



Ministry
of Justice

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

The Right Honourable
Robert Buckland QC MP
Lord Chancellor & Secretary of
State for Justice

1 March 2021

Dear Charles,

THE CROWN DEPENDENCIES AND THE UK-EU TRADE AND COOPERATION AGREEMENT

Thank you for your further letter of 3 February 2021 regarding ongoing engagement and cooperation between the UK Government and the Crown Dependencies, particularly following the agreement of the UK-EU Trade and Cooperation Agreement (TCA).

I set out below my responses to the questions you have raised by theme.

Development of the relationship between the UK and the Crown Dependencies

The UK Government is committed to continued dialogue with the Crown Dependencies on matters of mutual interest at both ministerial and official level. As the Ministry of Justice is responsible for the relationship between the UK and the Crown Dependencies, Lord Wolfson has fortnightly bilateral meetings with Ministers from the Isle of Man, Jersey and Guernsey. In addition, my officials are in daily contact with colleagues in the Crown Dependency governments, and this engagement is supported by weekly meetings to discuss priority matters.

Access to healthcare and higher education in the UK

Whilst the Crown Dependencies are responsible for the provision of health and social care in their own jurisdictions, the UK Government provides information and support to their administrations to help ensure delivery. The Department of Health and Social Care, alongside the Ministry of Justice, continues to support the Crown Dependencies on issues arising from the UK's exit from the EU and with their response to the Covid-19 pandemic, including supply of medicines and medical products, regulation, and inclusion in relevant sections of the TCA. There are reciprocal healthcare arrangements in place between the UK and both the Isle of Man and Jersey, and discussions on future reciprocal arrangements are ongoing with Guernsey.

The Department for Education is working closely with Crown Dependency governments on access for students from the Crown Dependencies to higher education in the UK. Currently, only students from the Crown Dependencies who moved to the UK for purposes other than undertaking a course are considered to be ordinarily resident in England on the first day of their course, and therefore eligible for home fee status. However, from the 2021/22 academic year, new and continuing students living in the Crown Dependencies who come to England solely for the purposes of higher or further education will be eligible

for home fee status, on the basis of three years' residency in the UK or the Crown Dependencies. Regulations were laid on 8 February 2021 giving effect to this commitment. The Crown Dependencies plan to engage directly with the devolved administrations about the fee status of Crown Dependency students in Scotland, Wales and Northern Ireland.

Changes to the Crown Dependencies' relationship with the EU

Under Protocol 3 of the Treaty of Accession 1972, the Crown Dependencies were part of the EU Customs Union. Protocol 3 did not extend to other aspects of the UK's membership of the EU such as services or people. As part of the TCA, the Market Access, Rules of Origin, Technical Barriers to Trade, Customs and Trade Facilitation and Sanitary and Phytosanitary Measures chapters and their relevant Annexes are extended to the Crown Dependencies. This allows the Crown Dependencies to benefit from reciprocal market access with EU markets on a "zero tariffs, zero quotas" basis, and benefit from facilitations in the same way as the UK – for example, provisions regarding the development and use of technical regulations, standards and conformity assessment procedures.

As discussed in more detail below, the TCA also covers the Crown Dependencies' fisheries interests, which were previously outside the Protocol 3 arrangements, including access to waters, management, port landings and licencing.

Differential arrangements under the TCA for the Isle of Man and the Channel Islands

The arrangements for each Crown Dependency were developed and agreed in close collaboration with the Crown Dependencies' Ministers and officials and reflect their individual priorities and economic needs. Since the conclusion of the negotiations, each Crown Dependency jurisdiction has considered the outcome and given consent to their inclusion within the TCA.

On VAT Cooperation, the different outcomes for the Channel Islands and the Isle of Man reflect the Crown Dependencies' preferences. The Isle of Man operates a VAT system and has entered into arrangements with the UK with respect to cooperation and revenue sharing on VAT. The Isle of Man therefore consented to be in scope of the VAT and Debt Recovery Protocol. However, the Channel Islands do not operate a VAT system and their preference is to negotiate required tax agreements directly under entrustment by the UK, rather than have the UK negotiate such arrangements on their behalf. It was therefore inappropriate for them to be included in the Protocol. The Channel Islands also agreed to a separate UK-EU declaration sitting alongside the TCA in which they committed to engaging with the EU on the recovery of claims related to VAT, customs duties and excise duties in a reasonable timeframe, under entrustment from the UK.

