

THE CHANNEL ISLANDS AND THE EUROPEAN UNION

INTRODUCTION

The Channel Islands (“the Islands”) consist of the Bailiwicks of Guernsey and Jersey. They have a combined population of approximately 165,000, and a combined GDP of approximately £6.2 billion. They are located just off the coast of France, in the English Channel. They are British Crown Dependencies, with a direct allegiance to the British Crown which goes back over 800 years.

The 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. The Islands enjoy a high degree of autonomy, including their own fiscal and judicial systems, and receive no financial subsidy from the UK or the EU. The constitutional relationship between the Crown Dependencies (the Bailiwicks of Guernsey and Jersey, and the Isle of Man) and the UK and the EU is different to the constitutional relationship between the UK Overseas Territories (such as the Falkland Islands and Gibraltar) and the UK and the EU.

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 are essentially within the Single Market for the purposes of trade in goods, but are third countries (i.e. outside the EU) in all other respects. However the Channel Islands have a close relationship with the EU in many different fields, not simply those covered by the formal relationship under Protocol 3. Both Jersey and Guernsey voluntarily implement appropriate EU legislation or apply the international standards on which they are based.

The UK referendum in June 2016 means that when the UK leaves the EU, Protocol 3 will no longer apply. However the relationship and the cooperation between the Islands and the EU in areas outside Protocol 3, including tax and financial services, are unaffected by the UK referendum result as the Islands’ existing status as third countries is unchanged.

The OECD Convention was extended to Guernsey and Jersey in 1990 and they are part of the UK for the purposes of its membership of the OECD. OECD Decisions and Recommendations apply to Guernsey and Jersey to the same extent as they do to the UK unless the contrary is specifically stated in a particular case.

TRADE AND INVESTMENT

As small islands, Guernsey and Jersey have a services based economy. Virtually all manufactured goods are imported. The main exports of goods are agricultural and fisheries products. Exports of goods from the Channel Islands to the EU and from the EU to the Channel Islands are treated as intra-EU trade. Through being a part of the customs union, the Channel Islands apply the Common External Tariff (CET) to imports of goods from third countries. The Channel Islands are not within the EU common system of VAT so trade in goods is not subject to the EU Principal VAT Directive. For those areas covered by Protocol 3, EU legislation is directly applicable and the Channel Islands are regarded as part of the UK Member State.

Agriculture and Fisheries

Both Bailiwicks have long agricultural and fisheries traditions. Although the farming and fisheries sectors are less important in both absolute and relative terms than they were in the past, they remain vital for the fabric of the rural economy. Both Islands are noted for the quality of their fresh fish and seafood, for their dairy products made from the unique Guernsey and Jersey cattle breeds, and for other products such as cut flowers, potatoes, wine and cider.

Many of these products are exported to the EU. The detailed rules setting out the conditions with respect to trade in agricultural products (which include fish and fish products) are set out in EC Regulation 706/73, as amended. Under this Regulation the Channel Islands must adhere to EU rules to facilitate and enable trade in such products including in relation to veterinary legislation; animal health; plant health; marketing of seeds; food; feeding stuffs; and quality and marketing standards. The implementation of legislation is underpinned by active cooperation between veterinary, agricultural and food safety experts in the Channel Islands and their EU counterparts.

The Channel Islands are outside the Common Agricultural Policy (CAP): they do not pay into nor receive funds from the EU budget. Similarly EU fisheries conservation measures under the Common Fisheries Policy (CFP) do not apply directly to the Channel Islands under Protocol 3 and the Channel Islands do not pay into or receive money from the EU (or UK) budget, including the European Maritime and Fisheries Fund - EMFF. However Regulation 706/73 imposes certain constraints on the Channel Islands' own systems of agricultural support: state aid for exports of certain agricultural products to Member States and to non-EU countries may not exceed the relevant aid, refund or compensatory amount permitted to be granted by the UK under the respective EU rules.

