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European Union Committee

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Brexit: the Crown Dependencies

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The European Union Committee

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Evidence is published online at <http://www.parliament.uk/brexit-crown-dependencies> and available for inspection at the Parliamentary Archives (020 7129 3074).

Q in footnotes refers to a question in oral evidence.

SUMMARY

The Crown Dependencies are neither part of the EU nor of the UK. Nevertheless, they have a unique constitutional relationship both with the UK and, as encapsulated in Protocol 3 to the UK's Treaty of Accession, with the EU. The consequences of Brexit for the Crown Dependencies are therefore significant.

There are three intertwined, and potentially conflicting, priorities for the Crown Dependencies in the context of the Brexit negotiations: maintenance of their centuries-old constitutional relationship with the UK; retention so far as possible of the benefits of the existing relationship between the Crown Dependencies and the EU; and the evolution of the Crown Dependencies' international identities, while respecting the UK's constitutional obligation to represent them in matters of defence and international relations. Seeking to keep these priorities in balance during the negotiation process will not be easy.

We note in particular the implications of Brexit for: the Crown Dependencies' continued ability to trade freely in goods, including fisheries, agriculture and manufacturing, both with the UK and the EU; the financial services sectors in the Crown Dependencies; the ability to continue to attract EU citizens to live and work in the Crown Dependencies, while at the same time retaining the Common Travel Area between the Crown Dependencies and the UK; and existing data protection cooperation, transport and communication links, and energy cooperation between the Crown Dependencies and the EU.

The UK Government has a constitutional responsibility to represent the interests of the Crown Dependencies in the Brexit negotiations. The Chief Ministers of the Crown Dependencies have expressed their satisfaction at the Government's engagement thus far in relation to Brexit. The real test of this engagement will come as negotiations begin. We call on the Government to ensure that the Crown Dependencies remain fully involved as negotiations proceed, and that their concerns and priorities are properly taken into account by the UK negotiators.

The Chief Ministers have made clear that the Crown Dependencies' close constitutional, economic and cultural relationships with the UK remain paramount. It is therefore important that the terms of the future relationship between the Crown Dependencies and the EU do not undermine the Crown Dependencies' relationship with the UK.

We urge the Government to reflect on the implications for the Crown Dependencies of the UK's post-Brexit policy priorities. In particular, the Government must ensure that the Crown Dependencies are kept fully apprised of, and are given the opportunity where appropriate to participate in, future free trade agreements with countries beyond the EU. We also call on the Government to support Guernsey and Jersey in their efforts to ensure that the UK's WTO membership is extended to cover them, as it already does the Isle of Man.

It remains to be seen if Brexit will prove a further impetus in the development of the Crown Dependencies' international identities. The evolution of these identities is a matter for bilateral discussion and agreement between the Crown Dependencies and the UK Government. While taking into account any future developments, the UK Government must continue to fulfil its constitutional obligations to represent the interests of the Crown Dependencies in international relations, even where these differ from those of the UK, both during the Brexit negotiations and beyond.

Brexit: the Crown Dependencies

CHAPTER 1: INTRODUCTION

This report

1. The Crown Dependencies of the Isle of Man, the Bailiwick of Jersey and the Bailiwick of Guernsey have a unique relationship both with the UK and with the EU. While the residents of the Crown Dependencies did not have a vote in the June 2016 referendum,¹ these unique relationships mean that Brexit will nevertheless have an impact, both on the Islands' bilateral links with the EU, and on their future relationship with the UK.
2. This short report seeks to outline the nature of the Crown Dependencies' current relationship with the EU, how it is likely to change following Brexit, the knock-on consequences for the Crown Dependencies' relationship with the UK, and the key constitutional and policy issues that the UK Government needs to bear in mind during the Brexit negotiations.
3. The report takes account of oral evidence heard from the Chief Ministers of Guernsey (Deputy Gavin St Pier), Jersey (Senator Ian Gorst) and the Isle of Man (Howard Quayle MHK), from a panel of academic and legal experts, and from Robin Walker MP, Parliamentary Under Secretary, Department for Exiting the EU, who has responsibility within the Department for liaison with the Crown Dependencies. We have also received a number of written submissions relating to the inquiry. We are grateful to all of our witnesses for their assistance.
4. The Crown Dependencies are not a part of the UK, and therefore do not fall within the jurisdiction of, nor have representation in, the UK Parliament. Rather, they each have their own legislatures to which their governments are accountable. It is a matter for the Crown Dependencies themselves to determine the nature of their future relationship with the EU, and any changes to their relationship with the UK that this will entail. We do not therefore make any direct recommendations to the Crown Dependencies themselves. Rather, we draw attention to the pertinent issues as we see them, in order to raise awareness across Parliament, the UK Government and the media, in the run-up to the Brexit negotiations.

