

Report of the Council of Ministers
UK/EU Trade and Economic Cooperation Agreement
Application to and implications for the Isle of Man

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1. Chief Minister's Foreword

After many months of negotiation, the United Kingdom and the European Union have agreed the terms of their future trading relationship.

The Isle of Man is covered by certain parts of that Agreement.

I am pleased to say that we have achieved the objectives we set at the start of the negotiations.

The most important of these is that goods originating in the Isle of Man will continue to be treated in the same manner as UK goods when they enter the EU market.

This means that Isle of Man goods entering the EU will not be subject to tariffs and will undergo the same customs and regulatory checks as UK goods. In other words, there will be no additional Manx friction for our goods.

In addition, we have agreed to allow for continued access to parts of our territorial waters for certain EU vessels, in a similar manner to the UK. We have secured the implementation of additional measures of control. This will mean that for the first time, we will be responsible for local management and licensing of these vessels. We will be able to manage effort to ensure a sustainable approach to fishing in our waters.

The new arrangements have taken many months to negotiate. It has not been easy. I am grateful to the many officials across a number of departments who have worked hard, alongside colleagues in the UK Government, to ensure that the Isle of Man's interests were understood and faithfully represented during negotiations.

The final details of the new arrangements for trade and fisheries were resolved in the final minutes of the negotiations. The full legal text is yet to be finalised and published.

The Isle of Man Government will publish further detail and analysis of the Agreement in the New Year.

In the meantime, I hope that the attached summary provides a useful summary of the key elements of the Agreement - and importantly what it means for our Island.

Howard Quayle
Chief Minister

24 December 2020

2. Summary

The Isle of Man's constitutional relationship – and its customs union – with the United Kingdom mean that it cannot enter into separate or different international trading relationships with other countries or international bodies such as the European Union.

When the UK left the European Union (EU), the Isle of Man's limited relationship with the EU (as set out in Protocol 3 to the UK's Treaty of Accession) fell - although it has continued to have legal effect, during the transition period, which runs until 31 December 2020.

The Isle of Man has been dependent upon the UK for the negotiation of its new relationship with the EU. The Isle of Man's relationship with the EU is limited by what the UK and EU agreed between themselves.

Early on in the negotiations, the EU made clear that neither the UK nor the Isle of Man should benefit from the UK's withdrawal from the EU. The EU were explicit that the Island's coverage in any new Agreement should not go beyond the scope of Protocol 3.

The Isle of Man sought to be covered by those arrangements that relate to the trade in goods (manufactured and agricultural). In return, the EU sought continued access to the Isle of Man's territorial waters.

Negotiations have sought to define the scope of that access – both for goods, and for fisheries.

The negotiations on fisheries have been long and difficult. A resolution was only achieved late in the transition period (23 December).

While the Isle of Man Government had set the UK a clear negotiating position, the final shape of an Agreement on fisheries, both for the UK and for the Island, was only arrived at on the last night of the negotiations. In fact, at the time of writing, the legal text has not yet been issued (although the principles are agreed).

On the basis that the terms of the Agreement are understood, the Council of Ministers has determined that the application of the Agreement – the "Isle of Man Deal" – represents an appropriate balance of costs and benefits. It has therefore signified to the UK Government its consent to the Island's inclusion within the text of the Agreement.

Once the text is finalised and the UK publishes its implementing legislation, the Isle of Man Government will make the minor changes to Isle of Man law to ensure that the Island complies with the obligations set out in the Agreement. It needs to do this before the transition period ends at 11pm Thursday 31 December.

It is also the Isle of Man Government's intention to seek permission to hold a debate in Tynwald at its January sitting, in order to explain the Agreement and its application to the Island.

3. Introduction

The Isle of Man was never included within the UK's membership of the European Union. Its limited relationship, which was broadly speaking confined to customs matters and trade in primarily agricultural goods, was set out in Protocol 3 to the UK's Treaty of Accession to the EU.

When the UK decided to leave the EU the impact upon the Isle of Man was not therefore as significant as it was likely to be for the UK as a whole. The Protocol would fall away and along with the UK, the Island would leave the EU's Customs Union and Single Market (although the Isle of Man was only ever part of the Single Market for goods).

