

Written evidence from the Government of Guernsey (SIT 08)

Public Administration and Constitutional Affairs Committee

The Scrutiny of International Treaties and other international agreements in the 21st century inquiry

1. Executive Summary

- 1.1. This evidence is submitted by the government of Guernsey (which is known as the ‘States of Guernsey’) to help the Public Administration and Constitutional Affairs Committee (‘the Committee’) to address the following question set out in its Call for Evidence:

“What role should devolved governments and legislatures, Crown Dependencies and Overseas Territories have in relation to international treaties and arrangements?”

- 1.2. The UK government is responsible for the defence and international relations of the Bailiwick of Guernsey (the jurisdictions of Guernsey, Alderney and Sark). It is longstanding constitutional practice that when the UK ratifies or accedes to, or accepts a treaty, convention or other such agreement (‘treaty/arrangement’) it does so on behalf of the UK and any of the Channel Islands¹ or Isle of Man that wish the treaty to apply to them.
- 1.3. The extension of a treaty to the islands can be done at the time of ratification or at a later date. This is the agreed practice accepted by the United Nations. The islands, in certain circumstances, may be authorised to conclude their own agreements by a process of ‘entrustment’, this is so particularly in areas of domestic autonomy such as taxation and social security.
- 1.4. Guernsey’s role in relation to international treaties and arrangements is that when the UK is planning to ratify a particular convention or treaty, it should consult the Crown Dependencies (i.e. Guernsey, in conjunction with Alderney and Sark; as well as Jersey and the Isle of Man) about whether they wish to participate in that agreement at the time of ratification or have it extended to them at a later date. Guernsey’s government must be consulted by the UK government at the earliest opportunity about any changes to existing treaties/arrangements or about opportunities to be part of the UK’s accession to treaties/arrangements. Guernsey must be given sufficient notice and information by the UK government on which to base its decisions.
- 1.5. Guernsey has its own parliamentary and governmental processes to follow when considering whether international treaties/arrangements should apply by participation or through extension to it or not. For this reason, sufficient time is needed for Guernsey’s authorities to consider whether it is appropriate and proportionate to have a treaty/arrangement applied to Guernsey and to take the necessary action (which may include enacting domestic legislation) to meet the requirements and obligations of that treaty/arrangement. Notification of the extension, amendment etc. of any treaty is

¹ The Channel Islands is a geographical area consisting of the islands of Jersey, Guernsey, Alderney, Sark, Herm and other smaller islands. The Bailiwick of Guernsey comprises the separate jurisdictions of Guernsey, Alderney and Sark. (Herm falls within Guernsey’s jurisdiction). The Bailiwick of Jersey is separate to the Bailiwick of Guernsey.

normally recorded on the island's official records by way of registration further to an order (known as an Act) of the Royal Court of Guernsey. The Bailiwick has three jurisdictions, so additional time is required so that Alderney and Sark's governments can also consider relevant matters and so that decisions may be made whether any particular treaty/arrangement would apply to all or part of the Bailiwick of Guernsey.

- 1.6. Guernsey aspires to have greater autonomy in its representation of its international identity through the process of entrustment. In 2016, the States of Deliberation (Guernsey's parliament) agreed to a set of proposals² to seek greater autonomy in its legislative process and in international relations. Work to advance these proposals is ongoing.
- 1.7. Further evidence supporting this response is set out in the remainder of this document.

2. Introduction

The Bailiwick of Guernsey

- 2.1. The Bailiwick of Guernsey ('the Bailiwick') is made up of the jurisdictions of Guernsey, Alderney and Sark. The islands are located in the Gulf of St Malo off the north-west coast of France. Although the islands form part of the British Isles they are not, and never have been, part of the United Kingdom.
- 2.2. The islands have a long history of being self-governing and self-funding. Guernsey has been independent for more than 800 years (since 1204). The islands are not sovereign states but are dependencies of the British Crown. The Queen is the Head of State for each island, as the latter day successor to the Duke of Normandy, and the Lieutenant-Governor is Her Majesty's personal representative in the islands, based in Guernsey.
- 2.3. Guernsey is the principal Island of the Bailiwick of Guernsey. It has never been a colony or a British dependent or Overseas Territory and its status constitutionally is, and always has been, distinctly different from that of the British Overseas Territories. It has its own legal system and independent courts of law.

