



TYNWALD COURT OFFICIAL REPORT

RECORTYS OIKOIL
QUAIYL TINVAAL

PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 24th November 2020

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Present:

The President of Tynwald (Hon. S C Rodan OBE)

In the Council:

The Attorney General (Mr J L M Quinn QC),
Miss T M August-Hanson, Mr P Greenhill, Mr R W Henderson, Mrs K A Lord-Brennan,
Mrs M M Maska, Mr R J Mercer, Mrs J P Poole-Wilson and Mrs K Sharpe
with Mr J D C King, Deputy Clerk of Tynwald.

In the Keys:

The Speaker (Hon. J P Watterson) (Rushen);
The Chief Minister (Hon. R H Quayle) (Middle);
Mr J R Moorhouse and Hon. G D Cregeen (Arbory, Castletown and Malew);
Hon. A L Cannan and Hon. T S Baker (Ayre and Michael);
Mr C C Thomas and Mrs C A Corlett (Douglas Central);
Mrs C L Barber and Mr C R Robertshaw (Douglas East);
Hon. D J Ashford MBE and Mr G R Peake (Douglas North);
Mr S P Quine (Douglas South);
Mr M J Perkins and Mrs D H P Caine (Garff);
Hon. R K Harmer and Hon. G G Boot (Glenfaba and Peel);
Mr W C Shimmins (Middle);
Mr R E Callister and Ms J M Edge (Onchan);
Hon. A J Allinson and Mr L L Hooper (Ramsey);
Hon. L D Skelly (Rushen);
with Mr R I S Phillips, Clerk of Tynwald.

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Tynwald

The Court met at 2.30 p.m.

[MR PRESIDENT *in the Chair*]

The Deputy Clerk: Hon. Members, please rise for the President of Tynwald.

The President: Fastyr mie, good afternoon, Hon. Members.

5 **Members:** Fastyr mie, Mr President.

The President: In the absence of the Lord Bishop, I will lead us in prayer.

PRAYERS

The President

Leave of absence granted

10 **The President:** Hon. Members, I have given leave of absence from this extraordinary sitting of Tynwald to the Hon. Member for Douglas South, Mrs Christian. I have given leave of absence also to the Lord Bishop.

Order of the Day

1. Standing Orders suspended to take Items 2 and 3 (Government business)

The Minister for Environment, Food and Agriculture to move:

That Standing Orders be suspended to the extent necessary to allow Items 2 and 3 on the Order Paper to be taken at this sitting.

The President: Item 1 on our Order Paper, suspension of Standing Orders. Hon. Member for Peel and Glenfaba, Mr Boot.

15 **The Minister for Environment, Food and Agriculture (Mr Boot):** Thank you, Mr President. I will try and speak up today, after the last sitting where I received criticism.

Mr President, before moving on to the business to today's Order Paper, I would just like to take this opportunity to thank you and your officers for arranging this extraordinary sitting of Tynwald so quickly.

Mr President, I beg to move that Standing Orders be suspended to the extent necessary to allow Items 2 and 3 on the Order Paper to be taken at this sitting.

The President: Hon. Member for Garff, Mr Perkins.

Mr Perkins: Thank you, Mr President. I beg to second.

2. Papers laid before the Court

The President: I call on the Clerk to lay papers.

The Clerk: I lay before the Court the papers listed at Item 2 of the Order Paper.

European Union and Trade Act 2019

European Union and Trade Act 2019 (Deficiencies) (DEFA) (No. 2) Regulations 2020
[\[SD No 2020/0544\]](#) [\[MEMO\]](#)

3. European Union and Trade Act 2019 European Union and Trade Act 2019 (Deficiencies) (DEFA) (No. 2) Regulations 2020 approved

The Minister for Environment, Food and Agriculture to move:

That the European Union and Trade Act 2019 (Deficiencies) (DEFA) (No. 2) Regulations 2020 [\[SD No 2020/0544\]](#) [\[MEMO\]](#) be approved.

The President: Item 3, European Union and Trade Act. Minister for Environment, Food and Agriculture to move.

30

The Minister for the Environment, Food and Agriculture (Mr Boot): Mr President, I would like to acknowledge that Members did *not* have sufficient time to scrutinise the Brexit-related legislation laid before them last week, and for that I apologise. I therefore hope they were able to benefit from support from my officers, such as yesterday's drop-in session, in order to gain a clearer picture of the effect of the legislation.

35

The Regulations before the Court have been drafted as a consequence of my Department's ongoing preparations for the Island's trading relationships with the UK, EU and rest of the world following the end of the transitional period. The Regulations ensure that the Island maintains its legislative alignment with the UK and the EU in the crucial areas of animal health and food standards.