Subject to all Parties agreeing, any new relationship agreed between the UK and the EU could be extended to cover the Isle of Man. But this was not guaranteed at the start of negotiations.

The Council of Ministers determined that its key objectives should be to:

- Preserve free movement of goods between the Isle of Man and the UK;
- Preserve free movement of people between the Isle of Man and the UK (and with Ireland the Channel Islands) within the Common Travel Area;
- Seek the similar treatment (to UK goods) for Manx goods in trade with the EU;
- Take advantage of any further opportunities from the Brexit process as they arose.

Any new Isle of Man-EU relationship had to be within the context of the new UK-EU relationship. The EU would not enter into a bilateral agreement with the Isle of Man, as the Island is not a nation-state in its own right and does not have its own legal personality in international law.

Throughout the withdrawal process, the Isle of Man Government pursued three main work strands.

- To prepare its legislation for the end of Protocol 3 in order to avoid a cliff-edge in respect of policy areas previously covered by EU law that applied to the Island. This was completed in advance of the deadline of 31 January 2020 when the UK ceased to be a Member State (although EU law did continue to apply during the Transition Period);
- To ensure that Government was ready for the end of the transition period, in terms of changes to relevant Government systems and procedures, and also, to support people and businesses' preparations; and
- To participate in the negotiations between the UK and the EU, to ensure that the Island's coverage by any future trading relationship suited the Island's needs.

This report covers the negotiations work strand and sets out how the UK-EU Free Trade Agreement applies to the Isle of Man.

Due to the nature of the negotiations, some of the more significant developments have occurred in the last few days. It is the case however that because of the UK Government's strategic approach to the negotiation process, it is a relatively light touch Agreement. It seeks to balance tariff-free trade with a number of other commitments, many of which do not apply to the Isle of Man.

4. The Agreement and how it applies to the Isle of Man

The UK-EU Free Trade Agreement comprises a number of elements set out in various titles.

The Agreement is modelled on similar EU Agreements with other countries. The UK deliberately culled different elements from other Agreements as a blueprint for its own EU Free Trade Agreement.

The Agreement does not however apply to the Isle of Man in its entirety.

During the initial stages of the negotiation, the Isle of Man Government reviewed the UK's opening position and considered each of the provisions on their merits. This was in line with the strategic objective of seeking to take advantage of any further opportunities from the Brexit process as they arose.

The EU established, at an early stage, the principle that it did not wish to see any Party benefiting from the UK's withdrawal from the EU. This meant that the EU negotiators would only entertain the inclusion of the Isle of Man within the Agreement for the purposes of the trade in goods. In return, the EU sought to retain existing levels of access to the Isle of Man's territorial waters for EU vessels.

However, when the UK and the EU set out their initial negotiating positions, the EU draft position on fisheries access appeared to envisage full access for all EU Member States to the entirety of the Isle of Man's territorial waters (0-12 miles from the shoreline) and that this would be in respect of all species of fish - quota and non-quota. That 'ask' appeared to exceed current access. It also did not accord with the UK's own negotiating position, in that it would not wish to permit any access for EU vessels within UK Territorial Waters.

There followed months of protracted and interrelated discussions as Isle of Man issues were linked from one negotiating table to another. Isle of Man issues were also intertwined with other issues that the UK and EU found difficult to resolve.

In the end, although the EU had agreed in principle that the Isle of Man might benefit from coverage by the goods title, issues relating to fisheries and governance issues remained unresolved right up until the evening of 23 December.

The proposed Isle of Man deal is a balance between rights and obligations. The Agreement as drafted gives the Isle of Man the right to trade goods with the EU in the same manner as those that originate in the UK – tariff and quota free.

The Agreement as drafted means that the Isle of Man is obliged to permit EU vessels access to Isle of Man Territorial Waters on the same basis as they had access on 31 January 2020 within some important parameters.

These parameters mean that the Isle of Man is able to limit fishing to historic levels and undertake increased local control, through implementation of local management of sea fisheries, through a local licensing regime. There is also a requirement for EU vessels to demonstrate a track record. There is more detail on fisheries access in section 7.