The work of the EU Committee

5. Following the referendum on 23 June 2016, the European Union Committee and its six sub-committees launched a coordinated series of inquiries, addressing the most important cross-cutting issues that will arise in the course of negotiations on Brexit. These inquiries, though short, are an opportunity to explore and inform wider debate on the major opportunities and risks that Brexit presents to the United Kingdom.
6. **We make this report for debate.**

¹ Other than those retaining a right to vote in the UK through past residence within the last 15 years—in the case of Jersey, up to 8,000 British citizens resident in Jersey were eligible to vote in the referendum. See [Q 5](#) (Senator Ian Gorst).

CHAPTER 2: THE CROWN DEPENDENCIES, THE UK AND THE EU

Introduction

7. This chapter outlines the current nature of the Crown Dependencies' relationship with the EU. In order to place this relationship in context, it is important first to summarise the Crown Dependencies' constitutional relationship with the UK.²

The Crown Dependencies and the UK

8. The Crown Dependencies are the Bailiwick of Jersey (population 100,000), the Bailiwick of Guernsey (population 66,000³) and the Isle of Man (population 85,000). There are three separate jurisdictions within the Bailiwick of Guernsey: Guernsey (population 63,000, and including the islands of Herm and Jethou); Alderney (population 1,900); and Sark (population 600, and including the island of Brecqhou). Each of the three jurisdictions within the Bailiwick of Guernsey is a self-governing Dependency of the Crown, with its own directly elected legislature and fiscal and legal systems. The Government of Guernsey act on their behalf in dealings with the UK Government.⁴ These islands, together with Jersey, are collectively referred to as the Channel Islands.
9. Each of the Crown Dependencies has a complex history in relation to the United Kingdom and its predecessor Kingdoms. The Channel Islands, situated between 10 and 30 miles off the Normandy coast, were historically part of the Duchy of Normandy, and their connection to the English Crown began with the Norman Conquest in 1066. In 1204, when King John lost continental Normandy to France, the people of the Channel Islands stayed loyal to the English Crown. The Islands were granted various rights and privileges in return, which have been confirmed in numerous Royal Charters since, and which are reflected in the autonomy that the Islands continue to enjoy today.⁵
10. The Isle of Man, situated in the Irish Sea almost equidistant from England, Scotland, Wales and Northern Ireland, was during the medieval period variously ruled by the Kingdoms of Norway, Scotland and England, until it finally came under the feudal lordship of the English Crown in the 14th century. The Island's legislature, Tynwald, is claimed to be the oldest continuous legislature in the world.
11. Today, the Bailiwicks of Guernsey and Jersey, and the Isle of Man, are collectively referred to as the Crown Dependencies. They are not part of the UK but are self-governing Dependencies of the Crown, with their own directly elected legislative assemblies, administrative, fiscal and legal systems and their own courts of law. They are not represented in the UK Parliament.

2 Much of the below is drawn from Ministry of Justice, *Fact sheet on the UK's relationship with the Crown Dependencies* (12 April 2013): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/564373/factsheet-on-the-uks-relationship-with-the-crown-dependencies.pdf [accessed 8 March 2017]

3 This figure is rounded up to the nearest thousand.

4 **Q 1** (Deputy Gavin St Pier). See also **Q 13** (Professor Andrew Le Sueur)

