

OPINION

The Background

1 I am asked to advise on this question:

"Does anything in the treaty between the EU and the UK setting out Gibraltar's future relationship with the EU undermine UK sovereignty or jurisdiction over Gibraltar?"

2 Gibraltar is a British Overseas Territory. It was ceded to Great Britain by Spain under the Treaty of Utrecht 1713. It has enjoyed British sovereignty since then.

3 In February 2026, agreement was reached between the "Parties" as defined in Article 3.1(a): "the European Union and the United Kingdom, in respect of Gibraltar".

4 This Treaty is the product of 4 years of negotiations between the Parties following the decision of the United Kingdom to end its membership of the European Union. Spain is not a party to the Treaty but was, of course, extensively consulted by the European Union during those negotiations as a Member State with a particular interest.

The general provisions of the Treaty

5 Article 1 states the purpose of the Treaty:

"The objective of this Agreement is to establish a mutually cooperative relationship between the Parties, which also promotes shared prosperity and close and constructive relations in respect of Gibraltar and the adjacent area in the Kingdom of Spain, in particular the territory of the municipalities that make up the Mancomunidad de Municipios del Campo de Gibraltar."

6 Article 3.3 states:

"Any reference to the 'United Kingdom' in this Agreement or any supplementing agreement shall be understood as referring to the United Kingdom as the State being responsible for the external relations of Gibraltar."

7 Article 336.1 states that the Treaty

"shall enter into force on the first day of the month following that in which both Parties have notified each other that they have completed their respective internal requirements and procedures for establishing their consent to be bound".

Article 336.2 allows the Parties to agree to "provisionally apply this Agreement" from an earlier date if administrative arrangements are in effect.

8 The European Commission has produced a Proposal for a Council Decision to comply with European Union requirements.

9 In the United Kingdom, sections 20-25 of the Constitutional Reform and Governance Act 2010 require (subject to irrelevant exceptions) that, prior to ratification of a Treaty, a copy must be placed before Parliament, with an Explanatory Memorandum, allowing for Parliamentary consideration. See also Erskine May (2019, 25th edition) at paragraph 7.36. Section 25(1) of the 2010 Act defines "treaty" to mean

"a written agreement -

- (a) between States or between States and international organisations, and
- (b) binding under international law".

10 Article 334 of the Treaty provides for "Termination" of the Treaty:

"Either Party may terminate this Agreement by written notification through diplomatic channels. This Agreement and any supplementing agreement shall cease to be in force on the first day of the twelfth month following the date of notification."

11 Article 2 of the Treaty is headed "Sovereignty". It states

"This Agreement, any supplementing agreements as referred to in Article 3, any administrative arrangements or other arrangements related to this Agreement, and any measures or instruments or conduct taken in application or as a result thereof, or pursuant thereto, shall be without prejudice to, and shall not otherwise affect the respective legal positions of the United Kingdom of Great Britain and Northern Ireland or of the Kingdom of Spain with regard to sovereignty and jurisdiction, and shall not constitute the basis for any assertion or denial of sovereignty including in legal proceedings or otherwise."

See also footnote 38 to Article 271 of the Treaty discussed in paragraph 47 below.

The substantive provisions of the Treaty

12 The Treaty contains seven Parts (containing 336 Articles) and forty-three Annexes.

13 The seven Parts are:

Part 1: Common and institutional provisions.

Part 2: Circulation of persons.

Part 3: Economy and trade.

Part 4: Frontier workers.

Part 5: Financial provisions.

Part 6: Dispute settlement.

Part 7: Final provisions.

14 The Treaty is accompanied by a series of Administrative Arrangements entered into between the United Kingdom and Spain which give operational effect to key provisions of the Treaty.

15 I shall identify what I see as the main provisions relevant to sovereignty or jurisdiction and then comment on their implications.

Part One: Common and institutional provisions

16 I have referred to some of the relevant Articles in Part One of the Treaty in paragraphs 5-6 and 11 above.

17 Article 18.1 of the Treaty addresses interpretation:

"The provisions of this Agreement and any supplementing agreement shall be interpreted in good faith in accordance with their ordinary meaning in their context and in light of the object and purpose of the agreement in accordance with customary rules of interpretation of public international law, including those codified in the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969."

This recognises and implements Article 31.1 of the Vienna Convention on the Law of Treaties 1969 which states:

"A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose".