The government of Guernsey

- 2.4. Guernsey is not, and never has been, represented in the UK parliament. It has its own directly-elected legislative assembly, the States of Deliberation, comprising 38 independent members³, and its own administrative, fiscal and legal systems.
- 2.5. The administration of public affairs and exercise of executive authority is undertaken through committees of the States including a senior committee (Policy & Resources Committee) and six Principal Committees. Those committees are each led by a minister⁴ with four other elected members of the States of Deliberation⁵.

² The proposals were set out in the document 'Constitutional Investigation Committee – Proposal to Achieve Greater Autonomy in the Legislative Process and International Affairs for Guernsey' (Billet d'État I of 2016) (p129 et seq) <https://www.gov.gg/CHttpHandler.ashx?id=99517&p=0>

³ Plus two representatives from Alderney's parliament, the States of Alderney.

⁴ Domestically, they are known as the 'President' of their Committee. The President of the Policy & Resources Committee is in effect the Chief Minister of the Island.

⁵ The six Principal Committees may also each have up to two non-voting members who shall not be members of

- 2.6. Guernsey's right to raise its own taxes is a settled constitutional principle. Guernsey raises its own taxes and pays for its own public services without any funding from any other jurisdiction (including the UK).
- 2.7. In the current context of the Covid-19 pandemic, the government of Guernsey has responded effectively thus far; being responsible for its own bespoke approach⁶ to suit the Bailiwick's circumstances whilst working closely with the UK Government where appropriate. This indicates its maturity as a jurisdiction and its competence in managing its domestic affairs.

Guernsey's constitutional relationship with the UK

- 2.8. The constitutional relationship with the UK is maintained through the Crown and is not enshrined in a formal constitutional document. The UK government department which deals with relations with the Crown Dependencies is the Ministry of Justice. In dealing with the relationship with Guernsey and the other Crown Dependencies, the Ministry of Justice's Ministers are generally acting in their capacity as Privy Counsellors rather than as members of the government of the day.
- 2.9. The centuries-old constitutional relationship includes the constitutional convention that the UK parliament does not legislate for the islands on domestic matters without their consent.
- 2.10. It is also extremely important that the UK government ensures that engagement and/or notice of intention to enter an agreement is given to the Bailiwick of Guernsey at an early stage so that the Bailiwick's three governments have time to consider properly and fully whether that agreement should be extended to all or part of the Bailiwick.
- 2.11. Guernsey's relationship with the EU is outlined in Annex 1.

the States.

⁶ More information is available at <https://covid19.gov.gg/>

3. Extension of treaties/arrangements and making direct agreements through entrustment

- 3.1. The UK government is responsible for the defence and international representation of the Bailiwick⁷. It is longstanding constitutional practice that when the UK ratifies or accedes to, or accepts a treaty, convention or agreement it consults with the Crown Dependencies as to whether they wish the treaty to apply to them. The Ministry of Justice has issued a comprehensive set of guidance notes to the UK government on how the process of extending a treaty/arrangement should work in practice⁸.
- 3.2. The ‘How To notes’ provide a process on which best practice can be established in regard to extending a treaty to the islands and are intended to ensure that there is full engagement with the islands. It is important that there is early consultation before a treaty is ratified by the UK. The islands can also proactively request the extension of a treaty.
- 3.3. The process of extending treaties has also been explored in detail by the House of Commons Justice Committee in several Inquiries into the Crown Dependencies and corresponding government responses from the Ministry of Justice:

- [Crown Dependencies Report](#) (March 2010)⁹
- [Government response](#) (November 2010)¹⁰
- [Crown Dependencies: developments since 2010](#) (December 2013)¹¹
- [Government response](#) (March 2014)¹²

Whilst there have been improvements in the practice for extending treaties, these Inquiries established that there were still issues to be addressed including the need for early consultation and the time taken to extend treaties at the islands’ request.

