

# STATES OF JERSEY



## **BREXIT REPORT: STEPS TAKEN BY THE GOVERNMENT OF JERSEY BEFORE NOTIFICATION BY THE GOVERNMENT OF THE UNITED KINGDOM UNDER ARTICLE 50 OF THE UK'S INTENTION TO WITHDRAW FROM THE EU**

---

Lodged au Greffe on 31st January 2017  
by the Minister for External Relations

---

STATES GREFFE

## **PROPOSITION**

**THE STATES are asked to decide whether they are of opinion –**

- (a) to recognise that the Government of the United Kingdom is likely to issue a notice under Article 50 of the Treaty on European Union to withdraw from the European Union; and
- (b) to endorse the Council of Ministers' intention to propose the repeal of the European Union (Jersey) Law 1973.

MINISTER FOR EXTERNAL RELATIONS

## CONTENTS

|   | <i>Page</i> |
|---|-------------|
| Foreword by the Minister for External Relations ..... | 4           |
| 1. INTRODUCTION .....                                 | 5           |
| 2. BACKGROUND .....                                   | 5           |
| 3. DEVELOPMENTS SINCE THE REFERENDUM .....            | 6           |
| 4. WHAT JERSEY HAS DONE SINCE THE REFERENDUM.....     | 7           |
| 5. WHAT IS JERSEY DOING NEXT? .....                   | 10          |

## REPORT

### Foreword by the Minister for External Relations

The Ministry for External Relations and other departments of the Government of Jersey, have been working assiduously to assert the Jersey interests that were identified in our report [R.72/2016](#), presented to the States shortly after the UK's referendum on EU Membership.

This further report not only summarises what we have been doing since 23rd June 2016 to make our interests known and understood, but also identifies the first steps that Jersey will be taking to carry forward the withdrawal process, chief among which will be the repeal of the European Union (Jersey) Law 1973.

Since the drafting of this report, the UK Government has, following the judgement of the Supreme Court of the UK in the case of R (Miller) -v- The Secretary of State for exiting the European Union, published its European Union (Notification of Withdrawal) Bill 2017, and has restated its intention to make notification under Article 50(2) of the Treaty on European Union ("TEU") in accordance with its original objective of before the end of March 2017. The timing and mechanism by which the UK triggers Article 50(2) TEU does not affect the actions that the Government of Jersey will be taking in order to repeal the legislation that brought into legal effect in Jersey, the arrangements for Jersey and the other Crown Dependencies which are embodied in Protocol 3 to the UK's Treaty of Accession to the European Communities.

The rights and obligations of Jersey citizens will be affected by the UK's decision to withdraw from the European Union, because Protocol 3 will cease to exist. That is a consequence of the exercise by the UK of its sovereign rights. However, the enactment of legislation affecting Jersey is a matter for the States Assembly and not for the parliament of the United Kingdom. The States are accordingly invited to assert this constitutional privilege and to endorse the intentions of the Council of Ministers to bring forward a *Projet de Loi* to repeal the European Union (Jersey) Law 1973.

Senator Sir Philip Bailhache  
Minister for External Relations  
Government of Jersey

## **1. INTRODUCTION**

- 1.1 It is 7 months since the people of the United Kingdom voted to leave the European Union, and 7 months since our report [R.72/2016](#) was presented to the States on 27th June 2016.
- 1.2 This Report does 3 things –
  - 1.2.1 it sets out the background to Jersey’s External Relations policy so as to provide the reader with context for the EU withdrawal process that is in hand;
  - 1.2.2 it summarises what the Government of Jersey has been doing since the Brexit vote of 23rd June 2016; and
  - 1.2.3 it sets out the next steps that the Government is and will be taking in the light of the UK Prime Minister’s Lancaster House statement on Brexit, 17th January 2017, and in anticipation of the triggering by the UK government of Article 50 of the Treaty on European Union (“TEU”).

