

STATEMENT TO BE MADE BY THE MINISTER FOR EXTERNAL RELATIONS ON SUNDAY 27th DECEMBER 2020

UK-EU Trade and Economic Cooperation Agreement – inclusion of the Bailiwick of Jersey (P.170/2020)

Introduction

I am enormously grateful to every Member of this Assembly for attending this sitting, on a Sunday, in the middle of the Christmas and New Year period. I am, equally, sincerely thankful to the staff in the States Greffe for their work to facilitate and support this sitting, to the Law Officers for their sage advice and support, and to officials across the Government for their tireless work over the past four years, and especially in the last few weeks, which has brought us to this day.

Members can be assured that the Council of Ministers would not have sought a requisition for the Assembly to meet on a Sunday, and over the Christmas period, if it weren't entirely and absolutely necessary. And indeed, Sir, we are meeting today to discuss a matter of the utmost importance to Jersey's constitutional and economic future.

The significance of today's sitting is further underlined by the fact that the States of Deliberation in Guernsey, the States of Alderney, and Chief Pleas in Sark, are also all convening to discuss their own Bailiwick's participation in the UK-EU Trade and Co-operation Agreement.

Lodging of P.170/2020

As Members know, the UK Prime Minister and the President of the European Union Commission announced on the afternoon of Thursday 24th December 2020 that a settlement had been reached between the UK and the EU on a Trade and Co-operation Agreement, to take effect from 1st January 2021. This outcome followed over four years of challenging negotiations, especially so in 2020, and an intense final period of talks over the past few weeks.

Upon the lodging of P.170/2020, which I hope the Assembly will consent to being debated today, the Government of Jersey had not seen the full and final legal text of the agreement, and Members will have subsequently noted that the text became available late on Christmas Day. That said, as the negotiations reached their conclusion, Ministers and officials were provided, on a strictly confidential basis, with sections of the near-final legal text which were specific to Jersey and are referenced in the report to P.170. The Government has also benefitted from seeing and reviewing near-final drafts of legal text over recent weeks, again shared in confidence, which has ensured we have a detailed view of the nature and structure of the agreement so far as it relates to Jersey. We have conducted a thorough analysis of the text specific to Jersey, seeking clarification from the UK Government where appropriate, and have sought to involve Scrutiny in our assessment of the deal – on a strictly confidential basis – as and when new detail has become available.

The delay in the availability of the final legal text is, however, the reason for P.170 being worded in the way that it is – a matter I shall cover in more detail when I introduce the debate. The Government of Jersey, proceeding as we have done throughout these negotiations in good faith, is of the view that it has received sufficient detail, and has given this proper consideration, to be able to recommend to the Assembly that Jersey's interests are best served by participation in the agreement. This position is similarly reflected and being taken in the Bailiwick of Guernsey, and the Isle of Man.

Crucially, Members will have seen that the option remains open to our Bailiwick, once the agreement has been ratified and the full and final legal text has been reviewed – and that includes by Scrutiny and by all States Members – to withdraw any consent we might give within 90 days of the agreement taking effect. This is what we might call a ‘cooling off’ period contained within the Agreement where, if upon further detailed scrutiny, the implications of the final text substantially change the way we have understood the Agreement to apply to Jersey, there is the option to withdraw.

It is important to clarify that this 90-day clause does not mean that Jersey can wait for up to 90 days to provide its consent or otherwise for participation in the agreement. It is a withdrawal mechanism, and one that can only be effected in the event that a decision has been taken by this Assembly that we should participate in the agreement. Of course, should this Assembly not adopt P.170, the issue becomes academic. But in any event a decision is required first, either for participation in the agreement or not.

Ratification

This agreement will come into force, initially on the basis of provisional implementation, on 1st January 2021. The full ratification process, including by the European Parliament, will need to be confirmed early in January 2021. Crucially for Jersey, and our fellow Crown Dependencies, the UK intends to ratify the agreement before the New Year. This means that we must also provide our Bailiwick’s decision to the UK before the New Year. Indeed, the UK Parliament is expected to be recalled on 30th December to ratify the agreement, and we expect the text of the agreement to be officially deposited on either 28th or 29th December.

It is of fundamental constitutional importance, Sir, that Jersey’s position is made clear before the UK Parliament is formally provided with the text of the agreement and begins its debate. The text that will be considered by the UK Parliament so far as it relates to Jersey must reflect the will of this Assembly. I hope that Members will agree that we cannot allow a circumstance to arise where UK Parliamentarians might debate an issue that impacts upon Jersey’s constitutional and economic future without the Government of Jersey confirming its consent or otherwise, in line with the decision taken by the States Assembly today. It is for this reason, Sir, why this Assembly, and the legislatures across the Channel Islands, are meeting as a matter of urgency today.

The Agreement

It is my view, the Chief Minister’s view, and the unanimous view of the Council of Ministers, that we have arrived at a deal which meets the objectives we set for the negotiation, and that it is in our best long-term economic and constitutional interests for Jersey to participate.