5 Government of Jersey, 'Jersey and the UK': www.londonoffice.gov.je/jersey/uk [accessed 8 March 2017]

12. The constitutional relationship of the Islands with the UK is maintained through the Crown and is not enshrined in a formal constitutional document. The Crown, acting through the Privy Council, is ultimately responsible for ensuring their good government. The Queen is the Head of State, with a Lieutenant-Governor acting as her personal representative in each Crown Dependency.
13. The UK Government is responsible for the defence and international relations of the Islands. The Lord Chancellor and Secretary of State for Justice is the Privy Counsellor with special responsibility for Island Affairs, supported by a Ministry of Justice Minister (currently Sir Oliver Heald QC MP) with responsibility for the conduct of the Islands' business within Whitehall. While the Ministry of Justice is responsible for managing the constitutional relationship with the Crown Dependencies, all UK Government Departments have a responsibility to engage directly with the Crown Dependencies on their policy areas.
14. The British Nationality Act 1981 confers British Citizenship on "all those with close connections with the UK, the Channel Islands and the Isle of Man."⁶ The Crown Dependencies, together with the UK and Ireland, comprise the Common Travel Area. There is no immigration control within the CTA. The Bailiwicks of Guernsey, Jersey and the Isle of Man are also members of the British-Irish Council.
15. The Islands' legislatures make their own domestic legislation, which requires Royal Assent or sanction. The Ministry of Justice examines such legislation to ensure that there is no conflict with international obligations (including compliance with the European Convention on Human Rights) or any fundamental constitutional principles. UK legislation rarely extends to the Crown Dependencies, and when it does so is normally extended by an Order in Council with the agreement of the Crown Dependencies.
16. The Crown Dependencies are not recognised internationally as sovereign States in their own right, but as territories for which the United Kingdom is responsible. As such, they cannot sign up to international agreements in their own right, but can have the UK's ratification of such instruments extended to them, or can sign specific international agreements if they have been entrusted to do so by the UK. However, as we explore in Chapter 4, the Crown Dependencies are developing their international identities.
17. The long-standing practice of the UK when it ratifies, accedes to, or accepts a treaty, convention or agreement is to do so on behalf of the United Kingdom and any of the Crown Dependencies that wish the treaty to apply to them.

The Crown Dependencies and the EU

18. The Crown Dependencies' relationship with the EU is unique. Article 355(5) (c) TFEU states that "this Treaty shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements of those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community signed on 22 January 1972."⁷

6 Ministry of Justice, *Fact sheet on the UK's relationship with the Crown Dependencies* (12 April 2013): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/564373/factsheet-on-the-uks-relationship-with-the-crown-dependencies.pdf [accessed 8 March 2017]

7 Article 355(5)(c), Treaty on the Functioning of the European Union, *OJ C 326/1* (consolidated version of 26 October 2012)

Protocol 3 to the UK Treaty of Accession

19. Protocol 3 to the UK's 1972 Treaty of Accession to the European Community is set out in Box 1.

Box 1: Protocol 3 of the UK's Act of Accession to the EU

Article 1

1. The Community rules on customs matters and quantitative restrictions, in particular those of the Act of Accession, shall apply to the Channel Islands and the Isle of Man under the same conditions as they apply to the United Kingdom. In particular, customs duties and charges having equivalent effect between those territories and the Community, as originally constituted and between those territories and the new Member States, shall be progressively reduced in accordance with the timetable laid down in Articles 32 and 36 of the Act of Accession. The Common Customs Tariff and the ECSC unified tariff shall be progressively applied in accordance with the timetable laid down in Articles 39 and 59 of the Act of Accession, and account being taken of Articles 109, 110 and 119 of that Act.
2. In respect of agricultural products and products processed therefrom which are the subject of a special trade regime, the levies and other import measures laid down in Community rules and applicable by the United Kingdom shall be applied to third countries.

Such provisions of Community rules, in particular those of the Act of Accession, as are necessary to allow free movement and observance of normal conditions of competition in trade in these products shall also be applicable.

The Council, acting by a qualified majority on a proposal from the Commission, shall determine the conditions under which the provisions referred to in the preceding sub-paragraphs shall be applicable to these territories.

Article 2

The rights enjoyed by Channel Islanders or Manxmen in the United Kingdom shall not be affected by the Act of Accession. However, such persons shall not benefit from the Community provisions relating to the free movement of persons and services.

Article 3

The provision of the Euratom Treaty applicable to persons or undertakings within the meaning of Article 196 of that Treaty shall apply to those persons or undertakings when they are established in the aforementioned territories.

Article 4

The authorities of these territories shall apply the same treatment to all natural and legal persons of the Community.

Article 5

If, during the application of the arrangements defined in this Protocol, difficulties appear on either side in relations between the Community and these territories, the Commission shall without delay propose to the Council such safeguard measures as it believes necessary, specifying their terms and conditions of application.

The Council shall act by qualified majority within one month.