40

The Regulations fulfil the legislative assurance, given to the UK and the EU, that we have retained and modified the EU law necessary for the Island to receive third country status. Such third country status is necessary to enable the continued export of the Island's animals, animal product, food and fish. Without the Regulations, we could not demonstrate our alignment, and valuable trade with the UK and EU would be jeopardised.

45

50 The provisions in these Regulations accordingly follow those set out in UK exit day statutory instruments and, as a result of this, my Department has added further provisions to the Regulations before the Court in order to mirror those most recently published in the UK. For example, Members may also be aware the UK government has withdrawn two of its statutory instruments which set out the UK's modifications to the EU plant health legislation. The related provisions, which are not relevant to the current application for third country status, have therefore been omitted from these Regulations.

55 This change demonstrates the presently fluid situation of the Brexit-related legislation. However, what is clear is that for the Island to maintain its current trading relationships it must be granted third country status at the meeting of SCOPAFF on 14th December. To be eligible for consideration at this meeting the legislation first must be approved by Tynwald and published, with the publication of this legislation being notified to the UK no later than Friday, 27th November.

60 These Regulations accordingly specify a further 84 items of EU legislation for retention in Manx law and remove 154 items of EU legislation that have either expired or are no longer considered relevant to the Island; amend previous regulations to account for changes in how the UK has revised its equivalent retained EU legislation; prescribe the modifications to 136 items of retained direct EU legislation to ensure such legislation is operable on and after exit day; and make provision for transitional arrangements concerning the use of model health certificates.

65 These Regulations also modify six items of secondary legislation, made under the European Communities (Isle of Man) Act 1973, to ensure that legislation is also operable on exit day. The majority of the amendments made by these Regulations remain minor in nature. But where more substantial amendments or transitional provisions have been prescribed, these follow from the approach taken in the UK legislation to ensure we have equivalent regulatory controls in place.

70 Should the Court approve these Regulations, the Island will be on a surer legislative footing ahead of the end of the transition period. However, I would like to note that, given the fluidity of the current situation, it cannot be guaranteed that further legislation will not be required. Nevertheless, as we reach a point of stability in our trading relationships, it is my Department's intention to review and consolidate its Brexit-related legislation, while also making further legislation necessary to accommodate these updates in the UK regulatory controls.

75 Mr President, the Regulations before the Court will ensure the Island is in the best possible position to obtain third country status and continue exporting the high-quality products that are the pride of the wide variety of businesses across the agricultural, fisheries and food production sectors of the Isle of Man's economy.

80 Mr President, I beg to move that the European Union and Trade Act 2019 (Deficiencies) (DEFA) (No. 2) Regulations 2020, be approved. Thank you.

The President: Hon. Member for Garff, Mr Perkins.

85 **Mr Perkins:** Thank you, Mr President. I beg to second and reserve my remarks.

The President: Hon. Member for Ramsey, Mr Hooper.

Mr Hooper: Thank you very much, Mr President.

90 Firstly, I would just like to thank the Minister and his team for taking the time yesterday to answer questions about these Regulations. Two things really spring to mind that I think we need to get some clarity on, just for the record.

95 The first is the Minister mentioned in his remarks that the legislation must be approved by Tynwald in advance of the SCOPAFF meeting on 14th December. We also know that some of the things in this legislation today were not in the version that was tabled last week before this Hon. Court. So my question for the Minister is, if we had not had this small delay in order to give the Department a few extra days to prepare these extra changes, would we have been back here

anyway? What was his back-up plan to bring these other changes forward if we had approved these in a rush last week?

100 The second question I have got for the Minister is throughout the whole Brexit process a lot of the work his Department has been doing is enshrining things in law that were previously covered by the blanket Protocol 3 kind of exemption, as it were. This indicates that going forward there should be a lot more work in keeping us up to date and current with UK and EU rules, as well as the review of Brexit legislation the Minister has just mentioned in his opening remarks. Is the
105 Minister satisfied his Department has adequate resources to do this? I would not like us to be in a position where the Department is unable to do other important work simply because they have to keep updating Brexit-related legislation to keep us up to date with our trading relationships.

Thank you very much, Mr President.

110 **The President:** Hon. Member, Mr Speaker.

The Speaker: Thank you, Mr President.

There are some of these Regulations that come and go in this document that are not immediately apparent as to how they impact the Isle of Man. Obviously things such as the labelling
115 of baby formula and the pollock in the Bering Sea, for example. I am just wondering, do we actually sense check these to make sure that we are only importing those bits of legislation that we need?

