
STATES OF JERSEY



INCLUSION OF THE BAILIWICK OF JERSEY IN THE UK/EU TRADE AND CO-OPERATION AGREEMENT: GOODS AND TRADE (S.R.4/2021) – RESPONSE OF THE MINISTER FOR EXTERNAL RELATIONS AND FINANCIAL SERVICES

**Presented to the States on 9th March 2021
by the Minister for External Relations and Financial Services**

STATES GREFFE

**INCLUSION OF THE BAILIWICK OF JERSEY IN THE UK/EU TRADE AND
CO-OPERATION AGREEMENT: GOODS AND TRADE (S.R.4/2021) –
RESPONSE OF THE MINISTER FOR EXTERNAL RELATIONS AND
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| Ministerial Response to: | S.R.4/2021 |
| Ministerial Response required by: | 2nd April 2021 |
| Review title: | Review of the Inclusion of the Bailiwick of Jersey in the UK/EU Trade and Co-operation Agreement: Goods and Trade. |
| Scrutiny Panel: | Brexit Review Panel |

INTRODUCTION

I am grateful to the Panel for completing its work, as requested by part (c) of P.170/2020, in such a constrained time period, yet still doing so thoroughly and efficiently. It was helpful for the Council of Ministers to be able to digest the Panel's findings, recommendations, and conclusion prior to taking its own decision as to whether the Government should invoke the 90-day termination clause. We are grateful to the Panel for ensuring this was possible.

As is confirmed in this response, the Government agrees with almost every finding of the review, and I hope this response adds some helpful additional information and context in certain respects. We accept all five recommendations, in some cases having already taken action.

As the Panel will be aware the Council of Minister's, following its own legal and policy analysis of the Agreement, reached the same final conclusion as set out in the report – that the unanimous decision of the States taken on 27th December 2020 should be upheld and Jersey should remain part of the TCA. It is re-assuring that Scrutiny had separately considered Jersey's participation in the TCA, and whether the decision of the States Assembly on 27th December was reflected in the final legal text, and reached the same decision as Ministers with respect to Jersey's continued participation.

I am grateful to the Panel for the professional manner in which it undertook this work, and for once again working constructively with my office to analyse a matter of fundamental importance to the future of our Bailiwick.

FINDINGS

| | Findings | Comments |
|---|---|---|
| 1 | The Trade and Co-operation Agreement is drafted as a high level 'legal framework' as opposed to a detailed piece of Law. The technical detail that will inform future decision making on the applicable provisions within the TCA is yet to be established by the "Specialised Committees" that will operate under the framework of the TCA. | Correct – External Relations will be working further with the UK Government on the governance supporting these new structures once established, to agree Jersey's role within them. |
| 2 | An analysis undertaken by Government Officials within External Relations has confirmed that nothing fundamentally alters Jersey's position of participating in the Trade and Co-operation Agreement. Therefore, Officials have recommended to Ministers that Jersey continue to participate in the TCA and do not ask the UK to invoke the 90-day termination clause. | Agree – this is reflected in the Council of Minister's report to the States Assembly. |
| 3 | In order for the successful implementation and functioning of the relevant Trade and Co-operation Agreement requirements for the Crown Dependencies, legal advice has highlighted that it is important that their interests are properly and consistently considered, recognised, and represented. | Agree – this is the subject of active and ongoing work which is being led and co-ordinated by External Relations. |
| 4 | The Joint Partnership Council is the central committee in charge of governing the Trade and Co-operation Agreement. It will oversee the TCA and be co-chaired by a member of the European Commission and a UK Minister. | Correct. |
| 5 | In terms of dispute resolution, it will be important to ensure that Jersey's interests are safeguarded in any dispute within which it may become involved in. | Agree – please also see the response to the recommendation relating to this point |

| | Findings | Comments |
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| 6 | Under the Trade and Co-operation Agreement, “Specialised Committees” will be established as mechanisms for developing trade policy and practices between the UK and the EU, through a series of Trade Committees. The Trade Committees will play an important role in determining the scope and application of future agreements. | This is correct in respect of agreements with the EU. The impact for wider rest of the world agreements is not clear and is likely to be limited. |
| 7 | In relation to Jersey’s involvement in the “Specialised Committees”, the Minister for External Relations and Government of Jersey Representatives are arguing for direct representation by Jersey in the relevant committees. | Ongoing discussions are taking place with the UK Government to ensure that Jersey’s views are correctly represented. It should be noted that, depending on the final structures, this may not always be through direct representation. |
| 8 | In relation to Part Two: Title I (Trade in Goods) of the Trade and Co-operation Agreement, legal analysis has confirmed that the legal text is in accordance with Jersey’s expectations as to the obligations that would be applicable. | Agree. |
| 9 | Jersey’s autonomy over its customs operations, is subject to the requirement that any requests made by Jersey under the relevant provisions of the Trade and Co-operation Agreement, such as requests for any changes, must be fulfilled by UK customs authorities. | The Customs Union Arrangement agreed between Jersey and the UK will provide a forum for discussing. No further agreement is necessary. |
| 10 | In relation to customs operations, the distinction between “goods” and “services” may not always be easy to determine. Therefore, the limited application of ‘goods’ to Jersey, may give rise to ambiguities in the future which should be kept under review. | Correct and this will be continually reviewed. |
| 11 | Jersey may need to ensure that distinctions are made between where Jersey’s World Trade Organisation (‘WTO’) obligations on services end, and where the UK’s Trade and Co-operation Agreement obligations on services go beyond the minimum requirements of the WTO. | This is an issue which External Relations is conscious of and monitoring carefully. |

