

THE CHANNEL ISLANDS AND BREXIT

Introduction

1. The Channel Islands (“the Islands”) consist of the Bailiwicks of Guernsey and Jersey. They are British Crown Dependencies (CDs) with a direct allegiance to the British Crown which dates back more than 800 years. The Islands are not part of the United Kingdom, but the UK has responsibilities for the Islands’ defence and their formal international representation. Channel Islanders are British citizens.

The current Channel Islands/EU relationship

2. The formal relationship between the 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 Treaty on the Functioning of the European Union (TFEU). Under Protocol 3, the Islands are effectively part of the Customs Union and can trade in goods as if they were part of the EU.
3. Protocol 3 also requires the Islands to treat all natural and legal persons of the EU in a non-discriminatory way. However, the 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 domestic law, provided this is done in a non-discriminatory way.
4. Except for the limited areas specified in Protocol 3, the Islands are outside the EU and are therefore treated as non-EU jurisdictions or ‘third countries’. Since 1972, the Islands have built up their own direct relationship with the EU, by voluntarily applying relevant EU standards when it is in their interests to do so and developing other forms of cooperation, separate from and additional to the formal Protocol 3 relationship through the UK.
5. As a strategic choice, the Islands have for many years pursued a “good neighbour” policy towards the EU. This reflects the fact that the Islands are geographically part of Europe, their economies are strongly interlinked with the European economy, and they share the democratic values that underpin the EU.

The impact of Brexit on the Channel Islands’ relationship with the EU 27

6. The Islands have made clear that irrespective of the outcome of Brexit, they are committed to maintaining this “good neighbour” policy and to maintaining and further developing their relationships with the EU Institutions and bilaterally with the EU 27 Member States.
7. Brexit will not directly affect the Islands’ relationship with the EU 27 in key areas like tax, anti-money laundering, financial services, and data protection where the Islands are already third countries and as such remain committed to close cooperation with the EU. (*Further details can be found on the Channel Islands Brussels Office website – www.channelislands.eu*).
8. The main areas of direct impact are those covered by Protocol 3, which will lapse from the date of the UK’s exit. As regards citizens’ rights, the Guernsey and Jersey governments have been clear from the outset of the Brexit process that it is their priority to protect the rights of EU 27 nationals resident in the Islands. They represent around 20% of the resident population in Jersey and 7% in Guernsey and make a significant contribution to the communities and to the economies of the Islands.

9. The Islands have introduced EU Settlement Schemes, similar to the UK scheme, to allow EU 27 citizens to remain following Brexit whether or not there is a deal between the UK and the EU. The application process has been designed to be as straightforward as possible and there is no fee. Many applications from EU nationals have already been made and processed successfully.

The Channel Islands and the Brexit process

10. Guernsey and Jersey have their own directly elected legislative assemblies and are not represented in the UK or European Parliaments. Consistent with historic practice, Guernsey and Jersey residents therefore did not form part of the UK electoral franchise for the June 2016 referendum on EU membership. (Like other UK nationals overseas, 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, the Islands maintained two long-held positions: firstly, that the 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 relationship with the EU deriving from Protocol 3.
12. Since the triggering of Article 50, there has been regular engagement at both political and official level between the three CDs (the Isle of Man being the third) and the UK Government on Brexit to ensure that the CDs are kept abreast of developments in the negotiations between the UK and the EU; and to ensure that, in turn, the UK government fully understands the particular interests of the CDs and can take these into account in the negotiations – something which the UK has committed to do.
13. The Islands have not sought to engage formally with the Brexit Task Forces of the EU Institutions (Council, Commission, European Parliament), given these consultative arrangements established with the UK.

The Channel Islands and the draft Withdrawal Agreement

14. On 18 October 2019 EU 27 leaders endorsed the revised draft Brexit Withdrawal Agreement (WA) negotiated with the UK government of PM Boris Johnson. Under the WA, the EU Treaties, including Protocol 3, will cease to apply to the UK and to the CDs and Overseas Territories from the date of the UK’s exit. However, the WA provides for an implementation period to the end of 2020, extendable once by mutual agreement by up to two years.
15. 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 implementation 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.
16. Given the ongoing difficulty in securing UK ratification of the WA, EU 27 leaders, at the request of the UK Government, agreed a further extension to 31 January 2020 (or earlier if the WA is ratified before then). Protocol 3 will remain in force for the duration of the extension.
17. It is strongly in the Islands interests that there should be a negotiated deal between the UK and the EU. Nevertheless, the Islands have also been undertaking extensive “no deal” planning if the UK should exit the EU without any agreement. 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.

The Channel Islands and the future UK/EU relationship

18. EU 27 leaders have made clear that negotiations on the future UK/EU relationship cannot begin until after the UK has left the EU. The Islands will be following these negotiations closely once they start and will make informed judgements about whether it would be in their interests to request the eventual UK/EU agreement on the future 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.
19. In the meantime, in November 2018 the UK and the Islands concluded customs arrangements that will take effect if/when the UK and the Islands leave the EU Customs Union. Agreement was also reached with the UK in October 2019 over the extension to Guernsey and Jersey of the UK's membership of the World Trade Organisation (WTO) which will also take effect once the UK has left the EU and after any implementation period. The UK has notified the WTO.

Channel Islands Brussels Office
15 November 2019