



**Isle of Man**  
**Government**

*Reiltys Ellan Vannin*



Council of Ministers

# Response to the consultation on the draft European Union (Withdrawal) Bill

Cabinet Office  
Oik Coonceil ny Shirveishee

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## Background

In a referendum on 23 June 2016, the United Kingdom (UK) voted to leave the European Union (EU). This is commonly known as “Brexit”. The UK will cease to be an EU Member State at 11.00pm (UK time) on 29 March 2019. The Isle of Man’s Protocol 3<sup>1</sup> relationship with the EU will come to an end at that time. The Island’s relationship with the UK will not change as a result of Brexit.

An agreement on the terms of the UK’s departure from the EU (“the Withdrawal Agreement”<sup>2</sup>) has been largely agreed between the UK and the EU but some issues are still to be resolved. If the Withdrawal Agreement is finalised and ratified by the UK and the EU there will be a transitional period (or “implementation period”) until the end of 2020 during which the UK, and the Isle of Man, will have the same rights and responsibilities as if the UK was still a Member State of the EU. EU legislation, including new EU legislation, will continue to apply to the UK during this period. Similarly, EU legislation which is currently applicable to the Island under its Protocol 3 relationship with the EU will also continue to apply. It is now hoped that this Agreement will be signed off at a special meeting of the Council of the European Union in November 2018 but it will then need to be ratified by both the UK and European Parliaments for it to come into force. If the Withdrawal Agreement is agreed and ratified, legislation will be required to give effect to it.

However, if the Withdrawal Agreement is not agreed and ratified by 29 March 2019, the UK will simply cease to be a member of the EU and there will be no implementation period. If that happens, legislation will be required to ensure that there are not large gaps in the Island’s legislative framework caused by the loss of many years of EU legislation that has applied directly and automatically as part of the law of the Island.

Finalising the Withdrawal Agreement is bound up with the negotiations on the UK’s future relationship with the EU. The UK Government has published a White Paper<sup>3</sup> on how it believes the future relationship between the UK and the EU should work but whether this vision of the relationship is acceptable to the EU and its Member States is uncertain.

Regardless of the state of the negotiations between the UK and the EU though, it is known that the UK Government’s proposals are not acceptable to a significant number of Conservative Members of Parliament, and others, who view the proposals as conceding too much to the EU and not representing the clean break from the EU that they want to see. Although the UK Government has continued to state that it considers reaching a deal is by far the most likely outcome, it has been publishing a range of contingency planning papers for a no deal scenario.

Whilst the outcome remains unclear there continues to be a very high level of engagement between the UK Government and the Isle of Man Government on Brexit preparation.

Whatever happens, new Manx legislation will be needed before 29 March 2019.

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<sup>1</sup> <https://www.gov.im/media/624101/protocol3relationshipwiththeeu.pdf>

<sup>2</sup> [https://ec.europa.eu/commission/sites/beta-political/files/draft\\_withdrawal\\_agreement.pdf](https://ec.europa.eu/commission/sites/beta-political/files/draft_withdrawal_agreement.pdf)

<sup>3</sup> <https://www.gov.uk/government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union>

## The Island's European Union (Withdrawal) Bill

The UK Bill that resulted in the European Union (Withdrawal) Act 2018<sup>4</sup> was the starting point for the Island's Bill.

In addition to looking at the UK's Withdrawal Bill, other UK Brexit-related Bills were considered during the drafting process for the Island's Bill, in particular the UK's Trade Bill<sup>5</sup>, and the Brexit Law that has been adopted by Jersey<sup>6</sup>.

A consultation draft of an Isle of Man Withdrawal Bill was produced which:

- dealt with the repeal of the 1973 Act, the preservation (subject to modification) of EU instruments which fall within the scope of Protocol 3, saved existing statutory documents made under the 1973 Act and continued to allow EU instruments to be voluntarily applied to, or implemented in, the Island where useful to do so;
- made provision by way of enabling powers for effect to be given to the Withdrawal Agreement (which will include the provisions governing the Implementation Period, if there is one, during which Protocol 3 will in effect remain in place) in Manx law, so far as possible; and
- provided enabling powers to allow for continued effect to be given to certain international agreements which currently apply to the Isle of Man by virtue of Protocol 3, or which may be extended to the Island in the future, including certain WTO and free trade agreements.