| | Findings | Comments |
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| 12 | Jersey's participation in the Trade and Co-operation Agreement might be considered to impact on Jersey's autonomy and ability to develop its own international identity. The Minister for External Relations has received a commitment from the Lord Chancellor and Secretary of State for Justice that the UK would respect Jersey's constitutional position in the operation of the TCA. | Correct in respect of the commitment received from the Lord Chancellor. The TCA does recognise the CDs have separate competent authorities that are responsible for implementing customs or regulatory controls. However, the UK will be ultimately answerable under the TCA in relation to Jersey's obligations. We agree with the panel highlighting the importance of the Lord Chancellor's letter in maintaining and ensuring clarity on the constitutional position in order to provide Jersey with the ability to continue developing its international identity and in respecting our autonomy. |
| 13 | The increased complexity of the export process is leading some smaller retail businesses in Jersey to stop deliveries into Europe because they are daunted by the large amount of administration and the VAT rules they need to navigate. | This is not directly a result of Jersey's participation in the TCA. The increased complexity of the export process was an inevitable consequence of Brexit, and the UK's exit from the Single Market and the Customs Union. |
| 14 | Rules of Origin determine where goods originate which has complicated the forward shipping of European goods for many large companies in the UK and Jersey. | As above, this is not directly as a consequence of the TCA, the additional complexity is a result of the UK's exit from the EU. The Government of Jersey is, as we have been doing throughout the Brexit process, seeking to ensure all businesses and islanders have the information they need to navigate this new trading relationship with the EU to overcome any potential challenges. Information and guidance is available on the government website and further communications campaigns are planned in the coming weeks. |

RECOMMENDATIONS

| | Recommendations | To | Accept / Reject | Comments | Target date of action/ completion |
|---|---|-----------|------------------------|--|--|
| 1 | The Minister for External Relations must ensure that an agreement is made with the UK (and then the EU) to set out the most appropriate procedures whereby Government of Jersey Representatives can | MER | A | MER has agreed a Memorandum of Understanding with the UKG on Dispute Resolution Mechanisms (DRM) within the TCA. This will be shared with the Panel and published when signed. | Completed |

| | Recommendations | To | Accept / Reject | Comments | Target date of action/ completion |
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| | be directly involved in any relevant dispute resolution process. | | | | |
| 2 | As the Trade Committees will play an important role in determining the scope and application of future agreements, the Minister for External Relations should ensure that Jersey is sufficiently represented in the relevant committees. | MER | A | This matter is being actively discussed with the UK Government. The MoU referenced above will be reviewed in June to take particular account of new governance structures. | July 2021 |
| 3 | The Minister for External Relations should ensure that there is a UK-Jersey agreement that governs the undertaking of any requests made by Jersey on its customs operations. | MER | A | The Customs Union Arrangement that Jersey already agreed with the UK came into effect at the end of the Transition Period at 11pm on 31 December 2020. This arrangement provides for the establishment of a committee which can consider operational issues such as requests in respect of the TCA. | Completed |
| 4 | In relation to customs operations, the Minister for External Relations should keep under review the distinction between “goods” and “services” in order to mitigate against any future ambiguities which might arise regarding the limited application of “goods” to Jersey. | MER | A | The Government is acutely conscious of the blurring between certain goods and services in the context of trade, and will bear this in mind and keep under active review in discussions with the UK Government, particularly in considering future agreements with other third country partners. | Ongoing Action |
| 5 | In order to provide clarity and support for businesses regarding the difficulties they may experience due to the changes resulting from Brexit and the Trade and Co-operation Agreement, the Minister for External Relations should undertake further “Beyond | MER | A | A further “Beyond Brexit” communications campaign will be launched in the coming weeks. A focus will be on the practical operational changes, and new requirements, that will affect Islanders and local businesses. | April 2021 |

| | Recommendations | To | Accept / Reject | Comments | Target date of action/ completion |
|--|--|-----------|--------------------------------|-----------------|--|
| | Brexit” virtual sessions for businesses. | | | | |

CONCLUSION

The Panel’s report is thorough, in-depth, considered and appropriately challenging. It reaches a conclusion which I strongly believe reflects Jersey’s best political, constitutional, and economic interests.