18 By Article 19 of the Treaty:

(1) The United Kingdom, in respect of Gibraltar, will be responsible for giving effect in its domestic law to a number of EU measures referred to in the Treaty. For

example, Article 14 on personal data protection.

- (2) Where such EU laws are amended or supplemented or replaced in the future, the United Kingdom (in respect of Gibraltar) has a discretion whether to accept and implement such provisions in respect of Gibraltar. But if it chooses not to do so,

"this Agreement shall be considered terminated unless the Cooperation Council, after a careful examination of ways to continue the Agreement, decides otherwise within ninety days" (Article 19.5).

- 19 Article 20 adds that the provisions of EU law which are given effect in respect of Gibraltar

"shall be interpreted and applied in accordance with the methods and general principles of Union law and shall in their implementation and application be interpreted in conformity with the relevant case law of the Court of Justice of the European Union."

- 20 Article 22 of the Treaty establishes a "Cooperation Council" comprising representatives of the European Union and of the United Kingdom, in respect of Gibraltar. It will be co-chaired by a Member of the European Commission and a representative of the United Kingdom at Ministerial level. Its function is "to oversee the attainment of the objectives of this Agreement and any supplementing agreement".

Part Two: Circulation of Persons

- 21 The provisions in Part Two of the Treaty are designed to implement the sixth Recital to the Preamble:

"CONSIDERING that all current physical barriers to the circulation of persons between Gibraltar and the Schengen area should be removed, while preserving

the integrity of the Schengen area through appropriate controls, measures and safeguards, and taking into account that Gibraltar does not participate in and is not associated to the Schengen area."

- 22 The Schengen area is a visa-free zone, allowing people to travel freely between many (not all) EU States (plus others such as Switzerland) without internal border checks. The Treaty seeks to ensure that Spain, on behalf of the EU, conducts checks on those who enter Gibraltar, since there will be no further checks on travel between Gibraltar and Spain (or between Gibraltar and other Schengen area countries).
- 23 The provisions in Part Two are complex and detailed. I shall identify the main points.
- 24 Article 29 addresses "Border crossing points". The Gibraltar airport and port are designated as Schengen border crossing points. Consequent to this, the need for checks at the land border between Gibraltar and Spain will disappear. That land border will operate in the same way as it does between Schengen States. This is a key aspect of the Treaty.
- 25 The Treaty provides for cumulative border checks at the border crossing points in the airport and port. Every person entering Gibraltar will be subject to a Gibraltarian immigration check performed by Gibraltarian border officers applying Gibraltar laws and to a Schengen immigration check performed by Schengen e-gates overseen by Spanish border officers (on behalf of the EU) applying EU laws. Exit controls will also be performed in a similar manner.
- 26 This is similar to the St Pancras border controls model for the Eurostar train. At St Pancras, an exit and an entry check are carried out. In Gibraltar, however, there are two

sets of *entry* checks happening cumulatively (with the same on exit). The consequence is that a person may be granted entry under one immigration control regime but not the other.

27 The Gibraltar controls and the Schengen e-gates will be on the British side of the terminal building. There will also be a Schengen Control Booth next to these areas, also on the British side of the terminal. Spanish police officers will be in those booths. Their role is to oversee the Schengen e-gates and also to conduct checks when the e-gates are not working or cannot be used (for example, for children under the age of 12). Those officers can also come out of the booth to the British side of the terminal whenever a traveller needs to be escorted to the Second Line Check Area (see paragraph 28 below).

28 Article 26.1 defines a "Second Line Check" to mean

"a further check which may be carried out in a special location away from the location at which all persons are checked (first line)."

Part of the Second Line Checks Area will be in Spain and a part in Gibraltar. It will allow Spanish officers to conduct second line checks in the part which is in Spain and Gibraltarian officers to do the same in the part which is in Gibraltar whenever second line checks are necessary and executive follow-up action is required. By reason of Article 27, when a second line check is carried out by Spain it is in accordance with relevant EU law.

29 Article 32.2 states that where, following border checks carried out by the United Kingdom (in respect of Gibraltar) and by Spain, the United Kingdom (in respect of Gibraltar) intends to refuse entry to a person (and there is no need for other coercive action against the person, that is arrest or detention), they shall escort that person to the

Second Line Checks Area. If Spain determines that the person has a right to free movement within the EU (for example because he or she is an EU national), Spain may admit the person into Spain.

