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Memorandum of Understanding

**between the Government of the United Kingdom of Great Britain and Northern Ireland
("the UK Government") and**

the Government of the Bailiwick of Jersey ("the Government of Jersey")

concerning

**the relationship between the United Kingdom of Great Britain and Northern Ireland ("the
UK") and**

the Bailiwick of Jersey ("Jersey")

**in relation to trade with the European Union and other relevant economic issues under the Trade
and Cooperation Agreement between the European Union and the European Atomic Energy
Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the
other part (signed in Brussels and London on 30th December 2020)**

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The UK Government and the Government of Jersey ("the Participants"),

RECALLING the Arrangement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Jersey concerning the establishment and operation of the United Kingdom-Crown Dependencies Customs Union (signed 26 November 2018),

RECALLING the Memorandum of Understanding between them concerning the relationship between the United Kingdom of Great Britain and Northern Ireland and Jersey in relation to World Trade Organization matters ("WTO MoU"),

ACKNOWLEDGING the continuing relevance of the principles contained in the 'Framework for developing the international identity of Jersey' (signed 1 May 2007) ("The Framework"),

WHEREAS the UK has signed a Trade and Cooperation Agreement (TCA) with the EU, Jersey has agreed to the application of the TCA to Jersey to the extent that is as provided for in the TCA,

ACKNOWLEDGING that the TCA creates obligations which are binding under international law and which need to be interpreted, implemented and administratively enforced (where appropriate) in Jersey, which is autonomous in its domestic affairs. The UK is responsible for the international relations of Jersey and for relevant obligations binding on Jersey in international law. Jersey is responsible for complying with international obligations,

ACKNOWLEDGING that the UK Government continues to be responsible for the international relations of Jersey in international law and that this Memorandum cannot, therefore, create obligations which are binding under international law and, in addition, is not intended to alter or affect the constitutional relationship between Jersey and the UK,

WHEREAS the Government of Jersey has confirmed that it believes that laws in Jersey are and will remain compliant with the TCA in accordance with established constitutional arrangements between the UK and Jersey relating, in particular, to international agreements,

ACKNOWLEDGING that the UK Government will be responsible for any disputes raised by or brought by the EU that relate to measures in force in Jersey and that in order to respond to such disputes there will need to be a coordinated approach between the Participants,

RECOGNISING that this Memorandum relates solely to the application of the TCA to the extent which the TCA applies to Jersey and Jersey's continued involvement in the TCA, and will only be read as such,

HAVE DECIDED as follows:

Introduction

1. This Memorandum sets out the understanding between the Participants on the principles regarding the application of the TCA to Jersey and future cooperation between the Participants in the context of the TCA.
2. This Memorandum is a statement of political intent and should not be interpreted as a legally binding agreement. It does not create legal obligations between the Participants and is not intended to alter or affect the constitutional relationship between the UK and Jersey.

Engagement between UK and Jersey related to the TCA

3. The Participants wish to work together, where appropriate, on trade and other economic matters that are relevant to the TCA. In particular, in the following areas:

- (i) transparency about trade and other economic matters that are relevant to the TCA, enabling Jersey to identify where its particular interests are engaged;
- (ii) notification of issues that are relevant to compliance with TCA;
- (iii) regular trade and other relevant economic policy reviews.

4. The Participants remain committed to regular informal and working level engagement and to the principle of good communication with each other and in confidence. The Participants will seek to alert each other as soon as practicable to developments that might be relevant to in the TCA.

5. The UK Government will involve the Government of Jersey, as appropriate, in discussions relevant to Jersey's trade arrangements with the EU. The UK is responsible for representing the interests of Jersey at the Partnership Council and relevant Specialised Committees and Working Groups. The UK will consult the Government of Jersey in advance where they have a clear interest in such meetings and where appropriate Jersey Ministers or officials may be invited to contribute directly as part of the UK delegation.

6. The UK Government will engage fully with the Government of Jersey prior to entering into any negotiations with the EU concerning changes to the application of the TCA to Jersey. The UK Government recognises that any amendment to the TCA would, to the extent it applies to Jersey, create new international obligations extending to Jersey. The UK Government agrees that it will only extend an amendment to the TCA to Jersey in accordance with established constitutional arrangements between the UK and Jersey relating, in particular, to international agreements.

7. The UK Government recognises that the interests of Jersey and the UK may be different, and the UK Government will support Jersey in developing its international identity and will collaborate with Jersey in seeking to represent their differing interests.