- 3.4. The extension of a treaty to the islands can be done at the time of ratification by the UK or at a later date. This is the agreed practice accepted by the United Nations. The islands may be authorised to conclude their own agreements in certain circumstances by a process of ‘entrustment’, particularly in areas of domestic autonomy such as taxation and social security.
- 3.5. The Ministry of Justice’s ‘[Background briefing on the Crown Dependencies: Jersey, Guernsey and the Isle of Man](#)’¹³ states that, “Article 29 of the Vienna Convention on the Law of Treaties provides that “unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory”. The established practice of the UK when it ratifies, accedes to, or accepts a

⁷ and Jersey and the Isle of Man.

⁸ <https://www.gov.uk/government/publications/crown-dependencies-jersey-guernsey-and-the-isle-of-man>

⁹ <https://publications.parliament.uk/pa/cm200910/cmselect/cmjust/56/56i.pdf>

¹⁰ <https://www.gov.gg/CHttpHandler.ashx?id=3488&p=0>

¹¹ <https://publications.parliament.uk/pa/cm201314/cmselect/cmjust/726/726.pdf>

¹² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/529238/gov-response-to-justice-select-committee-report-developments-since-2010-march-2014.pdf

¹³ https://www.justice.gov.uk/downloads/about/moj/our-responsibilities/Background_Briefing_on_the_Crown_Dependencies2.pdf

treaty, convention or agreement is to do so on behalf of the United Kingdom of Great Britain and Northern Ireland and any of the Crown Dependencies or Overseas Territories that wish the treaty to apply to them. This means that, when the UK is planning to ratify a particular convention or treaty, it should consult the Crown Dependencies about whether they wish to have it extended to them. It is not always possible to include Crown Dependencies ... in the instrument of ratification (for example, where they do not yet have the necessary implementing measures in place), but it is usually possible for the scope of ratification to be extended to include them at a later date. This practice has been agreed by other contracting States and is regarded by the UN Secretary General as establishing a different intention for the purposes of Article 29 of the Vienna Convention on the Law of Treaties¹⁴. "... Treaties and conventions should not be negotiated so as to contain provisions referring directly to the Crown Dependencies without consultation in good time in advance with the Islands in question."

- 3.6. In certain circumstances, the islands may be authorised to conclude their own international agreements by a process of entrustment. For example, Guernsey has full autonomy in domestic matters including taxation and social security. In these circumstances the UK government has agreed that it is appropriate for Guernsey to enter into these agreements on their own behalf. The UK government 'entrusts' the island to conclude these agreements within the terms of a 'Letter of Entrustment' issued to the island's government under the signature of the appropriate UK Minister on behalf of the Lord Chancellor.
- 3.7. If a convention or treaty is extended to any of the Channel Islands or Isle of Man, the UK retains responsibility in international law for all of their international obligations. Guernsey takes its international responsibilities very seriously and has an excellent track record in that regard. Guernsey ensures that it fulfils all the international obligations to which it has agreed to be bound. Guernsey (and other parts of the Bailiwick) takes the necessary steps to fulfil those obligations, including legislating domestically and implementing its own policies which are consistent with those obligations.

4. Guernsey and its international identity

- 4.1. As stated earlier in this response, Guernsey is neither part of, nor a former colony of, the UK. The UK parliament does not, in line with constitutional convention, legislate for Guernsey without its consent in purely domestic matters. However, due to our historic and special relationship with the Crown, the UK is responsible for our formal international relations and defence. This responsibility to represent the Bailiwick's interests exists even where the Bailiwick's interests differ from those of the UK. Successive UK governments have taken this responsibility very seriously (extracts of some of the relevant correspondence are in Annex 2).
- 4.2. In 2008, the UK formally recognised, through a signed agreement¹⁵ with the then Chief Minister of Guernsey, the appropriateness of Guernsey having greater independence with

¹⁴ Treaties and international agreements made before 1951 applied to Jersey, Guernsey and the Isle of Man by convention without any specific reference to the Islands. This practice was altered by UK government in 1951 under what is known as the 'Bevin Declaration'.