Competition policy

Competition policy per se is not within the scope of Protocol 3 (although normal conditions of competition in trade in agricultural products apply) so there is no obligation on the Channel Islands to follow general EU competition rules. However the Channel Islands' own legislation deals with competition questions in a manner consistent with treatment of similar questions under EU competition law.

Investment

The Channel Islands are third countries for the purposes of the EU's Common Commercial Policy (CCP). Only those provisions within EU trade and investment agreements that give improved market access to the EU for goods from a non-EU country will therefore apply directly in the Channel Islands by virtue of Protocol 3. For international agreements related to other aspects of trade and investment, the Channel Islands continue to rely on the UK to represent them internationally and extend agreements to the Channel Islands on their behalf where agreed.

TRANSPORT, ENERGY AND THE ENVIRONMENT

Environment

Protection of the environment on land and in the surrounding marine areas is crucial for the unique ecosystems of the Channel Islands. Environmental legislation is not covered by Protocol 3 but in some cases EU environmental standards, in areas like air and water quality, are used as guidelines for domestic legislation in the Channel Islands, even though there is no legal obligation to do so. The Channel Islands are committed to some international environmental standards on which EU legislation has subsequently been based. For example, the Channel Islands are covered by the UK's ratification of the Basel Convention on the control of trans-boundary movements of hazardous waste and their disposal, although for the purposes of the EU's implementing legislation in this area they are third countries. There is close bilateral cooperation with the UK and France on maritime protection.

Transport

Air and sea links are vital for small island economies like Guernsey and Jersey. The Channel Islands are outside the EU for the purposes of transport, since this is a service provision which is not covered by Protocol 3. However virtually all aviation and shipping links from the Channel Islands are to the UK, France and other EU destinations. This requires the operator (the airline or ferry company) and the airport or port to comply with relevant EU standards. For example, the Islands' airports have been

formally assessed by the Commission as meeting EU aviation security standards – an assessment endorsed by the EU’s aviation security committee. Otherwise transport legislation in the Channel Islands is largely based on international standards set by bodies such as the International Civil Aviation Organization (ICAO) and the International Maritime Organization (IMO). These international standards have often been transposed into EU law, and built upon.

Energy

Like transport, energy services are a service under EU law and so outside the scope of Protocol 3. EU electricity Directives in the Third Energy Package therefore generally do not apply in the Channel Islands. However the bulk of the energy needs in the Channel Islands are met from supplies from the EU, mainly by electricity cable interconnectors from France, so the Channel Islands have a strong interest in a properly functioning, competitive EU energy market, with security of supplies. Each Bailiwick has significant marine energy resources (both wind and tidal current) that, if developed, could be exported into the EU to assist with climate change commitments. The proximity of the Flamanville nuclear power station to the Channel Islands makes EU competence for nuclear safety standards under the Euratom Treaty of importance. There is close cooperation between the Channel Islands and the French authorities on emergency planning and on radioactive sampling.

Telecommunications

The Channel Islands are not members of the International Telecommunications Union and the UK Regulator, OFCOM, manages and licences spectrum rights of use on the Channel Islands’ behalf. The Channel Islands are therefore directly affected by the relevant European legislation concerning spectrum and benefit from being part of a larger European group when harmonising spectrum usage in international negotiations. The Channel Islands are part of the UK telephone numbering plan which is managed by OFCOM in accordance with the relevant EU Directives. However, Channel Islands consumers going abroad (and UK/EU consumers visiting the Channel Islands) do not currently benefit from the lower voice and data charges secured by the EU Roaming Regulations.

PEOPLE

Tourism

Guernsey and Jersey are attractive tourist destinations with their natural beauty and their unique culture and heritage. Tourism is therefore an important industry. The Channel Islands are part of the Common Travel Area (CTA) with the UK and Ireland. This provides for passport-free travel and simplified entry procedures. It does not derive from EU law but predates it and hence is not linked to Protocol 3. Like the UK and Ireland, Guernsey and Jersey are outside the visa/check-free Schengen area and so operate border controls for flights or ships arrivals from countries other than the UK or Ireland. EU nationals are not subject to any visa controls.

