

THE CHANNEL ISLANDS AND BREXIT

Summary

1. When the UK leaves the EU, the current basis for the Channel Islands relationship with the EU (Protocol 3 of the UK Accession Treaty) will no longer apply. Essentially this means that, subject to the outcome of UK/EU negotiations on the future relationship, the Islands will no longer be in the single market for trade in goods or the EU Customs Union. EU 27 nationals are a vital part of the Islands' communities. Securing their rights as part of the Brexit process is a key priority. However, for most purposes the Islands are already outside the EU ("third countries"). The relationship between the Islands and the EU in the areas not covered by Protocol 3 is unaffected by Brexit. Consultative mechanisms at both political and official level have been established with the UK Government to ensure that Channel Islands interests are taken into account in the Brexit process.

Introduction

2. The Channel Islands consist of the Bailiwicks of Guernsey and Jersey. They are British Crown Dependencies (CDs), with a direct allegiance to the British Crown which goes back over 800 years. The Channel Islands are not part of the United Kingdom, but the UK is constitutionally responsible for the Islands' defence and for formal international representation, while Channel Islanders are British Citizens.
3. The formal relationship between the Channel Islands and the EU is enshrined in Protocol 3 of the UK's 1972 Accession Treaty, and confirmed in what is now Article 355 (5) (c) of the EU Treaties. Under Protocol 3, the Islands are part of the Customs Union and can trade in goods and agricultural products as if part of the EU. Protocol 3 also requires the Channel Islands to treat all natural and legal persons of the EU in a non-discriminatory way. However, the Channel Islands are not bound by other aspects of EU free movement rules and are able to maintain restrictions on the right to reside and work, in accordance with insular law, provided this is done in a non-discriminatory way.
4. Except for the limited areas specified in Protocol 3, Guernsey and Jersey are outside the EU and are therefore treated as non-EU jurisdictions or 'third countries'. Since 1972, the Channel Islands have built up their own direct relationship with the EU, by voluntarily applying relevant EU standards and developing other forms of cooperation, which is separate from and additional to the formal Protocol 3 relationship through the UK. (*For further information, see the separate CIBO background notes on: the overall Channel Islands/EU relationship; tax cooperation; and financial services*)

The UK "Brexit" referendum

5. Following the UK election in May 2015, the new UK government announced that it would hold an "in-out" referendum on UK membership of the EU following the negotiation of a new settlement for the UK in the EU.
6. Since Guernsey and Jersey have their own directly elected legislative assemblies, and are not represented in the UK or European Parliaments, Guernsey and Jersey residents do not form part of the UK electoral franchise. This was the case for the June 2016 EU referendum. Guernsey and Jersey residents that were former UK residents had the right to vote in the referendum if they had lived outside the UK for less than 15 years.

7. During the UK referendum campaign Guernsey and Jersey maintained the long-held positions that
(a) the UK's EU referendum – and the UK's relationship with the EU - was a matter for the UK but
(b) Guernsey and Jersey were not themselves seeking to change their relationships with the EU, essentially as third countries apart from free movement of goods with the EU.
8. The referendum was held on 23 June 2016, with 52% voting for the UK to leave the EU, and 48% favouring remaining in the EU. The voter turnout was 72%.

The UK Article 50 Letter

9. On 29 March 2017, the UK Prime Minister wrote to the President of the European Council to start the formal process of leaving the EU under Article 50 of the EU Treaties.
10. In advance of this, the legislative assemblies in Guernsey and Jersey held their own debates and their views were formally communicated in letters from the respective Chief Ministers to the Prime Minister before the UK's Article 50 Letter was sent. These letters emphasised amongst other things the importance that both Guernsey and Jersey attached to providing certainty on the rights of those EU nationals residing in Guernsey and Jersey.
11. The UK Prime Minister's response to these letters highlighted the importance of the relationship between the UK and the Channel Islands, recognised Guernsey's and Jersey's own parliamentary processes in respect of Brexit, and reiterated the UK's commitment to ensuring the two Bailiwicks' interests would be properly taken into account.