¹⁵ [Framework for developing the international identity of Guernsey](#) (sometimes referred to as international identity

respect to international relations, particularly where those affairs relate to matters within the domestic competence of the government of Guernsey.

4.3. The agreement sets out a framework for the further development of Guernsey's international identity and the role of the UK government in this context, and amongst others included the following statements:

- The UK will not act internationally on Guernsey's behalf without prior consultation.
- Guernsey has an international identity which is different from that of the UK.
- The UK has a role to play in assisting the development of Guernsey's international identity. The role is one of support not interference.
- The UK will clearly identify its priorities for delivery of its international obligations and agreements so that these are understood, and can be taken into account, by Guernsey in developing its own position.
- The UK when acting in the international arena should, so far as practicable and appropriate, have regard to Guernsey's international relations, policies and responsibilities.

4.4. At the time that international identity framework was signed with Guernsey, the UK also signed similar agreements with the other Crown Dependencies.

4.5. Guernsey has entrustment to negotiate directly with the relevant authorities of sovereign states on certain topics and in certain circumstances, particularly where those affairs relate to matters within the domestic competence of the government of Guernsey. Examples include:

- Tax Information Exchange Agreements ('TIEAs') - Guernsey signed its first TIEA with the United States of America in September 2002. To date, Guernsey has signed 61 TIEAs with other jurisdictions. Further information can be found at <https://www.gov.gg/tiea>.
- Double tax agreements ('DTAs') – Guernsey currently has 15 full DTAs and 13 partial DTAs with other jurisdictions. Further information can be found at <https://www.gov.gg/dta>.

4.6. Since the signing of the International Identity Framework with the UK government, Guernsey has sought – in accordance with that framework – to ensure that, where appropriate, greater autonomy for managing its affairs can continue to be secured. It is an important measure of Guernsey's maturity as a jurisdiction that it is able to demonstrate effective democratic self-determination within its existing constitutional relationship with the UK.

4.7. Guernsey's governmental priorities (the States of Guernsey's objectives) are outlined in the Government Work Plan, Stages 1 and 2.¹⁶ Stage 2 of the Government Work Plan is to be debated in the States of Deliberation in July 2021. The States has already agreed, at Stage 1, the main priorities for the current term of government. One of those four

framework)

¹⁶ Government Work Plan – Stage 1, [Billet d'État VI, 2021](#) and [Resolutions of 26th March, 2021](#); and Government Work Plan – Stage 2, [Billet d'État XV, 2021](#) which is due to be considered at the States Meeting of 21st July, 2021.

priorities is managing the effects of Brexit, which includes implementation and maintenance of Guernsey's participation in the UK-EU Trade and Cooperation Agreement ('UK-EU TCA') and the continuing development of Guernsey's international identity and international standards.

- 4.8. Guernsey's Constitutional Investigation Committee ('CIC') was established in January 2014¹⁷, following earlier decisions of the States of Deliberation¹⁸, in order to investigate proposals on greater autonomy in relation to legislative process and international affairs. The CIC noted, in a report¹⁹ to Guernsey's parliament in January 2016, that work was underway to strengthen the processes by which treaties are extended, in order to avoid delays such as had been experienced in the past. The CIC also recommended that Guernsey expand the way that the process of entrustment could be used. This would help to avoid the circumstances Guernsey experienced when it was prevented from entering into the FATCA agreement with the US until a like agreement was signed with the UK²⁰.
- 4.9. In November 2016, as part of the Policy & Resource Plan, it was agreed that the States would "seek greater autonomy from the UK in respect of the legislative process and international agreements"²¹. In the Policy & Resource Plan of 2017²², it was recognised that further work would need to be undertaken in regard to States' Resolutions relating to the work of the CIC. Work has progressed since then, including in regard to the referral of UK Acts of Parliament and Orders in Council to Guernsey's States of Deliberation²³.