## **2. BACKGROUND**

- 2.1 In accordance with Article 18(2)(c) of the States of Jersey Law 2005, the Common Policy for External Relations was agreed by the Council of Ministers and presented as report [R.140/2012](#) on 23rd November 2012, and amended as [R.86/2015](#) on 27th July 2015. The Common Policy contains 6 principles for the conduct of Jersey’s External Relations, the first of which is: “Protect Jersey’s unique constitution, and its domestic and fiscal autonomy”. This is particularly relevant as the Government of the United Kingdom moves towards issuing notice under Article 50 TEU to withdraw from the European Union.
- 2.2 Following the decision to leave the European Union, of the UK electorate (which does not include the electorate of Jersey, because Jersey is not part of the United Kingdom) in the 23rd June 2016 referendum, the UK Prime Minister, Lord Chancellor, the Minister of Justice responsible for the Crown Dependencies (“CDs”), and other UK Ministers, have separately provided assurances that Jersey will be consulted and involved in decision-making in relevant areas. These assurances have to date been backed up by action, with officials in the UK Government actively working with officials from Jersey on a range of Brexit issues.
- 2.3 While Jersey is in general not empowered to bind itself internationally without the consent of the sovereign state, Jersey has had domestic autonomy since 1204, and asserted its views at the time that the UK was considering accession to the (then) European Economic Community. Jersey has been and is a self-governing, democratic country with the right to self-determination, and has an international identity which is different from that of the United Kingdom. This was acknowledged by the UK in its Framework Agreement with Jersey of 1st May 2007, in which the UK Government agreed that it would not act internationally on account of Jersey without prior consultation. It is therefore particularly important that the UK has and continues to involve and consult

Jersey in the UK's withdrawal from the EU, where issues under consideration affect Jersey's interests.

- 2.4 Looking back to the time of the UK accession, the States of Jersey played an important part in shaping Jersey's relationship with the (now) European Union: in 1967 it approved proposition P.59/1967 stating that it was the wish of Jersey to remain outside the European Economic Community, and in 1971 agreed on proposition P.116/1971 which approved the special arrangements proposed by the EEC with respect to Jersey and the CDs (arrangements to become Protocol 3 to the UK Treaty of Accession). In 1972, the States agreed proposition P.110/1972 which brought forward legislation to implement arrangements for Jersey in connection with the European Communities. The European Union (Jersey) Law 1973 brought into effect Protocol 3 under which certain rights and obligations were created in and for Jersey.
- 2.5 Protocol 3 has served Jersey well since 1973.

### **3. DEVELOPMENTS SINCE THE REFERENDUM**

- 3.1 After the electorate of the United Kingdom voted to leave the European Union on 23rd June 2016, the Government of Jersey issued report [R.72/2016](#) on 27th June 2016, setting out the broad proposition that it was the Government's objective to preserve the substance of our relationship with the UK. The basis for agreeing and setting this objective was the fact that the bulk of our cultural, political, industrial, trade and communications ties are with the UK. In addition, our economic prosperity is closely tied to our customs and monetary unions with the UK, and also to the freedom of movement that we enjoy as part of the Common Travel Area ("CTA"). The closeness of the economic ties and the benefits that they bring not only to Jersey, but, significantly to the UK also, are set out in the independent report by Capital Economics (October 2016), which estimated that the funds and investment that are brought to the UK through Jersey could provide up to a quarter of a million UK jobs.<sup>1</sup> Nothing that has happened since the 23rd June 2016 Referendum has led us to revise the view that the maintenance of our close and mutually beneficial relationship with the UK is fundamental to our interests.
- 3.2 R.72/2016 also stated that the Jersey Government's objective at that time was to preserve as far as possible the substance of the benefits of our relationship with the EU as set out under Protocol 3. These benefits include free trade in goods, in particular agricultural products (and products derived therefrom) and, in effect, freedom of movement in the EU for the majority of British citizens resident in Jersey<sup>2</sup> (albeit that EU free movement of workers, services and establishment do not apply to Jersey). Over the months since the referendum, it became increasingly clear that market access in goods to the EU could be restricted if the UK controlled movement of EU citizens into the UK. Prime Minister Theresa May on 17th January 2017 clarified that the UK would not be seeking to retain membership of the Single Market, and would instead be seeking a new customs agreement with the EU, which would remove the UK from the common external tariff of the Customs Union. The Government of Jersey has therefore, as a matter of prudence, been working on the assumption that a new and favourable trade agreement with the EU may not be negotiated by Brexit day. As a consequence, tariffs and non-tariff requirements could be a

