



United Kingdom Overseas Territories Association

UK Overseas Territories Association response to the House of Commons' European Scrutiny Committee's inquiry *UK's EU representation: what has changed and how is it working?*

1. Executive Summary

1.1 The UK's 12 inhabited Overseas Territories enjoyed a close relationship with the European Union (EU) throughout the period of the UK's membership. This association with the EU was laid out in the 1957 Treaty of Rome and governed by the Overseas Association Decisions (OAD)¹ adopted by the Council of the European Union.

1.2 The OAD aimed to increase the competitiveness of the Overseas Territories, strengthen their adaptability, reduce their economic and environmental vulnerability and promote their cooperation with other international partners.

1.3 As a result of this close relationship the Overseas Territories enjoyed access to a range of benefits, as set out in the OAD. These benefits included: tariff and quota free market access and access to dedicated and tailored funding streams aimed primarily at infrastructure and the environment.

1.4 Despite this long-established relationship, with the exception of Gibraltar, the UK's Overseas Territories were not given the opportunity to vote in the 2016 EU referendum.

1.5 In the subsequent negotiations, between the UK and the EU, the Overseas Territories were represented by the UK negotiating team. However, when the final terms of reference for the negotiations were published there was no reference to the Overseas Territories. This reflected the EU's unwillingness to give its negotiators a mandate to include Overseas Territories in the scope of the negotiation.

1.6 Despite this, the UK negotiating team endeavoured to raise the issues of the Overseas Territories on a number of occasions, and sought a variety of creative solutions to try and resolve the impasse. We were, and remain, grateful for these efforts. However, the EU were always very clear – their negotiating team had no mandate to discuss issues relating to the Overseas Territories.

1.7 When the Transition Period ended on 31 December 2020, the UK's Overseas Territories lost future access to all the benefits they had enjoyed under the OAD. Access to new funding streams ceased and market access was now subject to tariffs.

¹ Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union 'Overseas Association Decision.'



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1.8 In the six years since the UK voted to leave the EU and the year-and-a-half since the ending of the Transition Period no substantive discussion has taken place between HMG and the governments of the Overseas Territories as to what our future relationship with the EU will be or to how we will be represented at an EU level; nor has the UK sort to replace like for like the benefits lost following Brexit. Despite this, HMG has been supportive with respect to trade when the need for an intervention with the EU has been required.

1.9 The UK Overseas Territories Association (UKOTA) therefore makes the following recommendations:

1.9.1 There should be routine engagement between relevant officials in the UK Mission in Brussels and the Overseas Territories' Representatives.

1.9.2 The Overseas Territories should have a dedicated Desk Officer within the UK Mission to the EU to provide support and assistance to the Overseas Territories.

1.9.3 The UK should be encouraged to define the diplomatic level of engagement for Territories within the European Commission under its existing relationship.

1.9.4 Tariff and quota free EU market access for the Overseas Territories should be restored.

1.9.5 HMG should continue to look for opportunities to open negotiations with the EU regarding a mutually beneficial agreement, similar to the OAD, that would codify the nature of our new relationship with the EU.

1.9.6 HMT should provide support and assistance to the Overseas Territories in their discussions with the EU regarding financial services cooperation, equivalence and related matters, including best practice and transparency.

1.9.7 HMG should facilitate the participation of the Overseas Territories, in regional cooperation programmes.

1.9.8 There should be a new White Paper that defines a post-Brexit strategic partnership between the UK Government and the Territories. The 2012 White Paper was produced by the Cameron Administration, and is now out of date in light of Brexit. The White Paper should define the parameters of a new relationship.

1.9.9 Given that no substantive discussion has taken place between HMG and the governments of the Overseas Territories as to what our future relationship with the EU will be, how lost EU benefit may be replaced, or how we will be represented at an EU level, HMG and the governments of the Overseas Territories should meet formally to discuss these issues and to map out a way forward. These discussions should take place on the basis that any future programmes are developed strategically whilst emphasizing transparency, partnership, and cooperation. The Territories require a plan for strategic long-term investment in physical and intellectual capital rather than short-term funding through the Conflict, Stability, and Security Fund.