I also want to build on the comments that Mr Hooper made. Are these going to be a regular feature, these deficiencies orders, in terms of the post-Brexit landscape? Are we going to see these coming along frequently, like we have the customs orders, just in order to keep us up to
120 speed with the European regulations that we need to import? I think the challenge needs to be set to the Minister to find perhaps a simpler way of doing this, because at the moment there is not a simple one-stop shop as to where you can go to find which pieces of EU legislation are particularly relevant to the Manx producer, provider, supplier on the Isle of Man, and that is going to make doing business, no harder than the UK, admittedly, but certainly no easier either.

125 The final point I would just like to question would be what the process is in terms of industry engagement in perhaps pre-legislative scrutiny, because these are remarkably complicated texts. I apologise to the Minister that I could not come along to his open house yesterday in order to discuss this – I was in a Select Committee at the time – but I hope the Minister will see the direction of travel with some of these and be able to answer some of those queries.

130 **The President:** Hon. Member of Council, Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

135 I would just like to put on record my concern that we should have, and would benefit from, a definitive list of regulations made under the EU and Trade Act, and indeed any other Brexit legislation. I have spoken to officers about this. I am not sure whether that would be something under the responsibility of DEFA or perhaps Cabinet Office. I think such a list is important because with these Regulations they are regulations amending other regulations. It is very complex.

140 I am going to support this today. I think that it is clear, even with these Regs and all the other ones that have passed, that the Isle of Man has been absolutely belt and braces in terms of ensuring compliance and alignment and mirroring what the UK has brought in, but I do look forward to a time when we can remove some of these things from our statute books and of course, I have said it before, there is an issue that some of this is probably part of the stuff that the UK is trying to get away from.

145 So for me, I think that this list of what we are bringing in, perhaps linked with topics and how they relate to each other, is something that in the medium to long term would be beneficial and I would seek some assurance on that from the Minister. I think it would be helpful for the public, for officers and also for Members, following on from the comments from Mr Speaker and Mr Hooper.

150 Thank you, Mr President.

The President: Hon. Member for Douglas East, Mr Robertshaw.

Mr Robertshaw: Thank you, Mr President.

155 My question relates to page 13, Part 8 (fisheries) of the retention of Regulations as amended, and particularly paragraph (3)(8), where it talks about regarding:

... fishing authorisations for Union fishing vessels in United Kingdom waters ...

So presumably that is us. The Chief Minister kindly gave a fairly detailed answer to a question, I think it was elsewhere, a couple of weeks back about fishing. Bearing in mind there are pages and pages of this, would the Minister be kind enough to give us a layman's explanation of where our
160 fishing sector exists as of 1st January, bearing in mind that it can go one of two ways?

I think that would be much appreciated, to understand in quite straightforward terms what the options for us are, with particular regard to the defence of our fishing waters in the event of the Royal Navy not being available should there be an aggressive stance by EU countries to waters adjacent to ours and our own.

165 Thank you, Mr President.

The Speaker: The Royal Navy is always there.

The President: Minister to reply, Mr Boot.

170

The Minister: Thank you, Mr President.

I would like to thank all Members for co-operating with this extraordinary sitting, and I again apologise for the fact that you had insufficient time to look at the legislation during the previous sitting.

175 In reply to Hon. Member, Mr Hooper's queries particularly, I was very pleased to be able to facilitate yesterday afternoon, as I felt that it would help, not only with regard to these Regulations, but also the Climate Change and Competition Bills and I hope Members found that useful.

180 I think it is fair to say that we would not have been back here had we not had this hiatus in between, but the hiatus that we have had has enabled us to withdraw some things that are not relevant and also bring us as up to date as we possibly can. I think it is ... I am not quite sure how you would put it, but in terms of where we are we have to demonstrate to the UK and the EU that we are as compliant as we can be, but it is a fairly dynamic situation, and things will move on, and I am sure that other matters will arise and the Regulations will require further amendment. We
185 are reactive rather than proactive in this role, so I suspect that in December Tynwald there will be more Regulations that will require amendment.

With regard to adequate resource, depending on the agreement that is reached, the resource that we have at the moment would appear to be adequate, but there are competing legislative priorities and these things are fairly irregular in nature. So we will have to see what happens on
190 31st December or in the meantime, but please rest assured that we will make adequate resource to be compliant, as this is an important area for the Isle of Man. Some £25 million to £30 million worth of product is exported to the EU through the UK, and we need to be in a good position as far as that is concerned.

195 Referring to Mr Speaker, the legislation is cross-cutting and it is necessary to prevent the Island being a back door into the EU, or however you look at that. So whilst it might not appear immediately that it is relevant to the Isle of Man, and probably some of the things are not relevant to the Isle of Man, nevertheless, there are fears in other jurisdictions that we might be a back

door. Hence we are looking at that situation and having to perhaps look at regulations that are not necessarily immediately appropriate to the Isle of Man.