5. Territorial Extent Clause

A territorial extent provision in an international treaty sets out how the treaty applies to various constituent parts of each Party to the treaty, or how the treaty can be extended, completely or partially, to different parts of the Party that are not initially covered by the treaty.

For example, a provision in a bilateral treaty might state that the treaty applies to the United Kingdom and it can be extended to certain territories for whose international relations the UK is responsible, with the Agreement of the UK and the other Party.

Another example is a provision in a multilateral treaty (such as a United Nations convention) that allows Parties to similarly specify that their ratification extends to territories for which they are responsible, either from the outset or at a later date.

The territorial extent clause in the UK-EU Free Trade Agreement, along with the geographical application article, specifies which chapters of the full Agreement apply to the Isle of Man, Jersey, and Guernsey. These chapters are those that deal with trade in goods and related matters.

The following chapters of the Title of the FTA on trade in goods will apply to the Island under the territorial extent provision:

- National Treatment and Market Access;
- Rules of Origin; and
- Customs and trade facilitation.

The Protocols and Annexes that are attached to these three chapters provide further detail and will also apply to the Island. The Annex on Authorised Economic Operators and Protocol on Administrative Cooperation and Combatting Fraud in The Field of Value Added Tax and on Mutual Administrative Assistance for the Recovery of Claims Relating to Taxes and Duties will not apply to either Jersey or Guernsey as neither operate AEOs or VAT.

Because of the application of these provisions to the Island, the EU will treat the Isle of Man as being part of the UK's customs territory for the purposes of the FTA.

In addition, linked to the application of these trade-related provisions, the territorial extent provision specifies that the chapters on Sanitary and Phytosanitary Measures and on Technical Barriers to Trade (and, the Annexes linked to these chapters) also apply to the Island.

As a result of the FTA, there will be much greater legal clarity under the territorial extent clause about exactly which sections of the UK-EU FTA apply to the Island than was the case with the Island's former Protocol 3 relationship with the EU.

6. The Goods Title

One of the Isle of Man Government's strategic objectives was to ensure that Manx goods would be treated in the same or similar manner to UK goods when entering the EU market.

To this end, the Isle of Man sought to be covered by various chapters of the Goods Title. This was achieved, and is set out in the Territorial Extent Clause. The draft Treaty agreed with the EU states that the five Chapters and three Annexes/Protocols apply to the Island.

These Chapters cover the following:

- a. National Treatment and Market Access (Chapter 1)
- b. Rules of Origin (2)
- c. Sanitary and Phytosanitary (SPS) provisions (3)
- d. Technical Barriers to Trade (TBT) (4)
- e. Customs Facilitation (5)
 - i. Annex: Approved Economic Operators
 - ii. Annex: Protocol on Mutual Administrative Assistance in Customs Matters
 - iii. Annex: Protocol on administrative cooperation and combating fraud in the field of VAT and mutual assistance for the recovery of claims relating to certain duties and taxes

In addition, there are a number of Annexes appended to the TBT Chapter. Further details are in Appendix 1.

The draft texts of the Chapters and Annexes have been reviewed by Isle of Man Government officials from relevant Departments and HM Attorney General's Chambers. The Officers are content that there are no provisions contained within the texts that would cause the Island any difficulties in respect of compliance. They have been able to do so, and indeed to do so relatively quickly, for two main reasons. Firstly, because we have been working on a "no surprises basis". Isle of Man officials worked with their UK counterparts, as texts were developed. Secondly, because the emerging deal is "thin". That means that the UK started with a low level of ambition. They were not prepared to accept substantive ongoing alignment with the EU. This has resulted in an FTA that is only limited in terms of substance.

The content of each of the chapters is set out in further detail below.

Chapter 1: National treatment and market access for goods (including trade remedies)

This chapter deals with how goods from UK are dealt with when exported to the EU and vice versa.

Generally, each Party must treat goods from the other Party in the same way as their own goods in relation to internal taxation and regulation. Goods from one Party are granted free transit through the other Party. Generally, customs duties on all goods from the other Party are prohibited. In addition, the Parties are prohibited from imposing export duties on goods destined for the other Party, or any other tax or charge that would not be levied on goods for domestic consumption.