Procedure for engagement between the UK Government and the Government of Jersey in the event of a disagreement

8. In the event that there is disagreement between the Participants as to the existence of, or compliance with, an international obligation under the TCA the following procedure will be carried out at the request of either of the Participants:

- (i) Step 1: a meeting at official level between the Participants to discuss the disagreement, at which the Participants will use best endeavours to develop a joint position;
- (ii) Step 2: if discussions at (i) have been unsuccessful after a period of 10 days, the matter may be escalated to a ministerial discussion on the disagreement, at which best endeavours will be made by the Participants to develop a joint position.
- (iii) Step 3: if discussions at (i) and (ii) have been unsuccessful, or if it could otherwise assist the Participants to achieve consensus, the Participants may jointly commission an independent analysis by an agreed third party of the issues relating to the disagreement. Either of the Participants may

request such an independent analysis although both Participants will agree on the terms of reference for this analysis before it can be commissioned. In the event that independent analysis is commissioned, the third party should consider the issues in line with the agreed terms of reference and provide his or her analysis in writing to the Participants. The analysis will be treated as confidential. Any advice or recommendation contained in the analysis would be for information purposes only and will not bind or prohibit the Participants as to any particular action. In particular it will be without prejudice to any dispute processes under the TCA.

9. Having received and considered the joint independent analysis commissioned in paragraph 8(iii), best endeavours will be made by the Participants to ensure that there is agreement as to what the Participants' joint position on the existence of, or compliance with, an international obligation under the TCA, which will be reflected in the UK Government's response to the EU under the terms of the dispute resolution mechanism contained in the TCA.

10. If the procedures at paragraphs 8 or 9 are followed, this will be in a timely manner, in order to allow constructive engagement before the UK is required to respond to the EU under the relevant dispute process under the TCA.

11. In the unlikely event that a consensus cannot be reached between the Participants, after following the steps in paragraph 8 and considering any joint independent analysis commissioned under paragraph 8(iii), the UK will use its best endeavours to protect the interests of both Participants.

12. The Participants remain free to agree in writing to resolve a disagreement falling under the terms of this Memorandum through an appropriate alternative process. In any event the procedures in paragraphs 8 and 9 operate without prejudice to any engagement between the Participants under any other arrangement, framework or memorandum, including the Joint Customs Committee established by the customs arrangements concluded between the UK and the Crown Dependencies and signed on 26 November 2018 in London.

13. Jersey will provide assistance to the UK Government in relation to the UK Government's handling of a concern or dispute with the EU under the TCA where it relates to measures of or concerns relating to Jersey including liaising with relevant stakeholders, the provision of its own or relevant stakeholders' evidence or economic analysis or the provision of information in a timely manner.

General Dispute Resolution Principles

14. For the purposes of this Memorandum, and in relation to any disagreement, the Participants will:

- (i) resolve disagreements informally and at working level in the first instance;
- (ii) make determined efforts to resolve the matter promptly, in accordance with the provisions of this Memorandum, including those relating to confidentiality; and
- (iii) communicate and comply with applicable procedures in good faith and in a timely manner in order to achieve resolution.

15. The Participants may decide between them, in writing, to resolve any disagreement by an appropriate procedure.

Costs

16. Except as otherwise provided, the Participants will each bear their own costs and expenses incurred in complying with their commitments under this Memorandum.

17. The contribution of the Government of Jersey to the costs of a relevant dispute between the UK and the EU under the TCA will be agreed between the Participants on a case by case basis, but applying the following principles:

(i) for cases initiated by the UK Government ("offensive disputes") in relation to issues or policies or measures in which Jersey has an interest, the Government of Jersey will contribute a share of the costs of the dispute along with (as appropriate) (a) relevant UK Government departments; and (b) any other relevant administration with an interest and in accordance with the principles contained in paragraph 17;

(ii) for cases initiated against the UK Government ("defensive disputes") solely relating to a measure or measures in Jersey, the costs will need to be met by the Government of Jersey;

(iii) for defensive disputes relating in part to a measure or measures in Jersey and in part to a measure or measures in place in the UK or any other relevant administration, the Government of Jersey will contribute to such costs to an extent to be agreed with the UK Government in accordance with the principles contained in paragraph 18.

18. The principles for agreeing a contribution to the costs of a relevant dispute between the UK and the EU under the TCA are those of proportionality, having consideration to the number of measures that are being disputed that relate to Jersey measures and/or shared policy interests across UK Government departments and any other relevant administration.

