

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.
2. For most purposes the Islands are already outside the EU (“third countries”) so the relationship between the Islands and the EU in the areas not covered by Protocol 3 should not be directly affected by Brexit.
3. 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.
4. EU 27 nationals are a vital part of the Islands’ communities. Securing their rights as part of the Brexit process is a key priority.
5. Like the UK and the EU, the Channel Islands have undertaken contingency planning for a “no deal” scenario.

Introduction

6. 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.
7. 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 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.
8. 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

9. Following the UK election in May 2015, the incoming Conservative government led by David Cameron 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.
10. 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.
11. During the UK referendum campaign Guernsey and Jersey maintained two long-held positions: firstly, that the UK’s EU referendum – and the UK’s relationship with the EU - was a matter for the UK; and secondly, that Guernsey and Jersey were not themselves seeking to change their relationships with the EU, essentially as third countries other than for the purposes of trade in goods.
12. 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%. Following the result, David Cameron resigned and was succeeded as UK Prime Minister by Theresa May.

The UK Article 50 Letter

13. On 29 March 2017, Theresa May wrote to the President of the European Council to start the formal process of leaving the EU under Article 50 of the EU Treaties.
14. 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.
15. 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

16. 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.
17. Ministers from the CDs have held regular meetings relating to Brexit with Ministers at the UK Department for Exiting the European Union (DExEU) and are in regular dialogue with other UK government ministers. At official level, regular meetings have been held with DExEU and the UK Cabinet Office, as well as 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

18. The Channel Islands have not engaged 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 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. Both islands have enshrined this in law through the introduction of a “settled status” scheme, irrespective of the outcome of Brexit, similar to the scheme to be applied by the UK
- If the Channel Islands have to leave the EU Customs Union as a consequence of the UK choosing to leave the Customs Union, this would have a direct impact on exports of goods from the Channel Islands to the EU since, in the absence of a Free Trade Agreement between the UK and the EU, such exports would become subject to the EU’s Common External Tariff as well as a variety of other non-tariff barriers. Although such exports are relatively small in terms of overall GDP, the main sector affected would be fisheries which is socially and culturally an important industry. Most fisheries exports go to France.

The Withdrawal Agreement

19. On 25 November 2018, EU 27 leaders endorsed the draft Brexit Withdrawal Agreement (WA) negotiated with the UK government and approved the draft political declaration setting out the framework for the future relationship between the EU and the UK. Under the WA, the EU Treaties will cease to apply to the UK and to the Crown Dependencies and Overseas Territories from the date of the UK’s exit. Protocol 3 will lapse from this date. However, the WA provides for a transition period to the end of 2020, extendable once by mutual agreement by up to two years.

20. The WA makes clear in Article 3(c) that references to “the United Kingdom” in the WA includes inter alia “the Channel Islands and the Isle of Man, to the extent that Union law was applicable to them before the date of entry into force of this Agreement” - in other words to the extent to which Protocol 3 applies. During the transition period, EU law will continue to be applicable to the Channel Islands to the extent that EU law is currently applicable by virtue of Protocol 3.

21. Given the ongoing difficulty in securing ratification of the WA by the House of Commons, the UK requested an extension to the Article 50 deadline. At its meeting on 10 April, the EU 27 leaders, in agreement with the UK Government, agreed an extension to 31 October 2019 to enable the UK

to complete ratification. Protocol 3 will therefore remain in force for the duration of this extension.

Political Declaration setting out the Framework for the future relationship between the EU and the UK

22. The 10 April European Council conclusions made clear that while the WA would not be re-opened during the extension, the Political Declaration on future relations could be amended. However, EU 27 leaders also made clear that negotiations on the future relationship cannot begin until after the UK has left the EU.
23. The Channel Islands will be following this closely, as part of the ongoing engagement 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.
24. In the meantime, Guernsey and Jersey in November 2018 each concluded a Customs Arrangement with the UK. This establishes a Customs Union between the Channel Islands and the UK which will be important if/when both the UK and the Channel Islands leave the EU Customs Union. The Channel Islands are also actively engaged in discussions with the UK over the extension to Guernsey and Jersey of the UK's membership of the World Trade Organisation (WTO).

"No deal" contingency planning

25. Like the UK and the EU 27, the Channel Islands have had to plan for the possibility of the UK leaving the EU without a negotiated agreement. Significant effort has gone into preparations for such a "no deal" scenario in order to mitigate, to the maximum extent possible, the associated risks and to ensure that any potential disruption to the islands is kept to a minimum. These preparations have involved public sector agencies, food retailers and wholesalers, ferry operators, freight firms, local businesses, the third sector and the community as a whole. They have involved close cooperation with the UK Government, and with regional partners in France and the UK. Although the possibility of "no deal" has been postponed as a result of the extension to the Article 50 deadline, the risk remains. The contingency plans made are therefore still vitally important and will continue to be updated and reviewed.

Channel Islands Brussels Office, 17 April 2019