The Bill was (and is) necessarily largely enabling in nature so as to be able to deal with all possible Brexit outcomes and future relationships with the EU. Unlike in the UK, where there are a number of Brexit-related Bills, the Isle of Man does not have the resources to take such an approach and it is intended that the Island's Bill will be the single main piece of Manx Brexit primary legislation. A significant amount of secondary legislation will also be required, particularly in the "no deal" scenario, and this is currently being worked on by relevant Departments with support from the Cabinet Office.

Consultation on the draft Bill opened on 16 April 2018 and closed on 29 May 2018<sup>7</sup>.

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<sup>4</sup> <http://www.legislation.gov.uk/ukpga/2018/16/contents>

<sup>5</sup> <https://services.parliament.uk/Bills/2017-19/trade.html>

<sup>6</sup> European Union (Repeal and Amendment) (Jersey) Law 2018:

[http://www.statesassembly.gov.je/assemblypropositions/2018/p.16-2018\\_with\\_corrigendum.pdf](http://www.statesassembly.gov.je/assemblypropositions/2018/p.16-2018_with_corrigendum.pdf)

<sup>7</sup> This Law was approved by the States of Jersey on 6 March 2018 and is awaiting Royal Assent.

<sup>7</sup> <https://consult.gov.im/cabinet-office/brexit-bill-2018/>

## **Outcome of the consultation**

There were 12 responses to the consultation. Ten of the responses were from individuals, including one Member of Tynwald, one was from a company and one was from the Department of Infrastructure. The Isle of Man Government is grateful to everyone who participated in the consultation exercise.

The substantive responses in anonymised form, where permission to publish them has been given, are set out in the Appendix. One of the persons who submitted some comments and questions on the draft Bill requested that they not be published; an individual response to this person was provided.

There was a range of comments on the Bill but there was general support for the approach taken and no major objections.

## **After the consultation and next steps**

During and following the consultation on the draft Bill, consideration of its contents has continued. There have been further discussions between External Relations in the Cabinet Office and the Attorney General's Chambers, with relevant Government Departments and with the Ministry of Justice (which is responsible for ensuring that Isle of Man Bills can be granted Royal Assent).

As a result of this additional consideration and discussion, whilst the overall structure of the Bill has not been significantly changed – it must still deal with a range of Brexit circumstances – there have been a number of changes to the Bill, which are largely of a drafting and technical nature. Perhaps the most obvious change is to the Bill's short title; it will now be called the **European Union and Trade Bill** to better reflect its content.

The revised version of the Bill will be published shortly.

The intention remains that the Bill will have its 1<sup>st</sup> Reading in the House of Keys on 23 October 2018.

**Responses to the consultation on the draft European Union (Withdrawal) Bill**

**Individual 1**

**22 Do you have any other comments on the Bill?**

All of these provisions look sensible, though I regret they are necessary at all. Aside from not liking Brexit at all, this whole process demonstrates that the Island is a "vassal" state to the UK. I am not a Manx nationalist, but it is time we went our separate ways and became fully independent.

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**Individual 2**

**5 Do you have any comments on the provisions of the Bill dealing with the retention of EU legislation regarding clause 6?**

**17 Do you have any comments about the proposed powers in the Bill concerning trade agreements regarding clause 20?**

**19 Do you have any comments about the proposed powers in the Bill concerning trade agreements regarding clause 22?**

**20 Do you have any comments about the proposed powers in the Bill concerning trade agreements regarding clause 23?**

**21 Do you have any comments on the proposed Tynwald procedure for any of the powers in the Bill?**

**22 Do you have any other comments on the Bill?**

(same response under each of the questions above)

Historically, the United Kingdom (UK) has represented the Isle of Man in the European Union (EU) due to our status as a Crown Dependency. However, we were not involved in the Brexit vote and both the current UK government and the opposition have an aggressive relationship with the Island - with many from both sides of the Houses of Parliament regularly attacking the Island's financial regulations and independent status.

Rather than rubber stamp the UK's Brexit vote, Isle of Man residents should be given a vote to either:

a) Exit the EU as part of the UK's Brexit and continue to be represented by the UK for international affairs.

b) Retain our Protocol 3 relationship with the EU, but, seek to change our representative within the EU from the UK to Southern Ireland or another friendly country that is willing to represent us.