feature of Jersey's trade in goods and agricultural products with the EU 27 after the UK withdrawal. On account of not knowing at this stage whether a trade agreement will be concluded with the EU, and if so what provisions it will contain, the Government of Jersey will plan for the possible introduction of both tariff and non-tariff elements to trade in goods with the EU 27. We will also, as a matter of high priority, seek extension of UK membership of the World Trade Organisation ("WTO") to Jersey in order to ensure that we benefit from the lower trade barriers offered to WTO members, which include tariffs and import quotas.

- 3.3 Freedom of movement of workers from EU countries to Jersey exists by virtue of Jersey and the Channel Islands lying within the CTA (there being free movement of workers to the UK under EU law, and free movement from the UK to Jersey by virtue of the CTA), and as a result of a clause in Protocol 3 which requires Jersey to apply the same treatment to the nationals of the EU 27 countries as it does to nationals of the UK. Protocol 3 will fall away when the UK withdraws from the EU. It is likely therefore that Jersey will implement immigration controls that are applied to the Common External Border post-Brexit. This will not affect Jersey's ability to manage its own internal residential and work requirements.<sup>3</sup>
- 3.4 Our assessment is that Jersey's best interests would be served by the continuation in some form of free market access in goods and freedom of movement into the EU. The Government nonetheless recognises that these 2 areas will be subject to intense negotiations following the triggering of Article 50. We are accordingly asserting our right to contribute to the UK's negotiating position, recognising that we will adapt to what is achievable in the negotiations with the EU, as exemplified in the trade-off between freedom of movement of people and trade in goods. Any such agreement will need to be considered for extension to Jersey in due course, and – similar to the consideration that took place in 1967, 1971 and 1972 – the States Assembly will have to consider any legislation that will be needed to implement it, as well as to amend or repeal of any existing legislation. We will continue to adapt to further developments in the political arena to ensure that our planning is as up-to-date as possible.

## **4. WHAT JERSEY HAS DONE SINCE THE REFERENDUM**

### **In Jersey and with the UK**

- 4.1 R.72/2016 stated that we would continue after the referendum to act clearly and decisively in the interests of Jersey. The Government of Jersey has consistently asserted its views to the UK government, in accordance with the Common Policy for External Relations<sup>4</sup>, and, along with Guernsey and the Isle of Man, has had regular contacts at ministerial and official levels over Brexit. We have expressed our views to the UK on the implications for Jersey of the UK decision to withdraw from the EU: we have done this by submitting evidence: (a) to the Foreign Affairs Committee<sup>5</sup>, on the interests of the CDs in the UK Government's approach towards the UK withdrawal from the EU; (b) to the Justice Select Committee on the performance of the UK government in building its relationship with the CD's in the light of Brexit<sup>6</sup>; and (c) to the House of Lords EU Committee. On this last occasion, Chief Ministers of the CDs gave oral evidence to the Committee's short inquiry on Brexit and the CDs.<sup>7</sup>