1.9.10 Wider structured engagement and cooperation between the Territories and international and multilateral agencies, including the EU post-Brexit and regional



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groupings, is critical, particularly with regard to the growing threat of climate change.

2. Introduction

2.1 UKOTA welcomes the opportunity to give evidence to the Committee for its Inquiry *the UK's EU representation: what has changed and how is it working?*

2.2 UKOTA exists to promote the interests of the Territories and the co-operation between them. Specifically, UKOTA demonstrates the collective and individual partnerships between the Territories and HM Government (see Annex one).

2.3 The governments and peoples of the UK Overseas Territories are represented in the UK by their official Representatives and, in most cases, through their London offices. When interests align, the Overseas Territories may speak with one united voice through UKOTA.

2.4 Only individuals or organisations duly appointed by Territory governments are entitled or permitted to speak on behalf of the Overseas Territories, either individually or collectively. Only they can represent the Territories at events or in meetings with politicians or the media.

2.5 The strategic direction for UKOTA is provided by the UKOTA Political Council which comprises the Political Leaders of the Overseas Territories.

2.6 Evidence provided by UKOTA should not be seen as a replacement for evidence provided by individual Territories.

2.7 UKOTA cannot comment on the affairs of individual Territories.

2.8 This evidence is not submitted on behalf of the Government of Gibraltar.

2.9 UKOTA understands that the focus of the Inquiry is the UK's post-Brexit representation to the EU. Our response while specifically addressing the two questions posed by the Inquiry listed below with respect to the Overseas Territories, also encompasses the other questions raised by the Inquiry:

2.9.1 How should the Devolved Administrations, Crown Dependencies and British Overseas Territories be represented by the UK Government in its dealings with the EU?

2.9.2 What specific domestic concerns should be accounted for in meetings with the EU? For example, for Northern Ireland, the Protocol; for the Devolved



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Administrations, more generally, domestic legislation and initiatives, such as Common Framework policy and the UK Internal Market Act; and for British Overseas Territories, the fact that they are not covered by the TCA?

3. The Overseas Territories and the European Union pre-Brexit

3.1 Prior to the UK's withdrawal from the EU in January 2020 the Members of UKOTA, with the exception of Gibraltar, were formally associated with the EU, with the relationship enshrined in the provisions of Part IV of the *Treaty on the Functioning of the European Union* and the rules and principles governing the association spelt out in the various editions of the OAD.

3.2 In 2003 the Association of the Overseas Countries and Territories of the European Union (OCTA) was set up as a non-profit association under Belgian law 'to develop effective working relationships as a group with the EU institutions' among other objectives. OCTA was the main channel through which the UKOTs of Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Montserrat, Pitcairn, St Helena Ascension and Tristan da Cunha, and Turks and Caicos Islands (the UKOTs) interacted with the EU.

3.3 The 2013 OAD established three 'instances of association' to facilitate policy dialogue between the OCTs including the UKOTs and the EU. These were:

3.3.1 The annual EU-OCT Forum – a high level annual event chaired by the Commissioner in charge of International Cooperation and Development and attended by the leaders of the OCTs, representatives of the Member State to which the OCTs are linked (including the UK), and representatives of the European Investment Bank.

3.3.2 The working parties, also known as Partnership Working Parties (PWPs) – technical meetings on matters of specific concern to the OCTs; and

3.3.3 Quarterly Tripartite - meetings between the OCTs, the Commission and representatives of the Member State to which the OCTs are linked (including the UK).

3.4 The UK Overseas Territories participated in the EU-OCT Forum, PWPs and Tripartite meetings individually and also as a group via their OCTA membership. The UK and the other Member States to which the OCTs were linked (France, Denmark and the Kingdom of the Netherlands) also attended these mechanisms of policy dialogue with the EU. The UK representative at PWPs and Tripartite Meetings was usually an official within the Overseas Territories Directorate (OTD) of HMG's Foreign Commonwealth and Development Office responsible for EU-OCT co-ordination. The Head of OTD would usually represent the UK at the annual EU-OCT Forum.