Protocol 3, whilst it had its negative points, was well negotiated. When you look at it in detail, Protocol 3 is the United Kingdom's ideal Brexit deal. The UK will never be able to negotiate anything as fair or as stable.

If we follow the UK out of the EU we will lose not just our trading relationship with the EU, but, also with the world. This is important to consider because, when the UK negotiates new

world trade deals, our 'representative' will have the Isle of Man's interests at the bottom of their priority list whilst they attempt to get the best deals for their own country.

As we do not have the political or economic power to negotiate on our own behalf, we must choose our representative with the utmost care.

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### **Individual 3**

#### **22 Do you have any other comments on the Bill?**

An excellent stop gap piece of legislation to try to cover all possible eventualities for something ie Brexit that is totally uncertain in how it will play out.

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### **Individual 4**

#### **5 Do you have any comments on the provisions of the Bill dealing with the retention of EU legislation regarding clause 6?**

I think that there should be a sunset clause by which time all secondary legislation made under the 1973 Act will have been reviewed in light of experience after exit day. This could be (say) 4 years later for example. There should be a simple procedure to retain after that sunset period if the review recommends no change (as it likely will in a lot of cases).

#### **6 Do you have any comments on the proposal to prescribe a list of EU legislation that currently applies to the Island directly and which is to be retained as Manx law after Brexit (or after the transition period)?**

This seems a sensible approach, but I feel the courts should also be able to issue certificates, or at least direct HMAG to issue the necessary certificates by order where a court reasonably feels such an order is necessary, but where Government decision or instruction is lacking, or contradictory of the Court's view.

#### **7 Do you have any comments on the provisions of the Bill dealing with the retention of EU legislation regarding clause 8?**

This seems a sensible approach.

#### **8 Do you have any comments on the provisions of the Bill dealing with the retention of EU legislation regarding clause 9?**

This seems sensible.

(The explanatory memorandum for this section does not appear to work?)

#### **9 Do you have any comments on the provisions of the Bill dealing with the retention of EU legislation regarding clause 10?**

This seems a sensible approach. However I feel that there should be a sunset clause by which time all matters can be subject to review. I feel that this should be

a longer period (perhaps 10 years), to allow it all to be worked through properly and put into Manx law on a sure footing. I have experience of a case where local law was subject to former directions elsewhere, and the results were extremely undesirable, and easily avoided

by a forced review. I would therefore strongly recommend that this section not be allowed to drag on indefinitely.

**10 Do you have any comments on the ability to amend or revoke any retained EU law by Manx secondary legislation after Brexit using the powers in the Bill and in other Manx primary legislation?**

This seems a sensible approach. However any secondary legislation made in such a way should be given a meaningful vote, and not merely be "laid before" Tynwald, or subject to a negative procedure. This should be specified in the Bill.

**11 Do you have any comments on the powers in the Bill in connection with the UK's withdrawal from the EU regarding clause 11?**

Again, any regulation or order made under this provision should be given a meaningful vote by Tynwald, and not just be subject to being "laid before", or a negative procedure. This should be specified in the Bill. EU powers are extremely wide, and such a vast power should not be rubber stamped on the not by the old boys network.

**12 Do you have any comments on the powers in the Bill in connection with the UK's withdrawal from the EU regarding clause 12?**

This seems a sensible approach.

**13 Do you have any comments on the powers in the Bill in connection with the UK's withdrawal from the EU regarding clause 13?**

This seems a sensible approach. However as such an agreement will have been concluded to which we have not been a negotiating party, Tynwald should be given a meaningful vote, and any regulations should not be subject to a negative procedure, or merely "laid before" Tynwald.

**14 Do you have any comments on the proposal to have similar powers in the Bill to those currently in the 1973 Act to voluntarily apply EU legislation to the Island, or implement such legislation in the Island, with any necessary modifications where useful to do so?**

Again, this seems a sensible proposal, but any regulations should be subject to a meaningful vote, and not just "laid before" or subject to a negative procedure.

The ridiculous farce of an "EU Legislation May bundle" simply being nodded through MUST be brought to an end, and Brexit should be seen as an opportunity to improve the practice of creating legislation on this Island.