Article 6

In this protocol, Channel Islander or Manxman shall mean any citizen of the United Kingdom and Colonies who holds that citizenship by virtue of the fact that he, a parent or grandparent was born, adopted, naturalised or registered in the Island in question; but such a person shall not for this purpose be regarded as a Channel Islander or Manxman if he, a parent or grandparent was born, adopted, or naturalised or registered in the United Kingdom. Nor shall he be so regarded if he has at any time been ordinarily resident in the United Kingdom for five years.

The administrative arrangements necessary to identify those persons will be notified to the Commission.

Source: Isle of Man Government, *Isle of Man Relationship with the European Union*: <https://www.gov.im/media/624101/protocol3relationshipwiththeeu.pdf> [accessed 15 March 2017]

20. Under Protocol 3, the Crown Dependencies are part of the customs territory of the Union and therefore Union customs matters, the common customs tariff, levies, the prohibition against quantitative restrictions and any measures having equivalent effect apply. There is free movement of agricultural goods and derived products between the Islands and the EU. Measures relating to trade in agricultural goods and derived products with third countries are also included.
21. However, other EU Rules do not apply to the Crown Dependencies. Implementation of the provisions on the free movement of persons, services and capital is therefore not required, and the Crown Dependencies are not eligible for assistance from EU structural funds or under the Common Agricultural Policy. EU tax instruments do not apply, nor do justice and home affairs measures or the Schengen *acquis*, although the Crown Dependencies support improved judicial cooperation within the EU and have voluntarily applied for recognised equivalent status in a number of legal and policy areas.
22. Thus, in summary, the Crown Dependencies are part of the Customs Union and are essentially within the Single Market for the purposes of trade in goods, but are third countries in all other respects, although they voluntarily implement appropriate EU legislation or apply the international standards on which they are based. They do not contribute to, or receive, EU funds.⁸

8 Channel Islands Brussels Office, *The Channel Islands and the European Union* (21 March 2016): <http://www.channelislands.eu/wp-content/uploads/2011/12/CI-EU-background-note-21-March-2016.pdf> [accessed 9 March 2017] and Isle of Man Government, *Isle of Man Relationship with the European Union*: <https://www.gov.im/media/624101/protocol3relationshipwiththeeu.pdf> [accessed 15 March 2017]

Protocol 3 in context

23. Our witnesses reflected on the background to the drafting of Protocol 3. Senator Gorst noted that when the UK decided it was going to join the European Community, the three Crown Dependencies decided that they did not wish to be members, but because of the structure of their economies at the time, they wished to be able to trade in goods, in particular agricultural produce.⁹
24. Mr Quayle said that, while the Isle of Man did not wish to join, there had been concerns that trade and freedom of movement with the UK might not have been able to continue once the UK joined. Therefore, “Protocol 3 was put in place to allow this relationship to continue without bringing us fully into the European Union.” He noted that, while “the drafting of Protocol 3 was done almost as an afterthought ... it is an association that has served us well for over 40 years.”¹⁰
25. Professor Andrew Le Sueur, Professor of Constitutional Justice, University of Essex, noted that each of the Channel Islands initially had a different view as to what it wanted its constitutional relationship with the EU to be.¹¹ Professor St John Bates, of St John Bates Consultancy, and formerly Clerk of Tynwald and Counsel to the Speaker of the House of Keys, told us:

“Protocol 3 can be described as short, limited in scope and somewhat telegraphic. One reason for that was that until quite a late stage of the accession negotiations the UK Government’s position to the Dependencies was effectively, ‘We are in the middle of difficult and complex discussions. Because of that, either you are going to have to be treated as part of the UK or you are going to have to stay out entirely.’ It was only at a late stage that Protocol 3 was drafted and Lord Rippon eventually relented.”¹²

Differences between the Crown Dependencies

26. Notwithstanding the Protocol 3 framework, there are some differences between the Crown Dependencies in terms of their relationship both with the UK and the EU, notably regarding the rights of EU citizens (including British citizens) to work. Another principal difference is that the Isle of Man has a customs and excise agreement with the UK (signed in 1979), which provides for the sharing of VAT and other revenues between the Island and the UK. Thus the Isle of Man is part of the EU customs territory and fiscal territory.¹³ Guernsey and Jersey do not apply VAT. They apply their own customs regimes set up in 1973 and the EU Common External Tariff by virtue of being part of the customs union for goods through Protocol 3. They are also part of the Common Commercial Policy for goods. While the Isle of Man is part of the UK’s membership of the World Trade Organization (WTO), Guernsey and Jersey are not. We discuss these issues further in Chapter 3.