Brexit consultation arrangements between the Channel Islands and the UK

12. Since the triggering of Article 50, there has been regular engagement between the three CDs (the Isle of Man being the third) and the UK government on Brexit. The objectives of this engagement are to ensure that the CDs are kept abreast of developments in UK government thinking and of developments in the negotiations between the UK and the EU; and to ensure that, in turn, the UK government properly understands the particular interests of the CDs and can take these interests into account in the negotiations.
13. The Chief Ministers of the CDs have held quarterly meetings with Robin Walker MP, the Minister at the UK Department for Exiting the European Union with responsibility for managing the UK's engagement with the CDs in respect of Brexit. Mr Walker also visited Guernsey and Jersey in August 2017. At official level, meetings have been held with the lead officials in the UK government on areas of key importance for the CDs such as customs union and trade, immigration, transport, agriculture, fisheries, financial services, and the digital economy.

Engagement with the EU Institutions

14. The Channel Islands do not engage formally with the Brexit Task Forces of the EU Institutions (Council, Commission, European Parliament), given the consultative arrangements established and agreed with the UK, as described above. However, in the course of normal ("business as usual") engagement with the EU Institutions, Channel Islands representatives have consistently underlined that:
 - Brexit was a decision of the UK government and the UK people. The Channel Islands had not been looking for any change to our existing relationship with the EU.

- The direct impact of Brexit on the Channel Islands own relations with the EU will be relatively small: Guernsey and Jersey are already third countries to the EU for everything except the limited areas covered by Protocol 3, and this will remain the case after Brexit. This includes key areas of cooperation such as data protection, financial services and taxation.
- Nationals from the EU 27 make a vital contribution to the economies and communities of Guernsey and Jersey. Being able to give these nationals certainty about the future, and about the safeguarding of their rights, is a top priority for both Islands.
- If the Channel Islands have to leave the EU Customs Union as a consequence of the UK choosing to leave the Customs Union, this will have a direct impact on exports of goods from the Channel Islands to the EU. Although such exports are relatively small in terms of overall GDP, the main sector affected is fisheries which is socially and culturally an important industry. Most fisheries exports go to France.

The Withdrawal Agreement

15. Political agreement was reached between the UK and the EU 27 in December 2017 on the three main issues concerning the Withdrawal Agreement: citizens rights, the Irish border and the UK financial contribution. The Channel Islands have a direct interest in the first issue (citizens rights) for the reasons described above. The Irish border issues is relevant if, but only if, the outcome impacts on wider consideration of future customs arrangements with the EU, including for the Channel Islands. The financial contribution issue is not relevant to the Channel Islands since they do not pay into nor receive any funds from either the UK or the EU budget.

Transition arrangements

16. The EU Treaties will cease to apply to the UK and to the Crown Dependencies and Overseas Territories from 30 March 2019. Protocol 3 will lapse from this date. However, it seems likely that transitional arrangements will be agreed between the UK and the EU which will, subject to agreement on the detail, seek to maintain the status quo to the end of 2020 (though with the UK no longer a Member State and therefore no longer having a seat at the Council table). In this situation, it is expected that EU law will be applicable to the Channel Islands during the transition period to the extent that EU law is currently applicable by virtue of Protocol 3.

Future UK/EU and Channel Islands/EU relationships

17. Negotiations are expected to begin shortly on the future UK/EU relationship. The Channel Islands will be following this closely, as part of the ongoing consultations with the UK government over Brexit. Guernsey and Jersey will wish to be able to make informed judgements about whether it would be in their interests for the eventual agreement on the future UK/EU relationship to be extended in whole or in part to the Islands. Any such extension would of course also be subject to the agreement of the UK and the EU 27.

Channel Islands Brussels Office, 5 March 2018