Guernsey unless it has requested or agreed to them.

The Bailiwick is of the view that the PEC should be removed as this would demonstrate the UK Government's previously stated respect for the constitutional relationship and the position that the UK parliament does not legislate for the Bailiwick on domestic matters without consent. If the PEC is to remain in the Bill, then the reference to 'Channel Islands' contained within the clause should be removed ('in subsection (6), to omit the words "any of the Channel Islands or"').

If you would like to discuss any of these matters I would be pleased to speak with you. My officers will be able to make any necessary arrangements to facilitate a meeting, and can be contacted on 01481 717000 or externalrelations@gov.gg.

Yours sincerely



Deputy Peter Ferbrache
Chief Minister
[Government of Guernsey](#)