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January 2018

Brexit: Gibraltar report – Government response

I am writing to thank you for your letter following my Department's response to your earlier report, Brexit: Gibraltar, and to address the questions raised therein. I am grateful to the Committee for considering our response and continuing to engage with the important issues raised for Gibraltar by our exit from the EU.

It is in everyone's interests to secure a good deal for both sides. And we are working hard, with the Government of Gibraltar, to achieve this. We are clear that Gibraltar is covered by our negotiations for withdrawal, the implementation period and the future relationship. But a responsible government should prepare for all potential outcomes, including the unlikely scenario in which no mutually satisfactory agreement can be reached. That is exactly what we are doing across the whole of Government. Officials in my Department, the Foreign Office and across Government are working closely with the Government of Gibraltar to ensure that we are ready for every eventuality.

We are clear that Gibraltar is covered by our exit negotiations, including all aspects of the citizens' rights agreement. You asked specifically about frontier workers. We have held productive discussions with the EU and agreed in August that those who are frontier workers at the specified date should be protected under the withdrawal agreement. In September we agreed a definition for frontier workers. This definition, set out in the table comparing the EU/UK positions on citizens' rights, says:

'A frontier worker, as defined in EU law, is a UK national or an EU citizen pursuing genuine and effective work as an employed or self-employed person

in one or more States and who resides in another State (irrespective of whether the person also works in the State of residence), unless or until they no longer retain the status of a worker in the State of work (equivalent to that as defined in Directive 2004/38/EC) or they cease to work across the frontier into the State of work in accordance with Articles 45 and 49 TFEU and Regulation (EU) No 492/2011.'

We have also secured the rights of British people living in Spain, in line with our aim to ensure people can live their lives broadly as they do now. We have agreed the scope of important provisions regarding ongoing residence for UK nationals in the EU and vice versa. We have also confirmed who will be in scope for social security coordination - which includes those who have made previous contributions in another Member State, even if they are not resident in that Member State on the agreed date. Economic rights - people's rights to work, to be self-employed and to own a business - will also be protected in the citizens' rights agreement. We are very much aware of the importance of frontier workers to Gibraltar, including Spanish, British and other EU nationals. We will continue to engage closely with the Government of Gibraltar as we finalise the citizens' rights agreement, including on UK nationals resident in the EU and frontier workers.

We have been working closely with the Government of Gibraltar to ensure Gibraltar's interests are properly taken into account as we leave the EU. As I said before, we are considering a range of options that are relevant for our future negotiations so it would not be appropriate to set these out at this stage. This includes on the border, where ensuring that the smooth flow of legitimate goods and people across our borders – of both the UK and Gibraltar – will remain a priority for the Government.

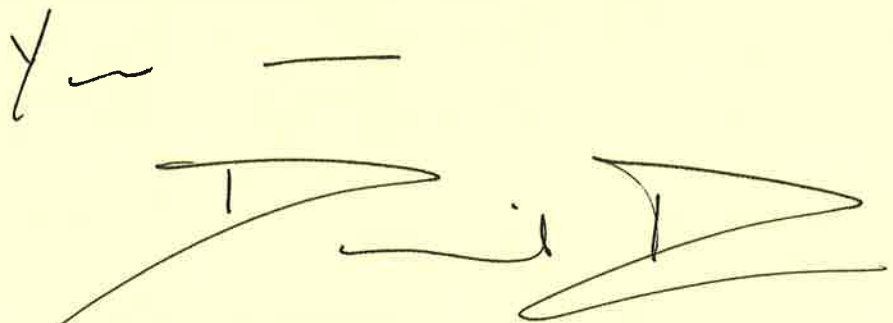
The work established at the July JMC is progressing apace. HMG and GoG intend to pursue a close economic partnership underpinned by shared, high standards of regulation. It is the unshakeable objective of the UK Government to ensure the seamless continuation of existing market access into the UK and enhance it where possible. This will require mutual confidence in, and cooperation on, regulatory and supervisory structures. Regarding the Committee's specific question on the programme of work on insurance; HMT, the Government of Gibraltar and regulators in the UK and Gibraltar are working together to better understand each other's supervisory approaches and ensure they can collaborate effectively. In terms of Free Trade Agreements, Department for International Trade officials visited Gibraltar in November 2017 to start the process of consulting the Government of Gibraltar, and Gibraltar businesses, on their interests in future Free Trade Agreements. DIT will continue to engage as the Government develops our future trade policy, as part of our overall consultation approach.

As mentioned by the Chief Minister in his own letter, the UK Government has always been clear that we are steadfast in our support for Gibraltar, its people and its economy. The EU's guidelines are a matter for the EU and the other 27 Member States, but we are clear that we are determined to get a deal that works for all parts of the UK. That deal must work for Gibraltar too and we have made this clear to the EU. We have liaised closely with the Chief Minister of Gibraltar throughout our preparations for withdrawal. Our liaison continues through the Joint Ministerial Council (Gibraltar EU Negotiations), which has now met five times, and regular official and Ministerial contact. It is clear that all sides wish to approach the UK-EU negotiations constructively and, as the Prime Minister has said, we wish to ensure a deep and special partnership between the UK and the EU.

Regarding British Gibraltar Territorial Waters, as I stated in my previous letter to the Committee, we are clear that future EU legislation or wider policies could not weaken or undermine the legal basis in international law for British sovereignty over Gibraltar. The UK is sure of its sovereignty over Gibraltar, including British Gibraltar Territorial Waters. Nor are Spain or the EU competent to grant Spain a right to exercise any jurisdiction or authority in British Gibraltar Territorial Waters, including through environmental designation or regulation.

When it comes to Spain more broadly, the UK sees the value of dialogue and cooperation. We would like to see co-operation continue in some form and, ultimately, to return to the Trilateral Forum, which Spain walked away from in 2011. Above all, the UK wants to foster a positive political environment which enables a constructive approach to issues of mutual interest, including the more than 7000 Spanish citizens who cross into Gibraltar daily for work. We are seeking to engage with all EU member states on matters of mutual interest and we are determined to get a deal that works for all parts of the UK family, including Gibraltar.

I trust that this letter provides the answers and assurances you are seeking. I look forward to the eventual publication of your next report.

A handwritten signature in black ink, appearing to read 'David Davis', is written over a horizontal line. The signature is stylized and cursive.

RT HON DAVID DAVIS MP
SECRETARY OF STATE FOR EXITING THE EUROPEAN UNION