On fisheries, there are differing arrangements for the Channel Islands and the Isle of Man on the prior notification periods for the landing of fish and the validated catch certificate for the direct movement of consignments of fisheries products by sea. This reflects the close proximity of the Channel Islands to the EU and the need to minimise any delays for Channel Island fishers who regularly land their catches in France or export fishery products there.

Fisheries provisions within the TCA

Article FISH.10 of the TCA sets out the provisions for reciprocal access for fishing in Crown Dependency and EU Member States' territorial seas, reflecting the actual extent and nature of fishing activity that it can be demonstrated was carried out during the reference period (1 February 2017 to 31 January 2020) by qualifying vessels under the Bay of Granville Agreement (BoGA) and the London Fisheries Convention. Qualifying vessels are vessels which fished in the territorial sea of the other party on more than 10 days in any of the three 12-month periods of the reference period. This ensures an access regime at a level reflecting activity during the reference period to ensure sustainable fishing in the waters concerned.

Defra is working with the Crown Dependencies on fisheries matters and is actively supporting them in developing a consistent approach to the evidence needed to demonstrate that the access criteria for qualifying vessels set out in the TCA has been met.

The Marine Management Organisation's Single Issuing Authority (SIA) provides a portal for the exchange of information with the Commission on vessels that it is proposed be granted access by the Crown Dependencies. The lists of EU vessels authorised to fish in the Crown Dependencies' territorial seas are published on the SIA website as well as on the relevant Crown Dependency's website. The Crown Dependencies will be reviewing the evidence supplied by the Commission for any applications by EU vessels to conduct fishing activity in their territorial seas.

The Crown Dependencies are now responsible for licensing EU vessels to fish in their waters. Whilst this is a new responsibility for them, given their experience in licensing domestic and UK vessels this is just an extension of those practical procedures. Work is taking place to collate information provided by the EU in order to determine the extent and nature of fishing activity during the reference period. The Crown Dependencies will use this information to issue licences for fishing in their waters with appropriate licence conditions to ensure sustainable fishing. The application of licence conditions to fishing vessels is already routine work for the Crown Dependencies.

For Jersey, the new arrangements under the TCA differ from the BoGA in that Jersey is now fully responsible for the licensing and management of the French vessels in its waters. Under the BoGA it was the responsibility of the French authorities to issue permits for French vessels fishing in Jersey waters. In order to ensure a smooth transition to the new arrangements, Jersey has decided to allow continued access to EU vessels on the basis of previously issued BoGA permits until 30 April 2021 whilst applications for new licences under the TCA are assessed and licences issued.

Article FISH.11 provides for the application of notification times for the direct landings of fish and the validated catch certificate for the direct movement of consignments of fisheries products by sea for the Channel Islands into the EU. A four-hour prior notification period for the direct landing of fish under Article FISH 11 has been put in place following discussions with the EU and France. Defra officials will be writing to the Commission for confirmation that they have implemented the prior notification period set out in Article FISH 11(1)(b) for the validated catch certificate for the direct movement of consignments of fisheries products by sea.

Article 10.3 of the TCA

Article 10.3 (the "sunset clause") allows for either Party to the TCA – the EU or the UK – to instruct the Partnership Council to end the application of the Agreement to one or more of the Crown Dependencies, within 90 days of it coming into force. This was a crucial addition to the TCA which allowed time for the Crown Dependencies to confirm their consent to their participation in the TCA, having had opportunity to scrutinise the Agreement.

Ministers of the French Government have publicly expressed concerns about the agreed fisheries terms, specifically in relation to the terms agreed for Jersey, namely that the TCA supersedes the BoGA and its licensing arrangements. UK Government officials remain in close dialogue with Jersey and counterparts in France and the EU Commission to ensure the efficient implementation of licensing and management arrangements negotiated and agreed by the UK and the EU as part of the TCA.

I hope that the Committee finds this response helpful. Please do not hesitate to contact me should you have any further questions or points of clarification.

Yours ever

A handwritten signature in black ink that reads "Robert Buckland". The script is cursive and fluid, with the first name and last name clearly distinguishable.

RT HON ROBERT BUCKLAND QC MP