- 4.2 Members of the Justice Select Committee including the Chair, Bob Neill, M.P. visited Jersey on 23rd to 24th January 2017 with a view to finalising their report before the end of March 2017. Jersey's written submissions are publicly available documents, and the oral evidence is also recorded in Hansard, with the references found in endnotes five, six and seven.
- 4.3 The Government of Jersey also committed in R.72/2016 to structure and resource its activity so that Jersey's interests could be properly protected; it accordingly established in June 2016 a Brexit Unit within the Ministry of External Relations, charged with the central co-ordination of the Government's Brexit-related activities. In September 2016, £1.75 million of cross-departmental funding was agreed to backfill staff who are working on Brexit, as well as to fund research and additional travel.
- 4.4 Oversight groups have been established to ensure political direction and strategy for Brexit-related activity. The Chief Minister, the Minister for External Relations, the Minister for Treasury and Resources, the Minister and Assistant Minister for Home Affairs, the Minister for Economic Development, Tourism, Sport and Culture, and the Minister for the Environment are members of the Ministerial Oversight Group, and other Ministers can be invited to attend according to the subject matter. Regular updates are given to the Council of Ministers, and a briefing session was held with States Members on 1st November 2016. Four workshops with States Members are scheduled for the first quarter of 2017, to capture in-depth views on key issues and work-streams.
- 4.5 The UK Prime Minister and the Lord Chancellor wrote in July 2016 stating their intention to involve and consult the CDs. This was followed up by meetings (in Whitehall and at the British-Irish Council in July and November 2016) with Robin Walker, M.P., Junior Minister at the Department for Exiting the EU, and most recently (on 25th January 2017), also with Mark Garnier, Junior Minister at the Department for International Trade. Sir Oliver Heald, Minister of Justice with responsibility for the CDs visited Jersey (and Guernsey) in October 2016.
- 4.6 In August 2016, 4 priority work-streams were identified and agreed between the UK Government and the governments of the Crown Dependencies; they are –
- (i) **Financial Services**, including Jersey's and the CDs' status as non-Members or 'third countries' in financial services, future trade in services, equivalence assessments, and passporting rights;
  - (ii) **Immigration and the Common Travel Area**, including border controls post-Brexit and the rights of EU nationals in the UK/CDs, and UK nationals in the EU;
  - (iii) **Customs Union and Tax, including** the customs and monetary union with the UK, future UK trading relationships with the European Custom Union and the European Single Market. The UK's and the CDs' World Trade Organisation membership and extension to Jersey is also covered under this item; and



- (iv) **Agriculture and Fisheries** – this sub-set of the Customs work-stream involves all matters related to DEFRA, the Common Fisheries Policy and the Common Agricultural Policy.

The Government of Jersey has established its own working groups of officials in these 4 areas, under a cross-departmental officials' Brexit Working Group, which is managed by the staff from the Ministry for External Relations. The following are among the additions that are in hand –

- (v) an **energy policy sub-group** is being established in Jersey under the Customs Union work-stream;
- (vi) a **legislation work-stream** has been established with the Law Officers' Department and the Law Draftsman's Office, which are conducting a review of Jersey's EU-related legislation, and are also looking at the form in which the Council of Ministers will propose the repeal of the European Union (Jersey) Law 1973 to the States of Jersey. This work-stream is also looking at how European legislation – the legislation that Jersey may need to retain to preserve necessary functions beyond Brexit – will be converted into Jersey law; and
- (vii) it was agreed on 25th January 2017 between CD Chief Ministers and UK Ministers that a further work stream on **transport and communications** will be established, now that progress has been made on the first 4 work-streams.

- 4.7 There has been co-ordination with Guernsey and the Isle of Man and discussions with UK officials on topics (i) to (iv), and (vi), and this will apply equally to future work-streams, including the one on transport and communications. CD 'roundtable' meetings have also taken place in Whitehall with the UK Government, and there are ongoing meetings notably with officials in Cabinet Office, DExEU, the Foreign and Commonwealth Office, Home Office, Ministry of Justice, Department for Business Energy and Industrial Strategy, Department for International Trade, HMRC and H.M. Treasury.

### **In Brussels**

- 4.8 The situation in Brussels is different, in that the UK handles official contacts over the UK withdrawal; we therefore do not engage directly with the EU on Brexit, as that is conducted through the UK. We nonetheless have direct day-to-day contacts with the EU institutions and EU Member States' permanent representations in Brussels, and these contacts are generally made through our Channel Islands Brussels Office, which continues with valuable work on equivalence, passporting and EU blacklists, for example. The Chief Minister and Minister for External Relations have made several political-level visits in the last 4 years, the most recent being in November 2016, when Senator Gorst and the Guernsey Chief Minister, Deputy St. Pier, held several meetings at the offices of the Permanent Representatives of EU Member States, and the offices of EU Commissioners. However, there has been no formal change since 23rd June 2016 in the way we engage with Brussels.