200 Hon. Member, Mrs Lord-Brennan: thank you very much for supporting the same. A definitive list of Regulations has been prepared and the Cabinet Office are aware of this issue. Obviously I cannot speak for the Cabinet Office in this respect, but the aim is to review and improve the position once the EU and UK trade arrangements are made and finalised, and the associated regulatory controls are in place. I do believe that there is a commitment that these will be reviewed in five years in any case. So as things go on, there will be changes, but there is a longstop of five years.

205 With regard to Hon. Member, Mr Robertshaw, and his fisheries query, unfortunately, I cannot be definitive about the situation with the negotiated position between the UK and the EU, and we are part of that arrangement. We know a little bit about the direction of travel, but nothing is certain at the moment. The default position is that Isle of Man waters will be only open to vessels from France, Belgium and Ireland as licensed by this Department, which is the position as it is with the track record and historically. That is the position that we would like to see at the very maximum maintained –

215 **Mr Robertshaw:** Would the Minister give way for a moment?

The Minister: Certainly.

220 **Mr Robertshaw:** I appreciate what he is saying and I thank him for his answer, but it is the ability, the capacity in our defence of those licences that I think is of particular interest. The answer that I received from the Chief Minister seemed to indicate that our defence capacity for protecting our waters was far less than optimal.

225 So could he give us any reassurance there at all, in the event of a more aggressive stance? After all, that could only be a matter of weeks away, so we must have prepared some contingency ideas about how we might protect our waters. Could he expand on his thoughts, please?

Thank you, Mr President.

The President: Minister.

230 **The Minister:** Thank you.

We have already introduced, in preparation, a licensing regime which we can bring in with regard to those vessels from the countries that I mentioned. If you are talking about direct enforcement, we obviously have the *Barrule* which is available to us, and we could step up patrols from the *Barrule*. In the past, we have done co-operative work with the Welsh enforcement agencies. They have a number of fisheries patrol vessels, far in advance of our own, but there are issues around that in terms of warranted officers and how we manage that. Particularly with COVID it is even more complex. But if the situation arose where we were having difficulty, I am sure that through the Cabinet Office – and I say this ... I cannot make any commitments – we would speak to the UK authorities in an endeavour to help the situation.

240 **Mr Robertshaw:** But Minister, if I may, the advice I have received from the Chief Minister is that it is highly unlikely that the Royal Navy would be available to help protect our waters in the light of the fact that they are going to have to protect the western approaches, a significant part of the English Channel and the southern parts of the North Sea. So they would not be available.

245 I would also suggest that in light of his comments about the Welsh provision, that they too would be fully engaged and employed in protecting *their* waters. So could he enlighten us a little bit further, bearing in mind that our vessel is slow and staffed at a very low level?

The President: Minister.

250 **The Minister:** Thank you.

I obviously can make no commitments here as to what resource will be available to us and where that resource in the UK or elsewhere will be deployed. We have what we have here, but we may be able to supplement that. But I cannot make any commitment in that respect. We have the licensing regime, any vessels that do fish in our waters that are not licensed will be committing an offence and how we enforce that would be something that we will have to look into. Let's hope it does not reach that point and that an agreement is reached that is satisfactory for all parties.

Thank you, Mr President. I beg to move.

260 **The President:** Hon. Members, I put the question at Item 3: that the European Union and Trade Act 2019 (Deficiencies) (DEFA) (No. 2) Regulations 2020 be approved. Those in favour, say aye; against, no.

A division was called for and electronic voting resulted as follows:

In the Keys – Ayes 23, Noes 0

FOR	AGAINST
Dr Allinson	None
Mr Ashford	
Mr Baker	
Mrs Barber	
Mr Boot	
Mrs Caine	
Mr Callister	
Mr Cannan	
Mrs Corlett	
Mr Cregeen	
Ms Edge	
Mr Harmer	
Mr Hooper	
Mr Moorhouse	
Mr Peake	
Mr Perkins	
Mr Quayle	
Mr Quine	
Mr Robertshaw	
Mr Shimmins	
Mr Skelly	
Mr Speaker	
Mr Thomas	

The Speaker: Mr President, in the Keys 23 votes for and none against.

In the Council – Ayes 8, Noes 0

FOR	AGAINST
Miss August-Hanson	None
Mr Greenhill	
Mr Henderson	
Mrs Lord-Brennan	
Mrs Maska	
Mr Mercer	
Mrs Poole-Wilson	
Mrs Sharpe	

The President: And in Council 8 for and none against. The motion carries unanimously.

265 Hon. Members, that concludes the business on our Order Paper today. Council will now withdraw and leave the House of Keys to transact such business as may be before it.

The Council withdrew.

House of Keys

The Speaker: Hon. Members, there being no business before the Keys, the House stands adjourned until 10 o'clock in our own Chamber next Tuesday, 1st December.

Thank you.

The House adjourned at 2.53 p.m.