



What Brexit means for Guernsey and Jersey

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Guernsey and Jersey's constitutional position

The Bailiwick of Guernsey (comprised of the islands of Guernsey, Alderney, Sark and Herm) ("**Guernsey**") and the Bailiwick of Jersey ("**Jersey**") form the Channel Islands, situated in the Bay of St Malo off the northwest coast of France. Although closely connected to the United Kingdom, the Channel Islands are not subject to the laws of the UK, and are not a part of the European Union (the "**EU**").

As Crown Dependencies, the Channel Islands are self-governing and have their own laws (including on taxation) and courts. Traditionally, the UK has been responsible for defence and for the international relations of the Channel Islands, including representing the Channel Islands in external negotiations with other states and bodies including the EU. However, this is changing. For example Guernsey and Jersey have each effectively entered into Tax Information Exchange Agreements with all 28 of the EU member states, Jersey has full bi-lateral double taxation agreements with 10 other countries and partial double taxation agreements with a further 12 nations and Guernsey has bilateral taxation agreements with other jurisdictions including the US, Hong Kong, Malta and Singapore.

Crown Dependency

The Channel Islands' status as a Crown Dependency means that its constitutional relationship with Britain is with the legal institution of the British Crown as currently embodied by Her Majesty Queen Elizabeth II (the "**Crown**") and not the UK Parliament or HM Government. Jersey and Guernsey make their own domestic legislation, although local laws passed by the States require ratification or sanction by Order in Council of Her Majesty by her Privy Council.

The Channel Islands' relationship with the EU

Guernsey and Jersey do not benefit from the UK's membership of the EU other than in a limited fashion via Protocol 3 of the United Kingdom Treaty of Accession to the European Community of 1973 and confirmed in Article 355(5)(c) of the Treaty on the Functioning of the European Union ("**Protocol 3**"). Protocol 3 brings the Channel Islands within the EU Single Market for the purposes of trade in goods (but not services). Protocol 3 will cease to have any effect once the UK's membership of the EU ceases.

Under Protocol 3 the authorities in Guernsey and Jersey are required to treat natural and legal persons of the EU equally and in a non-discriminatory fashion. In practice this means that EU citizens can come to the Channel Islands, as part of the common travel area, but the Channel Islands operate policies in relation to employment and housing that are different from the UK.

Protocol 3 provides that the pre-existing rights of Channel Islanders in the UK were not affected when the UK entered the EU. However, Channel Islanders (who are British citizens), cannot benefit from community provisions relating to the free movement of persons or services. This exclusion from community provisions relating to free movement applies to Channel Islanders unless they are directly connected with the United Kingdom –by birth, descent from a parent or grandparent born, adopted or naturalised in the UK, or has at any time been ordinarily resident within the United Kingdom for five or more years. Some Channel Islanders therefore do not now (and will not post-Brexit) have freedom of movement within the EU.

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The free movement of people between the Channel Islands and the UK is a long standing constitutional position, the current manifestation of which is in the Common Travel Area (“CTA”) between the UK, Jersey, Guernsey, Isle of Man, Northern Ireland, and the Republic of Ireland. The rights under the CTA allow for largely unrestricted travel between the jurisdictions. These arrangements will continue to operate post-Brexit.

The Convention on Economic Co-operation and Development (otherwise known as the OECD Convention) was extended to Guernsey and Jersey in 1990 and the Channel Islands is deemed to be part of the UK for the purposes of its membership of the Organisation for Economic Co-Operation and Development (the “OECD”). OECD Decisions and Recommendations apply to the Channel Islands to the same extent that they do to the UK, unless the contrary is otherwise specifically stated on a case by case basis.

In addition, Guernsey and Jersey have voluntarily implemented legislation equivalent to that applicable in the EU in a number of fields, including financial services and data protection. Guernsey and Jersey voluntarily implement all EU sanctions, including asset freezes, and has an excellent regulatory relationship with its EU counterparts.

Direct implications of Brexit on the Channel Islands

As the Channel Islands are not a part of the EU and do not benefit from the UK’s membership (except for the provisions of Protocol 3 concerning trade in goods), Brexit will have no direct impact on the Channel Islands’ financial services industries and a limited impact on trade in goods.