Action required in consequence of a TCA-related Dispute

19. Where, following the completion of the steps set out in paragraphs 8 to 13 relating to a dispute or any alternative agreed process followed by the Participants with the EU under the TCA, an existing measure in Jersey is deemed to be non-compliant with the TCA, the UK Government will notify the Government of Jersey of the need for action to ensure compliance with the TCA and which it considers essential in the Participants' interests.

20. Following notification under paragraph 19, the Government of Jersey will, following initial discussions with the UK Government, and within 15 days, provide written confirmation to the UK Government of the manner and timescale in which it commits to take such steps as are necessary to ensure the relevant measure's compliance with the TCA.

21. Where, following a ruling of the relevant disputes body or panel, an existing measure in Jersey is found to be non-compliant with the TCA, then the UK Government will notify the Government of Jersey of the need to bring the measure into compliance and the Government of Jersey will communicate expeditiously with the UK Government on its approach to bringing its measures into compliance within 7 working days.

Communication and Consultation

22. The Participants are committed to the principle of good communication with each other and in confidence and will seek to alert each other as soon as practicable to developments that might be relevant to the TCA.

Cooperation

23. The Participants wish to work together, where appropriate, on trade and other economic matters that are relevant to the TCA. In particular, the following areas:

- (i) transparency about trade and other economic matters that are relevant to the TCA;
- (ii) notification of issues that are relevant to compliance with TCA;
- (iii) regular trade and other relevant economic policy reviews.

Exchange of information, statistics and research

24. In order to enable each Participant to operate effectively, the Participants will aim to provide each other with as full and open as possible access to technical and policy information including statistics and research and, where appropriate, representations from third parties that would assist in trade and other economic issues relevant to the TCA.

25. The Participants recognise that cooperation is necessary to meet their respective policy and business objectives and their collective responsibility to deliver official statistics to the required standard.

Confidentiality

26. The Participants will treat information received from the other Participant as confidential (save for information already and lawfully in the public domain) and will safeguard the information to avoid prejudicing the other Participant's interests. In particular, the Participants accept that:

- (i) it is for the Participant providing the information to state what, if any, statutory or other restrictions there should be upon its usage;
- (ii) where it is legal to do so, each Participant will treat information which it receives in accordance with the restrictions which are specified as to its usage and no information will be further disclosed without the consent of the Participant providing the information;
- (iii) the Participant that is in receipt of the information may be subject to a legal obligation to disclose information in certain circumstances (e.g. in response to a request under the Freedom of Information Act 2000 or any equivalent legislation in Jersey) and, where this is the case, before disclosing any of the relevant information, the Participant that provided the information will be consulted about the propriety of disclosing it and given the opportunity to provide its assessment of the applicability of any exemption to the requirement to disclose information. The decision as to whether the relevant information is to be disclosed remains solely that of the Participant subject to the legal obligation;

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(iv) they will observe the confidentiality requirements that relate to documents that are designated as confidential for the purposes of conducting, in particular, an EU dispute.

Review of this Memorandum of Understanding

27. In the first instance, representatives of both Participants will meet by 30 June 2021 to consider the operation of this Memorandum.

28. Following this initial discussion, representatives of both Participants will meet at least once each year thereafter (but may meet more frequently, as appropriate), at a place, on a date and with an agenda fixed by mutual consent in order to:

(i) review the operation of arrangements under this Memorandum;

(ii) review the arrangements under this Memorandum in respect of the role for both Participants in relation to specialised committees and other governance structures under the TCA once they are established;

(iii) update this Memorandum as necessary;

(iv) ensure that the commitments made under this Memorandum are observed;

(v) exchange views on:

(a) any points of common interest arising out of the TCA and the application of that agreement to Jersey; and

(b) the operation of the arrangements under this Memorandum;

(vi) discuss and seek to decide appropriate ways and methods of ensuring that obligations arising under the TCA are effectively interpreted, implemented and administratively enforced (if appropriate) to prevent or minimise the risk of a dispute, or potential dispute, arising.

Operation

29. This Memorandum will come into operation on the date of the later of the Participants' signatures and will continue in operation until terminated by either Participant giving six months' written notice to the other.

Variation

30. This Memorandum, including any Annexes, may only be varied by written arrangement of the Participants.

Signature

31. This Memorandum represents the understandings reached between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Jersey upon the matters referred to therein.

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Signed in duplicate at London and at St Helier on 23rd February and
on 1st March both texts having equal validity.

For the Government of the United Kingdom of
Great Britain and Northern Ireland:



For the Government of Jersey:



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