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Minister of State for
Europe and the Americas

20 December 2018

Tom Tugendhat MP
Chair, Foreign Affairs Committee
Committee Office
House of Commons
London
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Dear Tom,

I am writing to inform you of the Government's intention to lay Regulations in Parliament on 14 January ('The Overseas Association Decision (Revocation) (EU Exit) Regulations 2019'), which are to follow a negative resolution procedure. The effect of these Regulations will be to remedy a deficiency in retained EU law by simply removing the text of the Overseas Association Decision (OAD) from the UK statute book from exit day. This is in accordance with section 8 of the European Union (Withdrawal) Act 2018, which allows Ministers to make regulations they consider appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law arising from EU exit.

The OAD is an EU Council Decision which sets out the scope of the relationship between the EU and the Overseas Countries and Territories (OCTs) of its Member States. The OCTs currently include all British Overseas Territories (OTs) except for Gibraltar and the Sovereign Base Areas.

As a result of EU Exit, the OAD will automatically cease to apply to the OTs, irrespective of whether or not these Regulations are laid. This would occur either at the end of the Implementation Period (IP), since the OTs are included in the territorial scope of the UK-EU Withdrawal Agreement, or, in the absence of an IP, from 29 March 2019. However, under the Withdrawal Act, the text of the OAD will automatically become 'retained EU law', and will therefore form part of domestic UK law from exit day.

Removing the text of the OAD from the UK statute book is appropriate for three reasons. Firstly, after EU exit, the OAD will relate to an association between two parties, the EU and its OCTs, neither of which will include either the UK or the British OTs: post-exit the text of the OAD would therefore make no sense on the UK statute book.

Secondly, the territorial application of the Withdrawal Act does not extend to the British OTs. As such, even if the text of the OAD were retained on the UK statute book, but amended insofar as possible to reference the UK and the British OTs rather than the EU and the OCTs, it would only apply legally to the UK and consequently not be capable of forming the basis of any meaningful UK-OT relationship. Furthermore, we consider that seeking to use retained EU law to define the UK-OT constitutional relationship is unnecessary because it is already set out in the 2012 White Paper on the Overseas Territories and is developed on a regular and ongoing basis in Joint Ministerial Councils (JMCs) and other fora.

Thirdly, there is a risk that retaining the text of the OAD, which references the OCTs of other EU member states, and which enumerates a number of entitlements to be conferred on them, could create a lack of legal clarity on a domestic level as to the rights and status of these OCTs with respect to the UK.

We recognise the OTs' long-standing relationship with the EU and the importance of OT-EU collaboration in a number of key areas, including environmental protection. As a government we are committed to supporting our OTs as we leave the EU, and I can therefore assure you that provisions in the OAD which are presently of value to the OTs are being preserved insofar as possible on a bilateral UK-OT basis, as I explain below.

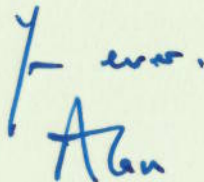
Tariff-free access to the UK market, which is currently provided for via the OAD, is intended to be implemented by secondary legislation under the Taxation (Cross-Border Trade) Act. Existing projects under EU funding streams including EDF, BEST and Horizon 2020 will be guaranteed by HMT for the lifetime of those projects in the event of a no deal. Future funding and programming arrangements for post-2020 will be considered as part of the UK Government's next Spending Review in 2019, taking account of OT Governments' views.

The OAD also contains a large number of legally non-binding or purely aspirational provisions. The substance of almost all of these provisions is already reflected either in the 2012 White Paper or in other bilateral arrangements between the UK and the OTs. But I will be writing to OT leaders following the most recent JMC on 4-5 December to explain how the UK Government is committed to maintaining the effects of as many as possible of these non-binding provisions, which are not already covered by an existing arrangement, on a bilateral UK-OT basis.

We have already consulted the OT governments on these Regulations. In our engagement with them on this issue, we have made clear that these Regulations are required to tidy up the UK statute book, and that the OAD will cease to apply to the British OTs as a result of EU exit whether these Regulations are laid or not.

I hope that this letter provides clarity and reassurance on the function of these Regulations. My officials will be happy to facilitate a meeting to discuss them further if you would find this beneficial.

I'd be grateful if you could convey this letter to Members of your Committee and other MPs that may have an interest.

A handwritten signature in blue ink, appearing to read 'Alan Duncan', with a stylized flourish above the name.

RT HON SIR ALAN DUNCAN MP