- 30 Article 34.2 states that where alerts in the respective databases and information systems require coercive action to be taken, the person concerned shall be escorted to the Second Line Checks Area (unless that would jeopardise the nature of any measures to be taken).
- 31 Article 34.5 provides that where there exists an alert requiring coercive action to be taken (whether under the Gibraltarian or Schengen control) the traveller will be given a choice as to whether to proceed with the control (and be arrested) or fly back to where they came from (and possibly be arrested upon arrival).
- 32 It follows that a British citizen travelling from the United Kingdom to the British territory of Gibraltar in order to spend time exclusively in Gibraltar may be denied entry to Gibraltar by a Spanish police officer and so have the option of being removed back to the United Kingdom.
- 33 Article 43 recognises that persons resident in Gibraltar are entitled to enter Gibraltar through the border crossings and so will enjoy Schengen rights. Such persons are identified (and distinguished from other British passport holders) by their possession of an identity card (if Gibraltarian) or a residence permit (if non-Gibraltarian but residing in Gibraltar).
- 34 In consequence, Article 45 requires the United Kingdom to inform the Cooperation Council whenever it proposes to make changes to the conditions in Gibraltar legislation

concerning Gibraltar identity cards and residence permits. The Council will then give an Opinion on whether the changes are compatible with the Treaty. This is designed to meet EU concerns that the United Kingdom, in respect of Gibraltar, should not be able to develop practices akin to the "golden passports" which some Member States have introduced, selling passports which confer valuable Schengen rights.

35 Articles 50 and 51¹ state that the United Kingdom, in respect of Gibraltar, is responsible for issuing or renewing residence permits in respect of Gibraltar. Articles 50-51 require that Spain is notified before a residence permit is issued or renewed, so Spain can veto the grant if the person concerned is considered to be

"a threat to public policy, internal security, public health or the international relations of any of the Member States."

36 Articles 50-51 also provide that

"Where there are grounds to object to a person holding a residence permit, including when the holder is considered to be a threat to public policy, internal security, public health or the international relations of a Member State ... the competent authorities of the Kingdom of Spain shall request the competent authorities of the United Kingdom, in respect of Gibraltar, to withdraw that residence permit".

The United Kingdom is then obliged to "withdraw the residence permit without delay".

The person concerned is entitled to be told the reasons for the Spanish decision, and of the appropriate remedies under Spanish and EU law.

¹ Articles 50 and 51 of the Treaty are identical. Article 51 takes effect once the Visa Information System ("VIS") operations commence pursuant to Regulation (EU) 2021/1134.

37 In respect of third country nationals, Gibraltar will no longer align itself with United Kingdom policy on the admission of persons for a short stay. Instead it will align itself with EU visa policy. As Article 47.3 states:

"Where the main purpose is to stay in Gibraltar, the Kingdom of Spain, the neighbouring Member State, shall issue the visa".

However, Article 47.4 requires Spain to notify the United Kingdom, in respect of Gibraltar, when it intends to issue such a visa. If the United Kingdom, in respect of Gibraltar, considers that such a visa should not be issued

"on account of sufficiently serious reasons pertaining to public policy, internal security or public health",

it shall inform Spain. In that case any visa issued by Spain

"shall not be valid for entry and stay in Gibraltar, which shall be marked in the 'comments' section of the visa".

Spain may, of course, issue a visa for the entry of that person into Spain. If such a person were to enter into Gibraltar, he or she would be there illegally.

38 Article 53 provides that where a person makes an application for international protection, such as asylum, in Gibraltar, the United Kingdom (in respect of Gibraltar) is responsible for the examination of that application. Spain is to be informed of any such application. It is entitled to object to the granting of international protection but "the final decision" is for the United Kingdom, in respect of Gibraltar. Where a person is granted international protection by the United Kingdom, in respect of Gibraltar, he or she is to be issued with a residence permit, but the territorial validity is limited to Gibraltar.

39 Articles 54-56 provide for information exchange between Member States and the United Kingdom, in respect of Gibraltar, for surveillance of persons by Spain and by the United Kingdom, in respect of Gibraltar, as part of a criminal investigation and for pursuit of those suspected of involvement in criminal offences. The powers apply to officers of Spain and of the United Kingdom, in respect of Gibraltar, on a reciprocal basis. Annex 8 lists the relevant criminal offences.