5. Participation in Free Trade Agreements

- 5.1. The UK's withdrawal from the EU and the process of consideration of international agreements and how they would apply to Guernsey has highlighted the importance of Guernsey receiving timely information in advance of any international agreements being ratified. Sufficient time enables Guernsey's (and, where applicable, Alderney and Sark's) government to take the necessary action, including modification or implementation of domestic legislation, to meet any requirements and obligations of an international treaty.
- 5.2. The territorial extent provisions within international treaties are important. They should reflect the constitutional relationship and practice in international law, including ensuring adequate and timely consultation with the islands. Whilst the Bailiwick authorities

¹⁷ Billet d'État I, 29th January 2014 (Article V): <https://gov.gg/CHttpHandler.ashx?id=85309&p=0> ; Resolutions, 30th January 2014: <https://gov.gg/CHttpHandler.ashx?id=99554&p=0>

¹⁸ Billet d'État XVIII (Volume 1), 25th September 2013 (Article II): <https://gov.gg/CHttpHandler.ashx?id=84016&p=0>; Resolutions, 26th September 2013: <https://gov.gg/CHttpHandler.ashx?id=99638&p=0>

¹⁹ Billet d'État I, 26th January 2016 (Article XV): <https://www.gov.gg/CHttpHandler.ashx?id=99517&p=0> ; Resolutions, 26th January 2016 (p11) <https://www.gov.gg/CHttpHandler.ashx?id=100130&p=0>

²⁰ Billet d'État XVIII (Volume 1), 25th September 2013 (Article II) (paragraph 63, p1413) <https://gov.gg/CHttpHandler.ashx?id=84016&p=0>

²¹ Policy & Resource Plan – Phase One 'Future Guernsey' ('Final - approved by the States on 16 November 2016'). (The version published in Billet d'État XXVIII of 2016 was then amended at a States Meeting in November 2016.): <https://www.gov.gg/CHttpHandler.ashx?id=105052&p=0>

²² Billet d'État XII, 27th June 2017 (Article I): <https://www.gov.gg/CHttpHandler.ashx?id=107774&p=0>

²³ Billet d'État VI of 2019: <https://gov.gg/CHttpHandler.ashx?id=118190&p=0> ; Resolutions, 28th March 2019 <https://www.gov.gg/CHttpHandler.ashx?id=118452&p=0> ; Draft legislation (approved by States on 12th June 2019, awaiting Royal Sanction) <https://gov.gg/CHttpHandler.ashx?id=118944&p=0>

generally act as one when it comes to international treaties, there are three jurisdictions involved, and the possibility remains that one or two of those jurisdictions may not wish treaty obligations (or all treaty obligations) to extend to it or them. Thus, there can be circumstances in which the extent to which a treaty applies within the Bailiwick as a whole requires careful description.

