

EXECUTIVE COUNCIL TOP LINES – TUESDAY 21 JANUARY 2020

European Union Withdrawal Agreement (Limited Application) Bill, 2020

- **Council agreed for the European Union Withdrawal Agreement (Limited Application) Bill, 2020 to be printed, published and presented as Government Business at the next formal meeting of Legislative Council on 21 January 2020**
- This was a special request from the UK to clarify some of its legal positions and laws. It also includes provisions to enable access if required to European Union courts during the transition period in 2020. The UK Government asked for assurance from the Overseas Territories (OTs) by Tuesday, 21 January to ensure the requirements for ratification of the Withdrawal Agreement have been met
- The Bill continues the law as it currently stands into the transition period
- Similar ordinances were also completed today from Ascension and Tristan da Cunha
- Other OTs are undertaking a similar exercise to St Helena
- Questions were raised around continued exports to the UK, funding and whether when we leave the EU the UK Government would match the funding currently provided by the EU, freedom of movement in the EU and whether we would get the same rights as citizens living in the UK
- Assurances have been given on many occasions by UK ministers that if for any reason the EU EDF 11 funding is not forthcoming the UK Government would replace this funding
- The eligibility for freedom of movement in the EU for British passport holders should continue during the transitional period
- The Governor agreed to write to the FCO to convey Members' concerns and reiterate the issues raised. The Joint Ministerial Council Meeting in March will also be used to reinforce these issues
- Members gave their support for the Bill and understood the safeguards continue during the transitional period
- There was unanimous agreement that this is a sensible exercise to ensure individual rights through legal redress to the European Court system during transitional period are maintained
- The Bill was passed to Legislative Council during the morning and following acceptance, signed by the Governor this afternoon.

Background

- 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

- To the extent that EU Law applies to St Helena, the version of the European Communities Act (ECA) – as applied through the lens of the English Law (Application) Ordinance – gives effect to any applicable EU Law on St Helena
- 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
- 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’ (scheduled to be 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)
- 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]’
- 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 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).

St Helena National Trust (Amendment) Regulations, 2020

- **Executive Council agreed that the St Helena National Trust (Amendment) Regulations, 2020 be approved and brought into force prior to 27 January 2020, which is the date on which the next Annual General Meeting of the Trust Council is due to be held**
- Approval of the amendments will deliver on commitments made in March 2019 when the Ordinance was revised. Significantly, this includes a new definition of ‘corporate member’ to distinguish members that are companies from society members
- The proposed changes will ensure organisational good governance, periods of tenure for officeholders and regulation

- The proposed amendments to the Regulations give effect to the internal regulation of the Trust
- At the meeting, the Chairman of the Social & Community Development Committee (SCDC) advised an additional change to the Regulations on how the Auditor is appointed and the requirement that the auditors chosen has to be approved by the Chief Auditor and agreed at the Trust's AGM – Representations from the Trust Council expressed concern that this would remove ability for freedom of choice, however the SCDC felt that good governance is paramount, as is the assurance public funds are satisfactorily audited and agreed with the recommendation of the Chief Auditor
- The SHNT is in receipt of significant funds under the Landscape & Ecology Mitigation Programme (LEMP) therefore it is imperative that their accounts are audited and displays good governance
- If there is disagreement between the Chief Auditor and the Auditor chosen, it will revert to the default position as per the Ordinance
- The SHNT has and continues to do good work and provides a vital service to St Helena
- Members fully supported the amendment Regulations
- Discussions took place around the National Heritage Register and who would assume this work if the responsibility is removed from the SHNT as well as the necessity of the Register
- The SHNT Director present at the meeting explained that the register was set up to satisfy statutory obligations and had become a GIS searchable database on the SHNT website, the SHNT did not want to shy away from responsibility but simply do not have the resources to maintain the Register. The Trust is happy to work with the relevant Directorate to be able to take this forward
- Members felt the Register which is a critical document for the Island should be safeguarded and the Chief Secretary has been tasked to liaise with the Infrastructure & Transport Director and the SHNT on how maintenance of this Register can best be taken forward
- The ordinance was seen as a modernising approach to supporting the Trust

Background

- In March 2019 the St Helena National Trust (SHNT) Ordinance, 2001 was amended to further regulate the powers and procedures of the Trust and the composition and procedures of the Trust Council. The amendment made provision for formalities relating to the appointment of the Trust Council to be prescribed by Regulations.
- The SHNT Regulations, 2002 have since been reviewed by the Trust Council and recommendations for amendments were subsequently discussed with the Attorney General's chambers, following which the draft SHNT (Amendment) Regulations, 2020 at Annex A, were developed.

- The St Helena National Trust (SHNT) has grown over the past five years in terms of turnover and number of staff, resulting in increased risks and complexity. The proposed amendments introduce a number of improved governance measures as part of the Trust's strategic and operational development. A significant material change to the regulations includes provision for Trust Council appointments as per the intention when the Ordinance was amended in March 2019. A further substantive alteration includes removal of responsibility for the National Heritage Register. Whilst the Trust remains committed to protecting and promoting Island heritage, this move recognises the reality of stretched resources and the Trust's inability over recent years to deliver on this responsibility.

AOB

- Consultations on the draft tobacco legislation is scheduled for end-January.

ExCo

21 January 2020