It is not a perfect deal – such agreements never are. I ask Members to keep in mind that negotiations regarding this agreement were, ultimately, the result of actions in which the Government, States and people of Jersey took no part. In line with our constitutional position, our involvement in the negotiations was conducted through the UK, and I wish to put on record that I do believe the UK has, to the best of its ability, met its constitutional obligation during this process to represent our interests internationally.

Goods

The Government's overarching objective in these negotiations was to preserve to the greatest extent possible the trading relationship we currently have with the European Union through what is commonly known as Protocol 3. In summary, the Protocol extends membership of the EU Customs territory to Jersey and gives us free and frictionless trade in agricultural or derived goods. This arrangement has served Jersey well and, as Members will be aware, we sought no change from that model.

It is therefore welcome that the Agreement provides that Jersey's involvement will extend to relevant parts of the goods and fisheries chapters. This will preserve tariff-free goods trade between Jersey and the EU. Inevitably, there will be differences from the current arrangements in place through Protocol 3, and these are set out in detail in the report to P.170. The Agreement is broader, requiring a degree of co-operation in relation to the setting and monitoring of regulatory standards for all types of manufactured and agricultural goods. There are also differences in how regulatory standards are enforced, and to the ongoing monitoring of trade policy and practices.

We will need to continue working closely with the UK in this respect, and particularly so as the UK will act as the state party – representing Jersey's interests – on the Trade Committees established by the Agreement. The letter received from the Lord Chancellor, attached as an addendum to P.170, gives us further re-assurances that Jersey's ongoing interests and constitutional autonomy will continue to be respected under this agreement in the years ahead.

UK-CDs Customs Union

Whilst not directly relevant to the Trade and Co-operation Agreement, I do wish to remind Members that Jersey's Customs Union with the UK, covering 95% of our total worldwide goods trade, will come into effect from 1st January 2021. The Crown Dependencies will form part of the external customs border of the UK with the EU, which will require ongoing adaptation to changes in Customs Law and practices.

Members will also recall that, from 1st January 2021, Jersey will benefit from the extension to the Island of the UK's membership of the World Trade Organisation, which will provide additional stability and protection for our future trading relationships with non-UK and non-EU jurisdictions.

Fish

Our participation in the Agreement would effectively supersede the Granville Bay Agreement. This would bring an end to the joint management of Jersey's waters which is provided for in that agreement. We will regain unilateral control over the management of our territorial waters. We can pursue a focus on sustainability, so long as any measures follow objective, scientific advice and are non-discriminatory in their effect on Jersey and EU – effectively in this case French – vessels.

As is the case at present, qualifying French vessels, with a history and track record of making their living in these waters, would be able to fish in Jersey's 3-12 nautical mile limit. However, any such vessels will, Sir, be licenced solely by Jersey. Members will be aware that this is not the case under current Granville Bay arrangements. The qualifying period for historical activity is 1st February 2017 to 31st January 2020, and a qualifying vessel must be able to show more than 10 days of activity in any of the three twelve-month periods ending on 31st January on, or between, 1st February 2017 and 31st January 2020.

The Agreement has new requirements around notification periods for the importation and landing of fisheries products – between one and three hours for a catch certificate and three and five hours before landing. It covers remedial measures, dispute resolution and data sharing.

It must of course be noted that, in the event Jersey doesn't participate in the Agreement, or withdraws within the 90-day period, the Granville Bay Agreement would remain.

Services

For Jersey, the agreement does not extend in any way to services, for which we already have established and effective third country relationships with the European Union.

At one stage requests were being made for parts of the Agreement to cover tax issues, and other matters of interest to our financial services industry. As Members know, Jersey already has separate arrangements and structures for working with EU countries and institutions in these areas, and we were pleased that the requests for them to be included in this trade agreement were ultimately withdrawn.

As part of making this agreement, the Government has made non-legally binding, political commitments around reasonable assistance in the collection of taxes and duties, and a declaration on harmful tax regimes. Given Jersey's track record of dialogue and co-operation with multilateral institutions on these issues, including with the EU Code Group and the OECD, these are statements which we make comfortably of our own accord, as a fiscally autonomous jurisdiction, and as an extension of our ongoing international engagement.

Conclusion

This has been a long four years and a challenging negotiation in 2020. It has resulted in a deal that meets our objectives as far as we could have expected. We have protected our autonomy and constitutional status vis-à-vis the UK and the EU. We have defended our economic interests and maintained our trading links for business. And we are now in a position to move forward towards the opportunities that exist in this new decade for growing and diversifying our economy with markets across the globe, as part of the British family.

Life will be different from 1st January 2021, but we have an Agreement which makes the changes we will incur minimal, manageable, and gives us a basis from which we can build successfully. The Council of Ministers recommends that Jersey participates in this agreement and I hope we have the support of this Assembly for doing so.