**15 Do you have any comments on the proposal that it should be possible to back date the application to the Island of EU legislation that is currently directly applicable to the Isle of Man under Protocol 3 if it has not been retained using the powers in clause 7 but it is subsequently found that there is reason why it should have been retained?**

Again, the proposals seem sensible, but a meaningful vote should be given, and not merely a "laid before" or subject to negative procedure process for future legislation.



**16 Do you have any comments on the proposal that it should be possible to use Manx secondary legislation to apply to the Island relevant UK legislation relating to Brexit, the Withdrawal Agreement (if any) and any future agreement on a new relationship between the UK and EU?**

I have two issues with this proposal. Firstly, as with almost all of my previous comments, Tynwald approval for such measure should be via a meaningful vote, and not a "laid before" or subject to negative procedure process. Secondly, I would not support the further entangling of Manx and UK legislation, and I think that it would be better to seek to replicate UK legislation, rather than seeking to apply it here directly by order in council, and having Manx secondary or tertiary legislation underneath. So, depending upon how it is applied, I do not support this proposal for the reasons set out above - as full replicated primary legislation would be a more desirable solution.

**17 Do you have any comments about the proposed powers in the Bill concerning trade agreements regarding clause 20?**

I think it would be better to join the WTO directly, rather than as an "add on" as a result of the Brexit debate.

I think that this issue should be actively, and separately, debated on-Island, and be subject to a meaningful vote in Tynwald, with full democratic approval and buy in from the public and business.

Whilst I personally support joining the WTO, I do not support this idea or shoe-horning it into another secondary issue. The two issues should be disentangled and handled separately.

**18 Do you have any comments about the proposed powers in the Bill concerning trade agreements regarding clause 21?**

I do not believe that any more UK legislation should be extended to the Island. I believe we should enter into agreements for ourselves. If appropriate this should be done alongside the UK, and on exactly the same terms; but not via the UK directly. I do not support this proposal as it maintains our "subsidiarity", which I, and I know a very great deal of other people, do not accept. These matters should be handled, but handled via a totally different process.

We should not be accepting EU subsidiarity as strengthening our subsidiarity to the UK.

**19 Do you have any comments about the proposed powers in the Bill concerning trade agreements regarding clause 22?**

This seems a sensible approach.

**21 Do you have any comments on the proposed Tynwald procedure for any of the powers in the Bill?**

As I have stated throughout all proposals for CoMin or Treasury to create regulations or orders subject to Tynwald approval, should be via a meaningful vote, and NOT as a result of a "laid before" or negative procedure process. Far too much is "noddled through", and it's little wonder the public have almost no confidence in our public institutions. Far greater transparency is required, and this is a prime opportunity to deliver it.

## **Individual 5**

**5 Do you have any comments on the provisions of the Bill dealing with the retention of EU legislation regarding clause 6?**

Yes.....anything enacted as a result of EU membership should be reviewed ASAP.

Also, why did the Manx public not have any vote in the brexit referendum

**6 Do you have any comments on the proposal to prescribe a list of EU legislation that currently applies to the Island directly and which is to be retained as Manx law after Brexit (or after the transition period)?**

Same answer as previous

**7 Do you have any comments on the provisions of the Bill dealing with the retention of EU legislation regarding clause 8?**

Same answer as previous

**9 Do you have any comments on the provisions of the Bill dealing with the retention of EU legislation regarding clause 10?**

Just need to review any law put in place as a result of eu membership and get stupid laws repealed

**13 Do you have any comments on the powers in the Bill in connection with the UK's withdrawal from the EU regarding clause 13?**

IOM should have some say in agreement reached

**16 Do you have any comments on the proposal that it should be possible to use Manx secondary legislation to apply to the Island relevant UK legislation relating to Brexit, the Withdrawal Agreement (if any) and any future agreement on a new relationship between the UK and EU?**

We need to have a say

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## **Individual 6**

**9 Do you have any comments on the provisions of the Bill dealing with the retention of EU legislation regarding clause 10?**

Seems sensible

**11 Do you have any comments on the powers in the Bill in connection with the UK's withdrawal from the EU regarding clause 11?**

As long as a close eye is kept on any deficiencies it will be fine. If we ignore them (as happens with some UK based laws) it may become a larger issue to resolve.