3.5 In addition to policy dialogue the OAD also provided cooperation in areas of mutual interest. These are set out in Article 5 of the OAD as including:



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- (a) the economic diversification of OCTs economies, including their further integration in world and regional economies;
- (b) the promotion of green growth;
- (c) the sustainable management of natural resources, including the conservation and sustainable use of biodiversity and ecosystem services;
- (d) the adaptation to and mitigation of impacts of climate change;
- (e) the promotion of disaster risk reduction;
- (f) the promotion of research, innovation and scientific cooperation activities; and
- (g) the promotion of social, cultural and economic exchanges between the OCTs, their neighbours and other partners.

3.6 Under the OAD the UK Overseas Territories benefited from development cooperation funds extended by the EU through the European Development Fund (EDF). Under the 11th EDF for the period 2014 to 2020 nine UKOTs were eligible for territorial allocations totaling 76.85 million euros. The Caribbean UK Overseas Territories were also eligible to participate in the Caribbean regional envelope of €40 million for regional cooperation in the area of resilience, sustainability, energy and marine biodiversity. All the UKOTs were eligible to participate in the €17 million Thematic 'Green Overseas – GO Programme', focusing on energy transition and climate change resilience.

3.7 EDF11 included a reserve fund in case of emergencies such as natural disasters. The reserve fund was used in 2017 for post hurricane support following hurricanes Irma and Maria. Anguilla received €2.8 million, the British Virgin Islands €2 million, Montserrat €0.32 million and the Turks and Caicos Islands €2.92 million.

3.8 The OAD also allowed the UKOTs to participate in Union programmes funded by the EU Budget including Horizon 2020 relating to research and development, Erasmus and BEST (the Biodiversity and Ecosystem Services in Territories of European Overseas scheme).

3.9 Trade and trade related cooperation were also included in the OAD with the OCTs including the UKOTs benefiting from non-reciprocal access to the EU market for goods and services.

3.10 The OAD thus brought real financial and economic benefits to the UKOTs, as well as providing mechanisms for policy dialogue with the EU and capacity building opportunities.

The table below summarises what the UK Overseas Territories gained from the EU, and what has so far replaced that support since the TCA between the EU and the UK Government was finalized.



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	Under UK membership of the EU	Post-Brexit
1. Tariff free access to EU markets	Tariff free and quota free access for goods from the Territories into the EU as well as preferential Rules of Origin.	Territory goods now face tariffs when entering the EU market which is a significant barrier to entry. Whilst the removal of these tariffs is still to be resolved, HMG has made it possible for the Overseas Territories to be included within new Trade Agreements negotiated by the UK, if both parties to the agreement are supportive. Whilst this is welcome, it is not a substitute for loss of trade with the EU, so the tariffs should be lifted at the earliest opportunity.
2. EU Cooperation.	The Territories benefited from development funds through the EDF. These funds included a territorial allocation for eligible Territories as well as regional programmes and a thematic programme.	The Territories are not a party to the new OADG which provides EUR 500 million from 2021-27 for funding relating to shared priorities of the Green New Deal, digital and sustainable growth and jobs, and other OCT strategic priorities.
3. Financial services regulation	Ongoing cooperation over financial services regulation.	The Territories are adversely affected by the decline in the UK Government's ability outside the EU to shape prevailing international regulations and rules that govern the financial services sector globally.
4. European Development Fund (EDF) support	The EU was a significant donor to the UK Overseas Territories. In 2014-20, EDF 11 funding to the OCTs was EUR 364.5 million.	The UK Government has indicated that EU funding will not be replaced like for like. Pre-existing funding streams for Territories are: Development Assistance for territories eligible for ODA, CSSF, Darwin and Blue Belt, available on a case by case basis.
5. Diplomatic influence in the EU	The 2013 OAD established the three 'instances of association' to facilitate policy dialogue between the OCTs, including the UKOTs, and the EU: <ul style="list-style-type: none"> - The annual EU OCT Forum - PWP's - Tripartite Meetings 	There are no mechanisms for policy dialogue between the EU and the Overseas Territories.
6. Funding to adapt the natural	Small island states are heavily affected by climate change. Failure to adapt and tackle climate change leads to catastrophic events,	The UK Government has uplifted the Darwin Plus fund to support biodiversity and the environment



