

Open Agenda

Copy No:

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Memorandum for Executive Council

SUBJECT

EUROPEAN UNION WITHDRAWAL AGREEMENT (LIMITED APPLICATION) BILL, 2020

Memorandum by the Attorney General

ADVICE SOUGHT

Council is asked to consider and advise whether the European Union Withdrawal Agreement (Limited Application) Bill, 2020, should be printed, published and presented as Government Business at the next formal meeting of the Legislative Council. A copy of the Bill is at Annex A.

**BACKGROUND &
CONSIDERATIONS**

Historical background

1. In 1971, by treaty the UK joined the European Economic Community (“EEC”), a predecessor of the EU. International treaties are not binding in the UK until they are incorporated into domestic law, so in 1972 the UK Parliament passed the European Communities Act (“ECA”). This Act gave effect in domestic law to what was then called Community Law. In 1992, the European Union was formed and the EEC (by then called the European Community) was incorporated into it. What was previously called Community Law became known as EU Law.
2. The ECA (to the extent that it is applicable and suitable to local circumstances) is Adopted English Law that forms part of the law of St Helena by virtue of the English Law (Application) Ordinance.
3. St Helena is not a Member State of the EU, and EU Law that applies to the UK does not apply to St Helena. However, St Helena and the other UK overseas territories (except Gibraltar and the Sovereign Base Areas in Cyprus) are classed by the EU as “overseas countries and territories”. As an OCT, St Helena does have some EU Law extended to it under the special arrangements for OCTs under the Treaty on European Union.
4. To the extent that EU Law applies to St Helena, the version of the ECA – as applied through the lens of the English Law (Application) Ordinance – gives effect to any applicable EU Law in St Helena.

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The Referendum and the Withdrawal Agreement

5. In 2016, the UK voted in a referendum to leave the EU. Since then, the UK Government has been in the process of negotiating its withdrawal from the EU.
6. Article 50(2) of the Treaty on European Union provides that, when a Member State of the EU wishes to withdraw, the EU must negotiate an agreement with the Member State setting out the arrangements for its withdrawal. In accordance with that provision, the EU and the UK have negotiated a Withdrawal Agreement. The UK intends that the Withdrawal Agreement will be agreed before the end of January 2020. On “exit day” (currently 31 January 2020) the UK will formally leave the EU. Subject to the provisions of the Withdrawal Agreement, the EU Treaties will cease to apply at 11pm on exit day and the ECA will be repealed (in UK law).
7. The Withdrawal Agreement provides for an implementation – or transition – period to begin upon the UK’s withdrawal from the EU. The implementation period will end on 31 December 2020 (although it may be extended for a further period of 1 or 2 years). During this period, Part 4 of the Withdrawal Agreement provides that EU law will continue to apply to the UK (including the OCTs). However, the provisions of the Withdrawal Agreement only apply to St Helena where “the provisions relate to the special arrangements for the association of the overseas territories with the [EU]”.
8. The reference to “special arrangements” is a reference to Part 4 of the Treaty on the Functioning of the European Union, and to Council Decision 2013/755/EU (also known as the “Overseas Association Decision”). These special arrangements make provisions, amongst other things, for the non-discriminatory treatment of goods imported from the EU. The continued effect of EU Law on St Helena is therefore limited.

The purpose of this Bill

9. In order to give effect to the Withdrawal Agreement, it will be necessary for domestic legislation to preserve, or “save”, any provision of EU Law that may apply in St Helena, and to ensure that any rights afforded by such provisions are capable of being enforced if necessary, for the duration of the implementation period.
10. The Bill provides for a mechanism that will achieve this effect once triggered by an Order of the Governor (i.e. on exit day, be

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that 31 January 2020 or otherwise). The effect will then last until the Governor makes a further Order (i.e. at the end of the implementation period).

11. The Bill also provides a power for regulations to be made, if necessary, in order to give effect to its provisions. Unusually, the power allows regulations to be made with retrospective effect. That is to say that the regulations will be able to change the law from a date before they come into force. However, the power to make regulations of retrospective effect may only be exercised so far as is necessary for the purposes of carrying into effect the provisions of the Bill.
12. Any arrangements concerning the UK's future relationship with the EU, to the extent that the relationship affects St Helena will be dealt with in due course.
13. It should be noted that the Bill does not create any new obligations for St Helena but instead extends those already in existence for the transitional period.

Urgency for the Bill

14. Before the UK ratifies the Withdrawal Agreement (intended for 31st January 2020) it needs to inform the EU that all requirements for ratification have been met. This includes that the Withdrawal Agreement as far as applicable has been applied to the OCTs. In order for this to be done by the UK in time, the Minister for the Department for Exiting the European Union has asked the OTs to give assurances by the 21st January 2020 that the Withdrawal Agreement has been implemented and that no further legislation is needed. It has been pointed out that without such an assurance the UK may not be able to inform the EU in time that all requirements for ratification have been met.

FINANCIAL IMPLICATIONS

15. There are no new financial implications arising from this. The Bill extends laws that are already in existence.

ECONOMIC IMPLICATIONS

16. No new implications as Bill extends laws already in existence.

CONSISTENCY WITH INVESTMENT POLICY PRINCIPLES

17. N/A

PUBLIC/SOCIAL IMPACT

18. The proposed Bill will not give rise to any public/social impact.

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- ENVIRONMENTAL IMPACT** 19. The proposed Bill will not have any environmental impact.
- PREVIOUS CONSULTATION/ COMMITTEE INPUT** 20. None as the matter does not fall in the remit of any of the Council Committees.
- PUBLIC REACTION** 21. As the Bill only continues the law as it currently stands so there is not expected to be any adverse public reaction.
- PUBLICITY** 22. The decision should be covered in the media briefing following the Executive Council meeting.
- SUPPORT TO STRATEGIC OBJECTIVES** 23. N/A
- LINK TO SUSTAINABLE ECONOMIC DEVELOPMENT PLAN GOALS** 24. N/A
- OPEN/CLOSED AGENDA ITEM** 25. This paper is for the open agenda.

Corporate Support
Corporate Services

20th January 2020

ATC

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