## **5. WHAT IS JERSEY DOING NEXT?**

- 5.1 Before and after the UK government triggers Article 50, we will continue to focus intensively on engagement with the UK government. As mentioned, the work-streams will expand to include communications and transport, among other areas. We will continue to pursue Jersey's interests rigorously as the UK seeks to negotiate a new, positive and constructive partnership with the EU. Prime Minister May said on 17th January 2017 that it is an objective of the UK Government that its new partnership should involve a comprehensive Free Trade Agreement with the EU (without membership of the European Single Market). One of our aims is that relevant parts of the intended Free Trade Agreement should be capable of being extended to Jersey – and the other CDs – if we so wish.
- 5.2 Furthermore, the Government of Jersey will continue and increase efforts to seek new markets for Jersey's services and goods, by developing trade access and opportunities with non-EU countries.
- 5.3 The Brexit Unit is also co-ordinating the collection of baseline data throughout government, from business and social sectors, relevant to the implications for Jersey of the UK's departure from the EU. The Chamber of Commerce, for example, has offered its assistance in this respect. A survey will also be undertaken to elicit information, indications of intended behaviour, and views which may also be used in the formulation of government policy.
- 5.4 As previously mentioned, the Law Officers' Department is undertaking a review of Jersey legislation in the light of Brexit. This is a major exercise which will continue for a considerable period. However, it is clear that Jersey will need to repeal the European Union (Jersey) Law 1973, which implemented Protocol 3 and created certain rights and obligations in Jersey. Accordingly, the States of Jersey are asked to consider the above proposition.

## Endnotes:

- 
- <sup>1</sup> Capital Economics: “The Value of Jersey to Britain”; revised October 2016. Jersey provides £118 billion of banking funds, and £0.5 trillion fixed asset investment into the UK. This in turn generates up to 250,000 jobs in the UK.
- <sup>2</sup> The EU’s Freedom of Movement does not apply directly to EU citizens coming to Jersey. Although British citizens benefit from freedom of movement, a narrowly-defined group of British-passport-holding Jersey citizens without a close or recent connection with the UK are, by virtue of Protocol 3, excluded from this. This anomaly will fall away after Brexit when all British, Jersey residents will be treated the same.
- <sup>3</sup> The Control of Housing and Work (Jersey) Law. The Revised Edition 18.150 shows the Law as at 1st January 2016.
- <sup>4</sup> R.86/2015 – “External Relations: Common Policy” presented to the States on 27th July 2015 by the Council of Ministers.
- <sup>5</sup> Government of Jersey: “Written evidence submitted by the Government of Jersey to the Foreign Affairs Committee inquiry into ‘the implications of leaving the EU for the UK’s role in the world’”; 30th September 2016. Available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/foreign-affairs-committee/implications-of-leaving-the-eu-for-the-uks-role-in-the-world/written/39591.pdf>
- <sup>6</sup> Government of Jersey: “Written evidence submitted by the Government of Jersey to the Justice Select Committee inquiry into the implications of Brexit for the Crown Dependencies”; 18th November 2016. Available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/implications-of-brex-it-for-the-crown-dependencies/written/43489.pdf>
- <sup>7</sup> Government of Jersey: “Oral evidence to the House of Lords Select Committee on the European Union short inquiry into Brexit and the Crown Dependencies”; Oral evidence by Senator Ian Gorst, (Chief Minister of Jersey), Deputy Gavin St Pier (Chief Minister of Guernsey), and Member of the House of Keys Hon. Howard Quayle, (Chief Minister of the Isle of Man), 20 December 2016. The transcript is available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/european-union-committee/brex-it-crown-dependencies/oral/44748.pdf>