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<p>environment and mitigate the impact of climate change</p>	<p>loss of life, and economic disaster. The Territories received approximately GBP 1 million a year through the EU’s Best (Biodiversity and Ecosystem Services in Territories) Initiative.</p>	<p>in the Territories. However, the Territories do not benefit from a dedicated climate change fund and have lost out on dedicated climate change funding under the EU Green Deal that includes the OCTs.</p>
<p>7. European Investment Bank</p>	<p>Financing mechanisms for capital infrastructure projects in the UK Overseas Territories was made available through the facilities of the European Investment Bank (EIB).</p>	<p>No replacement support for the EIB has yet been proposed.</p>
<p>8. EU Horizontal Programmes</p>	<p>Support was provided via the EU’s ‘horizontal programmes’ for sectors such as research, the environment, education, and competitiveness. Erasmus funding was also critical for the development of the education sector in some Territories</p>	<p>No replacement support for EU horizontal funding has yet been proposed although the Territories are eligible to participate in the Turing Scheme.</p>

4. Representation of the UKOTs during the Brexit Negotiations

4.1 As the Brexit negotiations between the UK and the EU was deemed an “external” matter, the Overseas Territories understood from the outset that the UK negotiating team would represent the interests of the Overseas Territories in the negotiations. At the same time, HMG sought to engage with the Overseas Territories before and during these negotiations, in order to fully understand the issues of relevance to the Overseas Territories and then to keep them updated and to take on-board real-time feedback.

4.2 A Joint Ministerial Council Overseas Territories – Europe Negotiations (JMC (OT-EN)) was established as the primary forum for dialogue on the UK’s exit from the EU. The objective of the JMC (OT-EN) was to facilitate political engagement and collaboration between the UK Government and the governments of the Overseas Territories to ensure that the Overseas Territories’ requirements were taken into account during the process of the UK exiting the EU.

4.3 The JMC OT-EN met on 7 February 2017, 12 July 2017, 14 June 2018 and 28 June 2019.

4.4 Technical level roundtable meetings with respect to trade, EU funding, free movement and fisheries and agriculture were established under the JMC (OT-EN).

4.5 When agreeing the terms of reference for the negotiations, the UK was unable to agree with the EU for the inclusion of the Overseas Territories and therefore it was never possible for the impact of EU Exit on the Overseas Territories to be discussed in the



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negotiations. This was a point that Michel Barnier, the EU's Chief Negotiator routinely made to the UK negotiators and in writing to the Overseas Territories.

4.6 Despite this, the UK negotiating team endeavored to raise the issues of the Overseas Territories on several occasions, and sought a variety of creative solutions to try and resolve the impasse. This included narrowing the focus of the UK ask on behalf of the Overseas Territories to simply trade in goods and then narrowing the territories on behalf of which they were negotiating. We were, and remain, extremely grateful for these efforts. However, the EU were always very clear – their negotiating team had no mandate to discuss issues relating to the Overseas Territories so they could not be discussed.

4.7 When the Transition Period ended on 31 December 2020, the UK's Overseas Territories lost future access to all the benefits they had enjoyed under the OAD:

5. In response to the two questions posed by the Committee as to how the UKOTS should be represented by the UK in its dealings with the EU, the following recommendations are made:

5.1 The UK Overseas Territories should continue to engage individually with the EU on a number of matters including trade and financial services. As stated above it is for individual Territories to comment on their representation by the UK in these areas should they wish. There are nonetheless several recommendations that UKOTA wish to make.

OT – UK – EU Relationship

5.2 Routine engagement between the UK's Mission to the EU and Representatives of the Overseas Territories should be established. This will enable the UK Mission to hear first-hand the priorities of the Territories, and for the Territories to build a relationship with the UK Mission.