Trade

Brexit will impact how trade in goods between the Channel Islands and the EU functions, because Protocol 3 will cease.

However, the export of goods to the EU represents only a modest part of the economies of the Channel Islands. The main sector expected to be affected by the termination of Protocol 3 is fisheries, of which most exports go to France. However, the governments of Guernsey, Jersey and the Isle of Man have indicated that they will attempt to negotiate a similar arrangement with the EU to replace Protocol 3.

Most Channel Islands agricultural products, are exported to the UK rather than other members States of the EU. Tariff-free reciprocal trade in goods between the UK and the Channel Islands arises out of long standing customary practices and under rights and arrangements set in Royal Charters. This position will not be affected by the UK leaving the EU.

Financial Services

Brexit will have no direct effect on the financial services industry in the Channel Islands. Protocol 3 is silent on services. Guernsey and Jersey are therefore treated as “third countries” (i.e. non-EU members) for the purpose of financial services. This relationship will not change when the UK leaves the EU and so Brexit will have no direct effect on the financial services industry in the Channel Islands.

Whilst neither Guernsey nor Jersey is a member of the EU, some aspects of EU legislation are adopted by the Channel Islands in compliance with the bilateral agreements in place between Guernsey and Jersey and member states of the EU, including for example a number of tax information exchange agreements with Member States. In addition, Guernsey and Jersey are able to market financial services into the EU because those services currently meet the stipulations imposed by the EU. This will not change by virtue of the UK leaving the EU.

Data Protection

The Channel Islands are not subject to the General Data Protection Regulation (EU) 2016/679 (“GDPR”) (although certain controllers and processors will be subject to its extra territorial reach). However, Guernsey and Jersey have adopted legislation based on the GDPR which have a similar effect to it.

The approval granted to Guernsey and Jersey as “third party countries with adequacy” (Commission Decision 2008/393/EC) (which means that the EU Commission has recognised that the Channel Islands have an adequate level of protection for transfers of personal data to and from the EU to take place without any further safeguards) is “grandfathered” into the GDPR and is due for review by the EU in or about 2020. This will not change following Brexit.

Unless the UK is granted an adequacy decision of its own in relation to the GDPR status, then controllers and processors in the Channel Islands will need to treat the UK post Brexit as a non-adequate third country for data protection purposes, which may add a layer of administrative complexity.

Free Movement of People

Guernsey and Jersey have committed to securing the rights of EU citizens and their family members resident in the Channel Islands following Brexit. Both intend to introduce an EU Settlement Scheme which closely mirrors that proposed in the UK. There will be no change to the status of EU citizens and their family members living in the Channel Islands before Brexit and throughout the implementation period following Brexit which is intended to run until 31 December 2020.

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Opportunities

Times of great change such as Brexit lead to uncertainty and can be challenging. However, they also present opportunities.

UK Fund Managers

If the UK does not strike a deal with the EU in relation to financial services post Brexit this could create challenges for UK based fund managers. In particular:

1. UK fund managers who currently use the EU passport under the Alternative Investment Fund Managers Directive (“AIFMD”) may no longer be able to do so because the UK is outside the EU.
2. Until the UK implements cooperation agreements with member states those managers may not be able to market funds in the EU by private placement.

Some UK fund managers have responded to this challenge by building a presence in the EU. However many fund managers continue to market Guernsey and Jersey funds in continental Europe using national private placement regimes. Guernsey and Jersey already have in place the necessary cooperation agreements to enable local fund managers to do so. Accordingly, the Channel Islands may be a suitable alternative home for UK fund managers facing such challenges.

UK Insurance Market Access

The withdrawal of the UK from the EU should allow the UK to determine for itself what access to grant to its markets. Unlike the Channel Islands, the British overseas territory of Gibraltar is leaving the EU alongside the UK. However, the UK has granted to Gibraltar “passporting rights” to enable Gibraltar insurers to write insurance business in the UK without being licensed by the FCA. Those rights stem from a bilateral agreement between Gibraltar and the UK. It is possible that the Channel Islands could secure similar access to the UK market post Brexit.



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