Part Three: Economy and Trade

40 Recital 10 to the Preamble of the Agreement states:

"CONSIDERING that all physical barriers to the movement of goods by land between Gibraltar and the Union should be removed, while protecting the integrity of the Union's Single Market and the Parties' financial interests ...".

41 Article 247.1 provides for Gibraltar to form an integral part of the EU customs territory. But that is subject to a decision by the Cooperation Council and is, I understand, unlikely to occur.

42 Unless and until it does occur, a specific regime will apply under Articles 242-245. Its basic features are the abolition of customs duties on goods moving between the EU and Gibraltar and the application of provisions equivalent to those which exist under EU law on the free movement of goods.

43 The central features of the new regime will be:

- (1) All customs clearance formalities for goods imported to, and exported from, Gibraltar will be carried out by designated customs posts located in Spain (Algeciras, La Linea, Sagunto) applying the Union Customs Code ("UCC").

- (2) Gibraltar will abolish its current regime on import duties so that goods imported from a non-EU country will be subject to whatever EU customs duties may be applicable to those goods under the EU's Common External Tariff.
- (3) Gibraltar will not form part of the EU VAT or excise territories, but will introduce a new transaction tax inspired by aspects of the EU VAT regime and will also apply excise duties in accordance with the EU's Excise Directives.
- (4) All goods placed on the market in Gibraltar (whether imported or produced in Gibraltar) will have to comply with EU standards.
- (5) There will be close cooperation between the customs authorities of Gibraltar and Spain.

44 Article 247.3 provides that, subject to the derogations in Article 247.4, and with the further exception of goods carried by travellers in their personal luggage, goods

"shall be brought into Gibraltar and be exported from Gibraltar only by land and in accordance with the rules laid down in Annex 19, 21, 22 and 24".

Annexes 19 and 21 set out the relevant procedures and roles of the designated customs points in Spain. Annex 19 applies to the import and export of EU goods and Annex 21 applies to non-EU goods. Those Annexes also address the operation of special customs procedures. These are customs warehouses, inward processing and temporary admission. Gibraltar customs are responsible for authorising and supervising these procedures under Annex 19 but both Spanish customs and Gibraltar customs play this role under Annex 21 (with Spanish customs playing the preponderant role under Annex

21, Article 1.1).

45 Article 265, read with Annex 22, allows for supervision of the operation of this regime "jointly", with Spanish customs officers coming into Gibraltar for this purpose on prior notification.

46 The Treaty provides for the possibility that Gibraltar may be required to align aspects of its indirect taxation rates to those in Spain:

(1) Article 248, read with Annex 24, provides that an independent consultative body is to be established in order to monitor significant distortions in trade between Gibraltar and the closest Spanish region (Campo de Gibraltar) that are linked to differences in the levels of transaction tax and excise duties charged on goods or categories of goods by Gibraltar, compared to the rates of VAT and excise duties charged by Spain on the same goods or category of goods. If such distortions are established, Gibraltar will be required to apply rates that will eliminate the distortion. See Article 2.3 of Annex 24.

(2) With respect to excise duties, three years after the entry into force of the Treaty, Gibraltar will be required to apply excise rates not diverging by more than a specified amount from the excise rates applied in Spain: see Article 6.2(b) of Annex 24. In addition, with respect to tobacco, a retail price difference of not more than a specified amount will apply between the price of a packet of cigarettes in Gibraltar as compared to Spain: see section 3 of Appendix 2 to Annex 24.

47 The Gibraltar Airport is a particularly sensitive issue for Anglo-Spanish relations concerning Gibraltar. That is because Spain considers that the isthmus on which the

Airport is located was unlawfully occupied by British forces after the Treaty of Utrecht 1713. Hence footnote 38 to Article 271 which states that nothing in the Treaty

"affect[s] the respective legal positions of the Kingdom of Spain or of the United Kingdom of Great Britain and Northern Ireland with regard to sovereignty and jurisdiction over the territory on which the airport is located and shall not constitute the basis for any assertion or denial of sovereignty including in legal proceedings or otherwise."

48 Articles 271-275 of the Treaty allow for flights between Gibraltar and the EU. This was not possible whilst the United Kingdom was a member of the EU because of Spanish opposition. The EU aviation measures specified in Article 273.3-6, read with Annex 25, will apply.

49 Article 273.7(b) provides for joint inspection visits to Gibraltar Airport to monitor compliance with Annex 25.

50 Article 274 provides for a joint venture company to be constituted under the shared responsibility of Spain and the United Kingdom (in respect of Gibraltar). It is to be responsible for selecting, through regular public tender, and supervising the commercial company in charge of the day-to-day management of Gibraltar Airport.