5.3 The Overseas Territories should have a dedicated Desk Officer within the UK Mission to the EU to provide support and assistance to the Overseas Territories.

5.4 The UK should be encouraged to define the diplomatic level of engagement for Territories within the European Commission under its existing relationship.

Market Access

5.5 Given the significance of the EU market to several of UKOTs, it is vitally important that the UKOTs' tariff and quota free access to this market is restored at the earliest opportunity. Anything less will continue the detrimental impact tariffs are having on the economies and government revenues of those UKOTs that trade with the EU. HMG should continue to look for opportunities to open negotiations with the EU regarding a mutually beneficial



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agreement, similar to the OAD, that would codify the nature of our new relationship with the EU.

Financial Services

5.6 The UK no longer has representation within the EU Code of Conduct (Business Taxation) to advocate and clarify financial standing in regulatory and tax matters on behalf of the UK Overseas Territories. Without consultation with the UK Government, the EU through the Code of Conduct Group continuously assesses the tax measures of the UK Territories and imposes domestic policy measures upon them which the EU deems to be 'good tax governance principles'. The same holds true for economic substance and Anti Money Laundering (AML) matters. In most matters, the EU (notably not a global standard setting body) has imposed measures that exceed international standards. Such domestic policy measures in the EU may differ from agreed international standards. The implications of failing to meet such policy measures, in most instances subject to tight deadlines and without consideration of financial resources, are that Territories are placed in jurisdictional reputational risk to their financial services industry by their inclusion on the EU list of non-cooperative jurisdictions in relation to tax purposes. This measure leaves the Overseas Territories to defend their own interests against an EU trading bloc without the advocacy of the UK Government. It may be beneficial if the UK were able to facilitate a greater synergy between its financial centre (London) and those Territories that have international financial centres. At present certain NGOs dominate the conversation around the EU Parliament with an interest to present inaccurate information on the known and tested global measures of financial transparency of the Overseas Territories. This NGO dominance is a direct result of the UK's withdrawal from the EU.

5.6 UKOTA thus asks the committee to recommend that Her Majesty's Treasury provide support and assistance to the Overseas Territories, if they require, in their discussions with the EU about financial services cooperation, equivalence and related matters, including best practice and transparency.

Regional cooperation

5.7 The EU Overseas Association Decision including Greenland of 2021 (OADG) Article 7 provides for 'Regional Cooperation, regional integration and cooperation with partners' including the UKOTs. The UK Overseas Territories should be given scope to establish a relationship with the EU and the EU OCTs to participate in regional cooperation programmes established pursuant to the 2021 OADG should they be of benefit. The UK Government should facilitate the participation in regional cooperation programmes, including, if necessary, financial support, when the same will benefit the Overseas Territories specifically in the areas of climate change, climate resilience, and climate adaptation.



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Annex

The United Kingdom Overseas Territories Association (UKOTA) exists to promote the interests of the Territories and the co-operation between them. Specifically, UKOTA demonstrates the collective and individual partnerships between the Territories and HM Government.

The creation of UKOTA led to the Territories' designation as Overseas Territories (from Dependent Territories), the creation of the Overseas Territories Department at the Foreign and Commonwealth Office and the evolution of the Joint Ministerial Council meetings. To date UKOTA has achieved success in a number of areas which include ensuring that the people of BOTs are eligible for full British Citizenship, visa-free entry to Europe and 'home fees' for BOT students studying in the UK.

The Mission Statement of UKOTA is:

- To provide a forum for exchange of ideas and discussion of relevant issues of common interest
- To work for the mutual benefit of Members of the Association
- To share information about issues of interest and benefit to the Members
- To provide a forum for exchange of ideas and discussion of relevant issues of common interest
- To make recommendations to the Governments of the Overseas Territories on appropriate courses of action where relevant
- To develop relationships, as a group, with HMG, UK Parliament, the European Union, the Commonwealth and other appropriate organisations and institutions.