- 5.3. In addition to the work relating to the Bailiwick's implementation and participation in certain provisions of the UK-EU TCA, it is important that there is early consultation and engagement between the UK's Department for International Trade and Guernsey's government on the development of new economic and trade-related treaty relationships.
- 5.4. Guernsey confirmed to the UK government that the Bailiwick's authorities wish to be involved at the earliest opportunity with any discussions in relation to any new Free Trade Agreements (FTAs) negotiated following the UK's exit from the EU.
- 5.5. As the UK negotiates new FTAs with other countries, it is expected that Guernsey will seek to be included in the territorial extent for goods by virtue of our customs relationship with the UK post-Brexit, subject to the usual consent processes. Discussions are still ongoing with UK Departments to enable the extension of agreements for areas such as investments, services and intellectual property. These elements could be extended at a later date. The government of Guernsey wishes to ensure that the usual process in respect of treaties can apply and that the territorial extent can be agreed at the point of extension or at a later date, in accordance with the agreed practice under the Vienna Convention (as in paragraph 3.5). Where extension is sought at a later date it is vital that the necessary support is afforded by the UK government to give effect to this decision in an expedient manner, in accordance with the principles described in the international identity framework (as in paragraph 4.3 of this document).
- 5.6. In addition to the consent to be bound by any new FTA, there needs to be consideration as to how termination in respect of the Bailiwick of Guernsey's participation in any FTA can be achieved, in order to maintain the principle that the islands should only be bound whilst their consent is in place.
- 5.7. FTAs are often negotiated at pace and the consent process period can be truncated, as was experienced with the ratification of the UK-EU TCA. Whilst the Bailiwick will endeavour to adapt procedures to seek to meet these demands, within the constraints of the domestic constitutional processes, this may not always be possible. Had the timescales experienced with the ratification of the UK-EU TCA by the UK been even shorter, or had the islands refused to consent to be bound, then there would have been a significant constitutional issue relating to the ratification of the UK-EU TCA. Consideration of how a failure to ratify would impact the extent of the treaty may need to be considered by the UK Government so that arrangements or specific treaty language can be agreed to respect the longstanding constitutional relationship between the islands and the UK, through the Crown.
- 5.8. In order to progress discussions relating to new FTAs, it will be important that all relevant UK government departments engage with Guernsey's authorities at the earliest opportunity on the scope of any proposed new agreements so that the risk of issues relating to consent, or compliance with any new agreement, can be mitigated.

6. Conclusions

- 6.1. Guernsey has volunteered this evidence to help the Public Administration and Constitutional Affairs Committee to fulfil its role in examining the constitutional issues in this Inquiry and to answer certain questions that the Committee has posed for this Inquiry.
- 6.2. Guernsey's historic centuries-old constitutional relationship with the Crown is vitally important. Guernsey is a mature democracy that respects the values of the Commonwealth, including the rule of law, the protection of human rights and civil liberties. The island takes its international reputation seriously and it remains a strategic priority to meet its international obligations and to take part in the development of new global standards.
- 6.3. Guernsey (and the rest of the Bailiwick) has competence over its domestic affairs and determines for itself whether it wishes to be bound by international treaties or other such agreements. The government of Guernsey needs sufficient notice and information on which to base its decisions as to whether any international treaties/arrangements should be extended to it or not extended. If a treaty/arrangement is to apply to the Bailiwick as a whole, then the governments of Alderney and Sark also need to be involved. A treaty can be extended to the islands at the time of accession or ratification (by the UK) or at a later date. It is, or should be, for Guernsey's government (and those of Alderney and Sark, if appropriate) to enact suitable domestic legislation and to introduce relevant policies to enable Guernsey to meet its obligations in regard to any treaty/arrangement.
- 6.4. Guernsey has developed a greater international identity in the last few decades and now enters into an increasing number of international agreements under entrustment. Guernsey would like to develop this autonomy and competence further to reflect the island's constitutional evolution and development and to achieve a greater measure of international personality on the international stage.

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Annex 1: **Guernsey's relationship with the EU**

A1.1 Guernsey is not, and has never been, a Member of the European Union (EU).

A1.2 During the period when the UK was a Member of the EU, there was a formal relationship between the Channel Islands and the EU which was governed by Protocol 3 to the UK's Act of Accession to the European Economic Community in 1972 ("Protocol 3"). That relationship, amongst other things, allowed for Guernsey to be in the EU customs territory and to benefit from free movement of industrial and agricultural goods. It 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. For all other matters outside Protocol 3, Guernsey 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. Certain limited agreements which the UK was party to through its relationship with the EU applied to Guernsey insofar as Protocol 3 applied. That included certain agreements like Free Trade Agreements.

A1.3 During the transition period (from 31st January 2020 until 31st December 2020), the terms of the UK-EU Withdrawal Agreement provided that there would largely be continuity, which for the Bailiwick meant it was as though Protocol 3 still applied. That 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')²⁴ which, therefore, ceased to apply to the Bailiwick from 11pm on 31st January 2020. 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.