**13 Do you have any comments on the powers in the Bill in connection with the UK's withdrawal from the EU regarding clause 13?**

Sounds good, although until you know the regulations and required changes you may not be able to guarantee that changes won't have an effect on the points above.

**15 Do you have any comments on the proposal that it should be possible to back date the application to the Island of EU legislation that is currently directly applicable to the Isle of Man under Protocol 3 if it has not been retained using the powers in clause 7 but it is subsequently found that there is reason why it should have been retained?**

unbroken effect is important

**16 Do you have any comments on the proposal that it should be possible to use Manx secondary legislation to apply to the Island relevant UK legislation relating to Brexit, the Withdrawal Agreement (if any) and any future agreement on a new relationship between the UK and EU?**

We should probably be making more of an effort to match the laws where possible. Not just after brexit but current out of date laws.

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### **Individual 7**

**5 Do you have any comments on the provisions of the Bill dealing with the retention of EU legislation regarding clause 6?**

Given the uncertainty of the brexit process, it makes sense for the Island to ensure that all relevant EU based legislation continues to operate on the Island for the foreseeable future

**6 Do you have any comments on the proposal to prescribe a list of EU legislation that currently applies to the Island directly and which is to be retained as Manx law after Brexit (or after the transition period)?**

It makes sense to do so

**7 Do you have any comments on the provisions of the Bill dealing with the retention of EU legislation regarding clause 8?**

It is essential to ensure that no relevant EU legislation and directives are inadvertently jettisoned if the UK leaves the EU

**8 Do you have any comments on the provisions of the Bill dealing with the retention of EU legislation regarding clause 9?**

This seeks to preserve the status quo so makes sense

**9 Do you have any comments on the provisions of the Bill dealing with the retention of EU legislation regarding clause 10?**

Again, as this intends to preserve the status quo it makes sense to do so

**10 Do you have any comments on the ability to amend or revoke any retained EU law by Manx secondary legislation after Brexit using the powers in the Bill and in other Manx primary legislation?**

I presume that this will depend to some extent on the position that the UK Parliament and devolved Parliaments and Assemblies take after the transition period, if there is one. Ensuring the ability to do this seems sensible

**11 Do you have any comments on the powers in the Bill in connection with the UK's withdrawal from the EU regarding clause 11?**

useful to have a fall back clause in case anything unexpected crops up during the transition period or post transition

**13 Do you have any comments on the powers in the Bill in connection with the UK's withdrawal from the EU regarding clause 13?**

None but hope that the situation will not arise and that the UK will decide to remain in the EU

**22 Do you have any other comments on the Bill?**

Although outwith the Island's control, I hope that the provisions contained within this bill will not be needed and it is agreed to drop it before enactment

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**Individual 8**

**5 Do you have any comments on the provisions of the Bill dealing with the retention of EU legislation regarding clause 6?**

Yes - The withdrawal of the UK from the EU should be supported in a manner that allows as smooth a transition as possible.

**6 Do you have any comments on the proposal to prescribe a list of EU legislation that currently applies to the Island directly and which is to be retained as Manx law after Brexit (or after the transition period)?**

Such incorporation of EU laws in domestic Manx legislation is acceptable to the extent that it does NOT impose new and arduous rules on Manx people that do not already exist.

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**Individual 9**

**10 Do you have any comments on the ability to amend or revoke any retained EU law by Manx secondary legislation after Brexit using the powers in the Bill and in other Manx primary legislation?**

This is an opportunity to retain the best of EU law, for example higher standards of employment law, human rights, animal welfare, beach and bathing water standards, clean air standards and so on. These standards must not be reduced or diluted without public consultation.

**15 Do you have any comments on the proposal that it should be possible to back date the application to the Island of EU legislation that is currently directly applicable to the Isle of Man under Protocol 3 if it has not been retained using the powers in clause 7 but it is subsequently found that there is reason why it should have been retained?**

This is an opportunity to retain the best of EU law, for example higher standards of employment law, human rights, animal welfare, beach and bathing water standards, clean

air standards and so on. These standards must not be reduced or diluted without public consultation.

**17 Do you have any comments about the proposed powers in the Bill concerning trade agreements regarding clause 20?**

Does this include the Transatlantic Trade and Investment Partnership (TTIP), the deal being negotiated behind closed doors between the EU and USA?