Immigration and emigration

As small islands, Guernsey and Jersey need to apply a labour and immigration policy which responds to the needs of the economy while ensuring that housing and population development is sustainable. Controls in respect of the right to work by EU nationals in the Channel Islands are dealt with under the respective domestic legislation in each island, subject to the requirement set out in Protocol 3 that the Channel Islands must treat all EU nationals equally. So, for example, in the application of their immigration policies they cannot favour, say, British nationals over other EU nationals.

Protocol 3 excludes “Channel Islanders” from the provisions of the Treaty relating to the free movement of persons provisions of the Treaty. However for Protocol 3 purposes, a person who was born (or who has at least one parent or grandparent who was born) in the UK, or who has resided in the UK for 5 years is

not a “Channel Islander”. Such people do enjoy free movement throughout the EU (including the right to work and reside).

Data protection

The protection of personal data, and ensuring that when such data needs to be transferred to another jurisdiction it is done efficiently and securely, is vital for public bodies and for industry in Guernsey and Jersey. Guernsey and Jersey’ domestic data protection legislation is based on EU law Guernsey and Jersey are among a small group of third country jurisdictions that have been officially assessed by the Commission as meeting current EU data protection standards. The Channel Islands are committed to meeting new EU data protection standards on the same timescale as EU Member States under the new General Data Protection Regulation adopted in May 2016.

FINANCIAL SERVICES

Financial services firms are major employers in the islands, with over a quarter of the workforce (19,000 jobs) employed in the sector. As major well-regulated financial centres, both Guernsey and Jersey are significant net providers of liquidity and investment funds to the EU economy. The Channel Islands have a robust and internationally respected system of financial regulation. Their own independent regulators enjoy excellent regulatory cooperation with their EU counterparts, including with the European Supervisory Authorities. Since May 2016 Guernsey and Jersey have been within the geographic scope of the credit transfer and direct debit schemes of the Single Euro Payments Area (SEPA).

Protocol 3 does not cover services, so the Channel Islands are already treated as third countries for the purposes of EU financial services legislation and this position remains largely unaffected by the UK’s “BREXIT” vote. Further details of the financial services industry in the Islands and of the relationship with the EU can be found in the separate note (“Channel Islands/EU: Financial Services”) available from the Channel Islands Brussels Office.

TAXATION

Guernsey and Jersey have the same need as EU Member States to protect their public finances and therefore have common cause with the EU in tackling tax evasion, fraud and aggressive tax avoidance. The Channel Islands have shown themselves by their actions to be reliable, active and cooperative partners of the EU and of the wider international community. This idea of partnership was shared by Pierre Moscovici, the EU Commissioner for Economic and Financial Affairs, Taxation and Customs. After meeting with the Chief Ministers of Guernsey and Jersey on 13 January 2016, the Commissioner commented publicly:

"I very much welcome the continued active engagement of Guernsey and Jersey in the key international initiatives for fighting tax evasion, fraud and abusive tax avoidance, in which they are important partners of the EU. Their implementation of the Common Reporting Standard on automatic exchange of information from the 1st January, and their support of the BEPS programme, alongside the EU Member States, are particularly noteworthy and reinforce their standing as cooperative jurisdictions."

Further details of the tax and regulatory cooperation between the Channel Islands and the EU can be found in the separate note “Channel Islands/EU: tax cooperation) available from the Channel Islands Brussels Office.

Channel Islands Brussels Office, 7 September 2016

The Channel Islands Brussels Office (CIBO)

In 2011 the governments of Guernsey and Jersey established a joint government office in Brussels to help promote and protect the Channel Islands interests in Europe and to strengthen engagement with the EU institutions and the individual Member States. For further information about the Channel Islands and the EU, or about the work of the Brussels office, please contact CIBO on info@channelislands.eu. You may also want to look at its website www.channelislands.eu.