

Sir Robert Neill MP
Chair
Justice Select Committee
House of Commons
London
SW1A 0AA

MoJ ref: Sub 111337

21 December 2023

Dear Sir Bob,

**EVIDENCE TO THE JUSTICE SELECT COMMITTEE
CONSTITUTIONAL RELATIONSHIP WITH THE CROWN DEPENDENCIES**

Thank you for inviting me to give evidence to the Justice Select Committee on 15 November alongside Greg Hands.

I said I would write to the Committee on a couple of matters.

Edward Timpson raised the issue of the use of permissive extent clauses (PECs), specifically the PEC in the Fisheries Act 2020. In my response I conflated the two separate issues of the PEC in that Act, and the fisheries quotas allocated to the Crown Dependencies (CDs).

Regarding the PEC, His Majesty's Government (HMG) is aware that the CDs take their international obligations seriously and considers it highly likely that they would meet any necessary commitments through their own domestic legislation if required. However, it is possible to envisage a scenario in which HMG may need to implement fisheries measures across the UK and the CDs to underpin international agreements or to ensure that the UK and the CDs (whose fishing boats are registered as British vessels) do not breach international law which prohibits illegal, unreported, and unregulated fishing.

Any breach of international fisheries obligations could have severe consequences for both the UK and the CDs' fishing industries. If the UK or a CD were found to have breached international law on fishing, sanctions might include a ban on the export of fish and fish products being imposed on the UK and each of the CDs.

It is reasonable for the UK to act to ensure it can meet its responsibilities and obligations in the event of such circumstances and it remains HMG's view that the decision to include the PEC within the Fisheries Act was within the bounds of the constitutional relationship.

Importantly, the inclusion of a PEC within a Bill does not itself impose provisions that take effect upon or within a CD, rather, it allows for the possible extension of provisions later, if required. In the unlikely event that a specific concern were to arise in the future, which might lead to a breach of an international fisheries obligation, the UK would of course look to discuss and resolve the matter directly with the CDs.

The activation of the PEC without the consent of the CDs would only ever be considered in exceptional circumstances and after all other options were exhausted. It may be helpful if I add, by way of context, that the last time the UK activated a PEC to legislate directly for a CD by Order in Council was 56 years ago. This was on the grounds of the UK's responsibility for the international relations of the CD in question.

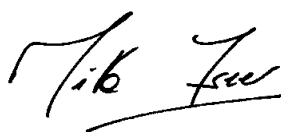
Turning to fisheries quotas, which are not related to the inclusion of the PEC in the Fisheries Act 2020, these are considered after engagement with stakeholders, including the CDs. The approach of the Department for the Environment, Food & Rural Affairs (Defra) to future quota is set out in its recent consultation 'Fisheries: Managing our quota in 2023 and beyond'¹. Defra officials discuss fisheries quotas with the CDs on a regular basis.

Edward Timpson also raised the government of Guernsey's concern about the extent of the Home Office's consultation with the CDs during the passage of the Illegal Migration Act 2023. He asked what discussions the Ministry of Justice (MoJ) had had with the Home Office to ensure meaningful consultation in the future.

It is incumbent on all UK Government departments to consult the CDs when considering legislation or policy which may affect them. Once initial contact is made, we expect the lead department to remain in touch with the CDs on relevant matters. The MoJ would usually only get involved, as we did on this occasion, if the issue in question has the potential to affect the UK's relationship with the CDs.

When a department is dealing with a complex, fast-moving Bill, the legislative timetable may not always allow for engagement as early or as frequently as the UK Government would wish. The MoJ became involved in the Illegal Migration Bill when Guernsey's Chief Minister said that the version of the Bill on which the CDs had been consulted differed from the version published, including in respect of the extent provisions. In this instance, the Home Office quickly engaged with the CDs and an understanding was reached, resulting in the addition of a new PEC at the behest of Guernsey (and Jersey) in the Illegal Migration Act 2023. I understand that Home Office officials maintained regular contact with Guernsey's Home Affairs team during the passage of the Act, including sharing draft clauses at the earliest opportunity and hosting monthly meetings with the Bill team and all the CDs.

The MoJ will continue to work across Whitehall to promote the importance of the UK's relationship with the CDs, aiming to ensure that the CDs' voices are heard and that departments respond swiftly to their concerns.

A handwritten signature in black ink, appearing to read 'Mike Freer', with a stylized flourish at the end.

MIKE FREER MP

¹ Fisheries: managing quota allocation from 2023 - GOV.UK (www.gov.uk)