This will, for the first time, allow US companies to sue the UK government in special courts.

It must be ensured that private companies cannot sue the IOM government for implementing higher standards of fairness, transparency, environmental impact or any other issue related to trade.

**18 Do you have any comments about the proposed powers in the Bill concerning trade agreements regarding clause 21?**

Does this include the Transatlantic Trade and Investment Partnership (TTIP), the deal being negotiated behind closed doors between the EU and USA?

This will, for the first time, allow US companies to sue the UK government in special courts.

It must be ensured that private companies cannot sue the IOM government for implementing higher standards of fairness, transparency, environmental impact or any other issue relating to trade.

**19 Do you have any comments about the proposed powers in the Bill concerning trade agreements regarding clause 22?**

See previous comment.

**20 Do you have any comments about the proposed powers in the Bill concerning**

See previous comment.

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**IOM Company**

As most of the questions are of a legal and/ or procedural nature, we have limited our response to comments about the proposed powers in the Bill concerning trade agreements (Clauses 20 to 23) and to providing our general comments as requested.

**General comments**

Most of the questions raised deal with the practical and legalistic transfer of existing EU legislation into domestic Manx Legislation. As a general comment, we feel that having the appropriate legislative framework already in place to achieve this as of the date of the UK's formal withdrawal from the EU is sensible and avoids the possibility of gaps arising in domestic legislation which could arise if such transposing legislation was not in place.

We are not able to provide a legal view on the how this is achieved, but the idea of enacting the relevant EU legislation into domestic legislation and then having the ability to review and consider this at a later date for suitability and applicability seems like a pragmatic approach.

We support the strategic approach adopted by the IoM Government to maintain close engagement with the UK government. This should maximise the possibility of securing two key aims:

- 1) ensuring that the Island's position is understood by the UK government and hopefully is communicated in their discussions with the EU; and
- 2) to maintain the IoM's position as a trusted and committed trading partner of the UK.

The real significance of 2) may only be felt in the aftermath of Brexit. It is possible, indeed likely, that post Brexit, the UK will have increased scope to vary elements of its tax legislation which are currently driven by EU Directives, most notably with regard to VAT.

Given the Island's VAT position with the UK and the Revenue Sharing Agreement in place between the Island and the UK, it will be of critical importance for the IoM to work closely with the UK to have input into any future discussions to understand any proposed changes to the UK VAT system and to ensure that the Revenue Sharing Agreement remains fair and reasonable from the Island's perspective.

### **Specific comments**

*Question 8 - Do you have any comments about the proposed powers in the Bill concerning trade agreements? See clause 20 to 23.*

In terms of trade, the Isle of Man does have a limited relationship with the EU which is set out in Protocol 3 to the UK's Treaty of Accession to the EU and means that the Island is included within the UK's membership of the EU VAT and customs union, and it is subject to certain provisions of the Single Market for trade in goods.

The post Brexit trading relationship is of critical importance to the Island and will be directly affected by the UK's Brexit deal with the EU. The Island is not part of the negotiating process, but it is vitally important that the Island's interests are made clear in this area and as far as reasonably possible form part of the UK's Brexit negotiation strategy.

As has been highlighted in the consultation paper, the Island is dependent on the UK in respect of its future relationship with the EU in matters such as continued free movement of goods and being able to recruit people from the EU to work in the Island and support its economy. At the time of writing, we do not know how these matters will work post Brexit.

In the short term and to avoid any additional unnecessary disruption to the Islands trading position, it therefore seems sensible to have enabling powers to allow for continued effect to be given to certain international agreements which currently apply to the Island by virtue of Protocol 3, or which may be extended to the Island in the future, including certain WTO and free trade agreements.

It is noted that the Island may have limited capacity to develop and shape its future trading relationship with the EU and the rest of the world, however such measures would at least provide some breathing space to allow more medium to longer term consideration to be made.

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### **Department of Infrastructure**

The Department recognises that the Bill is required in order to ensure that the legislative framework within which the Department operates is legally sound following the decision of the UK Government to proceed with a withdrawal from the European Union.

Officers from the Department will continue to work closely with colleagues in the Cabinet Office tasked with progressing the Bill to ensure that all the impacts on both the Department's primary and secondary legislation are identified and addressed.

On that basis I look forward to further discussions on the detailed issues in due course.

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