Fees and other charges levied in connection with importation or exportation of goods from the other Party are limited to an approximate cost of service basis. The import licensing procedures of each Party must be administered in a fair, equitable, non-discriminatory and transparent manner and export licensing must be published in a timely and clear manner.

This chapter includes provisions on trade remedies and the possibility of imposing anti-dumping and countervailing duties on goods from the other Party if there are trade distortions. This chapter also deals with cooperation and enforcement in respect of breaches of customs legislation.

Given that the Island has a longstanding customs Agreement with UK, under which the Island is part of the UK's customs territory, the Island is obliged to keep its measures in this area in line with those of the UK. Because of this chapter extending to the Isle of Man, goods originating from the Islands will be treated in the same way as goods from the UK when exported to the EU.

Chapter 2: Rules of Origin

This chapter sets out how an item qualifies to be treated by one Party as originating in the other Party and so eligible for preferential treatment under the Agreement.

The purpose of the chapter is to ensure that products that originate in a third country, or largely originate in that country, do not benefit from the provisions of the UK-EU trade Agreement when exported from one Party to the other. For example, animals or plants that were raised or grown in a Party would qualify as originating in that Party for the purpose of export to the other Party.

Animal (including aquaculture) and plant products that originated in a third country might still qualify as originating in a Party if, whilst in the Party, they were subject to a process (such as pickling, drying, or smoking) that was intended to give a product special or different characteristics. Subjecting a product to simple preservation processes such as chilling or freezing would not be sufficient. Other processes such as cleaning, bottling, shelling, or slaughter of animals from a third country would also not be sufficient.

Similarly, a manufactured product that consisted of components that came exclusively or largely from a Party would be considered to originate in that Party. However, a manufactured product that largely consisted of components that came from a third country would be unlikely to qualify as originating in the Party.

The chapter includes provisions on procedures for claiming, and denying, preferential tariff treatment, administrative cooperation and sanctions and record keeping. There is an exemption for small consignments that are sent in a small package from one private person to another private person, or that are included in a traveller's personal luggage.

By virtue of this chapter applying to the IOM, goods from the IOM will be considered as coming from the UK and so will be treated in the same way as goods from the UK.

Chapter 3: Sanitary and Phytosanitary (SPS) Measures

The main objectives of this Chapter are to protect human, animal and plant life or health in the territories of the Parties whilst facilitating trade between the Parties.

The Chapter is intended to contribute to implementation of the World Trade Organisation's (WTO) SPS Agreement, to ensure that UK and EU SPS measures do not create unnecessary barriers to trade, promote greater transparency of each Party's SPS measures, enhance cooperation on matters such as animal welfare and antimicrobial resistance, and promote implementation of relevant international standards, guidelines and recommendations.

The Chapter deals with official certification, import conditions and procedures for relevant products and the requirement for transparency and the exchanging of information between the Parties.

By virtue of the Isle of Man being covered by this Chapter, animals and plants and animal (including aquaculture) and plant products from the Island are treated in the same way as those from the UK when exported to the EU and so subject to no additional barriers or procedures that will not apply to UK products.

To ensure compliance with this Chapter and ensure that there is completely free trade between the Island and the UK in this area, it has been agreed with the UK that the Island will keep its SPS measures in line with those of the UK.

Chapter 4: Technical Barriers to Trade (TBT)

Technical barriers to trade are measures that are not tariff or quota measures but which can prevent products from one Party being exported to, or placed on the market in, the other Party.

TBT measures can include requirements for products to comply with technical standards or regulations or undergo conformity assessment procedures that have the effect of acting as a barrier to products from the other Party. SPS measures are excluded from being covered by this chapter.

This chapter links to, and incorporates parts of, the WTO's Agreement on Technical Barriers to Trade.

Under this chapter, each Party agrees to consider the impact of technical regulations, product standards and conformity assessment of products that they are proposing to apply. Marking and labelling requirements are permitted under this chapter. The Parties commit to transparency and cooperation on market surveillance and non-food product safety and compliance.