Part Four: Frontier Workers

51 Articles 291-298 on Frontier Workers largely replicate EU rules on the free movement of workers which had remained as retained EU law in Gibraltar.

Part Five: Financial Provisions

52 Article 299 requires the Cooperation Council to

"establish a financial mechanism to promote cohesion between Gibraltar and the contiguous frontier zone, including on matters of training and employment."

Part Six: Dispute Settlement

- 53 Articles 300-327 contain provisions for settling disputes between the Parties concerning the interpretation and application of the Treaty and supplementing agreements. The process involves arbitration, with any question of interpretation of a concept or a provision of EU law to be referred to the Court of Justice of the EU.
- 54 The provisions are largely taken from the Trade and Co-Operation Agreement entered into by the EU and the United Kingdom.

Part Seven: Final Provisions

- 55 Articles 328-324 contain standard provisions, for example on Termination of the Treaty (see paragraph 10 above).

Analysis

- 56 As recognised in Article 2 of the Treaty (see paragraph 11 above), the Agreement
- "shall be without prejudice to, and shall not otherwise affect the respective legal positions of the United Kingdom of Great Britain and Northern Ireland or of the Kingdom of Spain with regard to sovereignty and jurisdiction, and shall not constitute the basis for any assertion or denial of sovereignty including in legal proceedings or otherwise."
- 57 Article 2 states one of the fundamental objects and purposes of the Treaty by reference to which the Treaty is to be interpreted and applied: see Article 18.1 (paragraph 17

above).

- 58 In my opinion, nothing in the Treaty provides a basis to question or undermine or qualify the sovereignty and jurisdiction of the United Kingdom in respect of Gibraltar.
- 59 The Treaty recognises and accepts that the United Kingdom and Spain have different views on sovereignty and jurisdiction. But it wisely - indeed inevitably, if any agreement was to be reached - focuses on practical measures to address the relationship between the EU and the United Kingdom in respect of Gibraltar.
- 60 Those practical measures certainly confer powers on the EU, and in some respects Spain as the relevant Member States, and involve the application of EU law to be applied (in the event of a dispute) by the Court of Justice. But in the judgment of the United Kingdom and in the judgment of the Government of Gibraltar, those Treaty provisions greatly benefit the people of Gibraltar, having regard to the practical problems and economic challenges they face, especially after the United Kingdom decided to leave the EU. Free movement of persons and free movement of goods between Gibraltar and the EU (and, in particular, Spain as the closest Member State) are considered vital to the economy of Gibraltar. There is no doubt that the people of Gibraltar wish, while remaining an overseas territory of the United Kingdom, to maintain close relations with the EU for economic, free movement and other reasons. In the EU Referendum in 2016, 95.9% of Gibraltar residents voted to remain in the EU, on a turnout of 83.5%.
- 61 Any international treaty (with rare exceptions) involves the State conferring powers or rights on other persons. That is true whether the State reaches an agreement with regard to the role of an international body (such as the Council of Europe or the International Criminal Court) or commits itself to follow rules relating to trade (for example the World

Trade Agreement). The Trade and Co-Operation Agreement with the EU has been implemented in the United Kingdom by the European Union (Future Relationship) Act 2020.

62 To enter into such Treaties is an exercise of sovereignty and jurisdiction. By this Treaty, the United Kingdom in respect of Gibraltar has chosen to exercise its sovereignty and jurisdiction in the manner described above because it believes, after lengthy and hard-fought negotiations, that it has secured a deal which will result in considerable benefits to the people of Gibraltar. That is a political judgment which it is for the Government of the United Kingdom in respect of Gibraltar to make.

63 Even if (contrary to my view) any provision of the Treaty might otherwise provide a basis to question or qualify the sovereignty and jurisdiction of the United Kingdom in respect of Gibraltar, Article 334 of the Treaty (see paragraph 10 above) retains for the United Kingdom in respect of Gibraltar the power to terminate the Agreement. That further confirms that the sovereignty and jurisdiction of the United Kingdom in respect of Gibraltar is retained.

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26 February 2026

IN THE MATTER OF

THE TREATY AGREED BETWEEN

THE EUROPEAN UNION

and

THE UNITED KINGDOM

IN RESPECT OF GIBRALTAR

OPINION

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