A1.4 When the UK withdrew from the EU, the relationship between the Bailiwick of Guernsey and the EU changed. Certain elements of the relationship did not change: for example, the Bailiwick was, and still is, a third country to the EU for trade in services (including financial services), data protection and data sharing. Nonetheless, the effects of the UK's withdrawal from the EU remain a key external influence for the Bailiwick. The States decided in March 2021²⁵ that dealing with the continuing implications of the UK's exit from the EU is one of the four key strategic priorities for the States of Guernsey.

A1.5 The three separate parliaments of the Bailiwick of Guernsey²⁶ each decided in December 2020²⁷ to participate in the UK-EU Trade and Cooperation Agreement ("UK-EU TCA"), insofar as the UK-EU TCA applies to the Bailiwick, in particular in respect of fisheries and the trade in goods. The Bailiwick of Guernsey's participation in the UK-EU TCA meets the economic needs of the islands, replacing as far as possible the previous Protocol 3 relationship; and provides the basis for a stable and predictable relationship on fishing for both the Bailiwick's fishing industry and those in neighbouring regions. More

²⁴ The London Fisheries Convention is an international agreement relating to fishing rights in the coastal waters of Western Europe. It provides rights of access to fishing grounds between the 6-12 nautical mile limits of the territorial seas for fishermen of contracting parties that had fished in those waters between 1953 and 1962.

²⁵ Government Work Plan – Stage 1, [Billet d'État VI, 2021](#) and [Resolutions of 26th March, 2021](#)

²⁶ The States of Deliberation (for Guernsey); the States of Alderney and the Chief Pleas of Sark.

²⁷ The Bailiwick's Participation in the UK-EU Trade and Cooperation Agreement, [Billet d'État XXIX, 2020](#) and [Resolutions of 27th December, 2020](#)

information on the effects on the Bailiwick of its decision to participate in the UK-EU TCA are detailed in the paper considered by the three parliaments in December 2020.

A1.6 The potential effects of the UK's departure from the EU on the Crown Dependencies, including on the evolution of the Crown Dependencies' international identities, are recognised in two reports published in 2017:

- House of Commons Justice Committee 'The implications of Brexit for the Crown Dependencies' (March 2017)²⁸
- Government response (September 2017)²⁹
- House of Lords European Union Committee 'Brexit: the Crown Dependencies' (March 2017)³⁰
- Government response (October 2017)³¹

The importance of the UK government effectively and satisfactorily representing the Crown Dependencies' interests, even when those interests are different from the UK's own, was highlighted in the conclusions of both those reports and continues to be extremely important.

The effect of the UK's departure from the EU on treaties which apply to Guernsey

A1.7 When the UK left the EU, Protocol 3 ceased to have effect. Guernsey engaged with relevant UK government departments about the transition³² of international agreements that applied to the island insofar as Protocol 3 applied (primarily customs and agri-foods/sanitary and phytosanitary measures and Free Trade Agreements (FTAs)).

A1.8 Guernsey, together with Alderney and Sark, adopted a continuity approach in relation to "EU international agreements that apply by virtue of, and to the extent provided by, Protocol 3"³³. In some areas, such as customs, certain conventions have been extended to the Bailiwick as part of the UK's continuity programme, such as the UK-Japan Comprehensive Economic Partnership Agreement (CEPA) where such conventions were relevant and proportionate. For those that have not been extended to date, there remains an option to do so in future. In respect of EU-third country trade agreements such as FTAs, continuity agreements secured by the UK will continue to apply to the Bailiwick to the extent that Protocol 3 applied.