Inclusion in this chapter means that products from the Island will be treated in the same way as products from the UK when they are exported to the EU, provided they meet any relevant requirements. The Island will need to continue to accept products from the EU if they can be placed on the market in the UK.

Chapter 5: Customs and trade facilitation

The objectives of this chapter are to reinforce cooperation between the UK and EU in the area of customs and trade facilitation, and to support appropriate levels of customs legislation and practices whilst ensuring effective customs controls and enforcement of customs and related legislation. It also aims to ensure that the legislation of each Party is non-discriminatory and that procedures are based on modern methods and effective

controls to combat fraud. It also seeks to ensure that measures in relation to security, safety and the fight against fraud are not compromised.

Given the longstanding and close working relationship between the Isle of Man and the UK under the customs and excise Agreement, the Island is used to maintaining its legislation and procedures in line with those of the UK and this will continue under this chapter.

Protocols on Mutual Assistance in Customs Matters & VAT

Two Protocols to the Agreement are linked to this chapter. First, the Protocol on Mutual Administrative Assistance in Customs Matters, which provides additional detail on the operation the mutual assistance between the UK and EU. Second, the Protocol on Administrative Cooperation and Combating Fraud in the Field of VAT and Mutual Assistance for the Recovery of Claims Relating to Certain Duties and Taxes. This second Protocol provides further detail on the operation of the cooperation and measures to combat fraud that are covered by it.

Protocol - Approved Economic Operator (AEOs)

This Protocol provides for the administrative process to allow for the continued use of Approved Economic Operators. The Isle of Man does have some AEOs and sought to be covered.

7. The Fisheries Title

In the summer of 2020, the Isle of Man Government agreed that in return for continued tariff and quota free trade for our goods, it was open to further discussion to allow for some continued access to the Island's territorial waters for EU vessels.

The EU's original negotiating position was not, however, acceptable. Their initial ask appeared to require access – in theory – for all fishing vessels, from all Member States, to fish all species, in the whole of the Isle of Man's territorial waters.

In responding to the EU's offer of goods access in return for fisheries access, the Isle of Man's position was that it would be willing to discuss continued access for EU vessels that respected three important parameters. These were:

- a. Sustainability – fisheries managed in a sustainable manner
- b. Access – for EU vessels to CDs' waters not in excess of current levels
- c. Management – CDs manage their own waters

The EU engaged with these principles in the negotiating room and subsequently, working closely with officials in the Isle of Man, the UK drafted a legal text to be put to the EU that allowed for continued access and protected the CDs' principles.

This text was broadly acceptable to the EU who then, in light of the significant crossover with the broader UK-EU fisheries arrangements, amended the texts for inclusion within other parts of the Agreement.

Over subsequent weeks, there was further discussion on fisheries issues more broadly, and the issue of Isle of Man fisheries access was caught up in those broader discussions.

In the end, the final Agreement on how fisheries provisions would apply to the Isle of Man came very late in the negotiations.

Essentially, the Isle of Man's parameters were accommodated, and access for EU vessels to Isle of Man territorial waters would in future be managed and licensed by the Isle of Man, in line with sustainable principles, and that access would be granted only on the basis of the demonstration of a track record of previous activity. By including a track record requirement, this allows for the removal of risk of increased effort (latency) by those vessels that had not fished previously.

8. Legislative Provisions

As mentioned above, the Agreement between the UK and the EU is relatively modest in scope, as it reflects the UK's political priorities to move away from the requirement for regulatory alignment with the EU.

In addition, there are only relatively limited elements of the Agreement that apply to the Isle of Man. In particular, the Goods title, which covers customs and regulatory matters (and particularly in relation to agricultural matters), is an area where the Isle of Man has chosen to align with the UK and therefore looks to keep in step with UK law.

Furthermore, the fisheries provisions are dealt with by means of Sea Fisheries Regulations made under the Isle of Man's Sea Fisheries Act. Regulations had already been drafted and approved by Tynwald in order to prepare for the prospect of there being No Deal. These Regulations are due to come into force on 1 January 2021 following the end of the transition period.

For these reasons, there are only relatively few, and minor changes required to give effect to the Island's obligation under the Agreement.