A1.9 Guernsey has worked closely with the UK to ensure that arrangements and relationships which existed before the UK left the EU were able to continue to apply to the Bailiwick as had been the case under Protocol 3, to the extent possible. Other important elements in this regard are a customs arrangement³⁴ between the UK and the islands and the

²⁸ <https://publications.parliament.uk/pa/cm201617/cmselect/cmjust/752/752.pdf>

²⁹ [House of Commons - The implications of Brexit for the Crown Dependencies: Government Response to the Committee's Tenth Report of Session 2016–17 - Justice Committee \(parliament.uk\)](#)

³⁰ <https://publications.parliament.uk/pa/ld201617/ldselect/ldcom/136/136.pdf>

³¹ [CHttpHandler.ashx \(gov.gg\)](#)

³² from the UK as an EU Member State to the UK in its own right

³³ As set out in paragraph 3.17 of The Withdrawal Agreement between the United Kingdom and the European Union – Implications for the Bailiwick of Guernsey, [Billet d'État II](#), 2020, and [Resolutions of 17th January 2020](#)

³⁴ [Billet d'État of XIX of 2018](#) – 'Customs Duties and Associated Powers required in Respect of Brexit' and [Resolutions](#) of 18th July 2018

extension of the UK's membership of the World Trade Organization (WTO)³⁵ to the islands, both of which came into effect at 11pm on 31st December, 2020³⁶³⁷.

³⁵ [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 18th February, 2019, the Policy & Finance Committee of Alderney on 16th April, 2019 and the Chief Pleas of Sark on 27th March, 2019.

³⁶ when the UK-EU transition period ended

³⁷ The Bailiwick's Participation in the UK-EU Trade and Cooperation Agreement, [Billet d'État XXIX](#), 2020 and [Resolutions of 27th December, 2020](#)

Annex 2: **Guernsey's international identity**

A2.1 Successive governments have taken seriously the UK's responsibility to represent the Bailiwick's interests, which exists even where the Bailiwick's interests differ from those of the UK; and have recognised the importance of the Bailiwick's constitutional relationship with the UK, through the Crown, and of the Bailiwick's domestic autonomy. In a letter dated 9th May 2019, the then Prime Minister the Rt Hon Theresa May MP said: "This Government has defended strongly the longstanding constitutional convention that Parliament does not legislate for the Crown Dependencies on their domestic matters without their consent, save in exceptional circumstances and as a last resort. As I noted in my letter to you of 22nd October 2018, the longstanding constitutional relationships between the UK and the Crown Dependencies will not change as a result of the UK's decision to leave the EU."³⁸

A2.2 This position was reaffirmed by the Prime Minister the Rt Hon Boris Johnson MP, in a letter, dated 9th September 2019, which said: "the UK Government appreciates the special relationship that the UK has with the Crown Dependencies. This is a deep historical relationship in which we work collaboratively together on matters of mutual interest, and where the UK Government does not intervene in the Crown Dependencies' domestic affairs without consent other than in very limited circumstances and as a matter of last resort...I am keen to further strengthen this relationship after the UK has left the European Union, when the UK Government will be negotiating its own free trade agreements on behalf of the entire British family, including the Crown Dependencies. The UK Government will continue to engage the Crown Dependencies Governments throughout this process as we seek a future relationship with the EU that works for the entire British family."³⁹

A2.3 The Lord Chancellor, in a letter to the Chief Minister of Guernsey dated 24th December 2020, said "As a Crown Dependency, Guernsey is self-governing in respect of its domestic affairs, including in relation to its territorial sea. The UK is responsible for the defence and international relations of the Crown Dependencies. The UK recognises and respect Guernsey's excellent track record of meeting its international obligations through its own domestic policies and legislation"⁴⁰. Guernsey also received a letter from the Paymaster General, on 12th 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 Mandate⁴¹, the UK remains unchanged in its commitment to seek outcomes which support your security and economic interests and also reflect your unique characteristics."⁴²

³⁸ [Letters between Deputy Gavin St Pier and the UK Prime Minister April-May 2019](#)

³⁹ [Letter from the Prime Minister to the Chief Minister of Guernsey](#), 9th September 2019

⁴⁰ [Letter from the Lord Chancellor to the Chief Minister of Guernsey](#), Guernsey's participation in the agreement between the UK and the EU, 24th December 2020

⁴¹ The UK published "[The Future Relationship with the EU – the UK's Approach to Negotiations](#)" on 27th 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."

⁴² As in The Bailiwick's Participation in the UK-EU Trade and Cooperation Agreement, [Billet d'État XXIX](#), 2020, page 59