There is a need to change existing sea fisheries regulations, therefore, to define the dates for the reference period, and the 10 day track record requirement.

In addition, the UK's implementing legislation will be scrutinised to ascertain whether there are any horizontal provisions (such as dispute resolution or consultative bodies) which may need to be given effect in Manx law.

9. Tax Declaration

Attached to the Free Trade Agreement is a declaration between the two Parties that relates to curbing of harmful tax practices. As part of that declaration, each Party has agreed to “encourage” their dependencies, within the parameters of their constitutional relationships, to adhere to accepted internationally agreed principles in relation to harmful tax practices.

These principles are aligned with those of the OECD and the EU Code Group, and as such are already accepted and followed by the Isle of Man.

Whilst this declaration places an obligation upon the UK, rather than on the Isle of Man itself, in this case the Isle of Man Government does not consider this declaration to be of concern.

10. Conclusion

The ability of the Isle of Man to be included in this Agreement was far from given as the process started. The insistence of the EU that no one should benefit from the UK's exit from the EU posed risks. Once this principle of the Island's involvement had been accepted, the guidelines to which officers worked were the strategic priorities set by the Council of Ministers (as mentioned above in section 3).

On the first, this new Agreement does not cause any obstacles for our trade with the United Kingdom – by far the most significant trading partner of the Isle of Man. Indeed the Agreement recognises that the Isle of Man is part of the customs territory of the UK, for the purposes of the Agreement.

On the second, there is nothing in the Agreement that calls into question the Common Travel Area.

On the third, the Agreement ensures that Isle of Man goods – both manufactured and agricultural – will be treated in the same way as UK goods when entering the EU market, and to that end, will not be subject to tariffs or quotas.

On the fourth, the scope for taking advantage of additional opportunities was limited. The EU's position that no party should benefit from Brexit meant that there was no opportunity for the Island to expand the scope of its relationship with the EU.

However, the opportunities afforded by the post-Brexit world may include opportunities for the Island to work with the UK as it seeks new trading relationships beyond the EU.

More immediate positive impacts include a more modern approach to fishing with the ability, for the first time, for us to licence and manage European vessels. The Agreement also gives our businesses clarity for the future and the ability to explore opportunities in the EU market on a solid legal basis.

There had been risks that we would be asked to pay a price for access to the EU market that we could not pay either for financial or capacity reasons. We feared at the beginning of the negotiations we would be expected to "pay more to get less" and that this may have been manifested through significant Level Playing Field or other regulatory obligations.

Annex on Medicinal Products

This annex aims to facilitate availability of medicines, promote public health, and protect high levels of consumer and environmental protection in respect of medicinal products. It provides for mutual recognition of Good Manufacturing Practice (GMP) inspections and certificates, meaning that manufacturing facilities do not need to undergo separate UK and EU inspections, as well as ongoing co-operation in the field of medicines regulation.

Annex on Motor Vehicles and Equipment and Parts Thereof

The objective of the annex is to eliminate and prevent unnecessary barriers to trade in motor vehicles and parts. It confirms that the Parties will mutually recognise approvals based on UN regulations. It establishes dedicated cooperation mechanisms to address regulatory barriers, and provides for information exchange to support activities including market surveillance.

Annex on Organic Products

The annex will provide, most importantly, for an equivalence Agreement between the UK and EU. This means products that are certified as organic in one market will be recognised in the other. There are also wider benefits, including provisions for effective regulatory cooperation to combat fraud, upholding the integrity of our organics production and control systems, and collaboration on the future development of organic standards.

Annex on Trade in Wine

The annex on trade in wine provides for simplified certification, documentation, labelling, and packaging requirements for the imports of wine produced in the other Party, reducing costs for exporters and consumers. It also sets out requirements to share information and to jointly review the Agreement in future with a view to further facilitating trade in wine between the UK and the EU.

Annex on Chemicals

The annex seeks to facilitate trade in chemicals, ensure high levels of environmental and health protection and provide for cooperation between authorities. It includes joint commitments to comprehensive implementation of international classification and labelling rules as well as commitments to ongoing regulatory cooperation and information exchange between the UK and the EU.