9 [Q 1](#)

10 *Ibid.*

11 [Q 13](#)

12 [Q 13](#); Lord Rippon (then Geoffrey Rippon MP) was the Minister responsible for negotiating the terms of UK entry to the European Community.

13 [Q 3](#) (Howard Quayle MHK)

27. While all of the Crown Dependencies cooperate where appropriate, given their geographical proximity, the relationship between the Channel Islands is in practice closer. For instance, they have a joint Channel Islands office in Brussels, whereas the Isle of Man operates a separate office.¹⁴ While we were told that the Crown Dependencies' interests were in alignment most of the time, this is not always so. The Chief Ministers of Jersey and Guernsey cited fishing rights as an area of disagreement between them (see Chapter 3).¹⁵
28. There is also some difference in the intensity of the Crown Dependencies' relationship with other EU Member States. The Channel Islands operate an office in Caen, reflecting the geographical and historical links with Normandy, and Senator Ian Gorst told us that the bilateral relationship with France was "a very close second" to that with the UK. As well as cultural and language links, some French financial institutions are based in the Channel Islands, and there are also significant transport and energy supply links.¹⁶ Given its geographical location, such bilateral links with other Member States are less significant for the Isle of Man, although it has good relationships with its next-nearest neighbour, Ireland.¹⁷
29. As we shall see in Chapter 3, although the three Crown Dependencies have many policy interests in common in connection to the Brexit negotiations, they also have their own individual priorities, reflecting the relative economic importance of various sectors and issues.
30. It is also notable that the Crown Dependencies' constitutional relationship, both with the UK and the EU, is distinct from that of the UK Overseas Territories, including Gibraltar, the only Overseas Territory within the EU. Indeed, the Chief Minister of Jersey told us that "our relationship with the EU is virtually the mirror image of Gibraltar's relationship with the EU."¹⁸

14 [Q 2](#) (Senator Ian Gorst, Hon Howard Quayle)

15 [Q 2](#) (Senator Ian Gorst, Deputy Gavin St Pier)

16 [Q 4](#)

17 [Q 4](#) (Hon Howard Quayle)

18 [Q 8](#); Our recent report European Union Committee, *Brexit: Gibraltar* (13th Report, Session 2016–17, HL Paper 116) sets out our analysis of the implications of Brexit for Gibraltar.

CHAPTER 3: BREXIT AND THE CROWN DEPENDENCIES’ FUTURE RELATIONSHIP WITH THE EU

The end of Protocol 3

31. Mr Quayle noted that the Crown Dependencies’ Protocol 3 relationship was dependent on the UK remaining a member of the EU.¹⁹ Our witnesses agreed that Protocol 3 was therefore destined to cease to exist along with the UK’s EU membership. Professor Alastair Sutton, of Brick Court Chambers, former European Adviser to the Crown Dependencies, and current Adviser to the Government of Bermuda, told us that “when we leave, the day the treaties cease to exist will be the day Protocol 3 ceases to exist simultaneously with all the other treaty arrangements. Therefore, from a purely legal point of view, running it on is not an option.”²⁰ Susie Alegre, of Doughty Street Chambers, agreed: “The UK’s withdrawal from the EU will end the special relationship Crown Dependencies have with the EU under Protocol 3.”²¹ Mr Walker said that it was “difficult to envisage the circumstances in which the EU would sign up to a continuation of the Crown Dependencies’ EU status while the UK left.”²²

The Crown Dependencies’ future relationship with the EU

32. The question therefore is what the Crown Dependencies’ future relationship with the EU will look like. Our witnesses identified several policy fields that were likely to be affected, and therefore needed to be taken into account in the Brexit negotiations.

Trade in goods

33. Senator Gorst told us that the structure of the Crown Dependencies’ economies at the point of UK accession meant that Jersey’s priority at the time was to take advantage of the Treaty’s provisions enabling the free movement of goods. He noted that agricultural industries were extremely important at that point.²³ Although the Islands’ economic model has changed in the intervening period, the ability to trade in goods remains a priority for each of the Crown Dependencies.
34. Mr Quayle said that one of the Isle of Man’s two key concerns related to freedom of movement of goods.²⁴ He told us that the impact of Brexit on agriculture and on animal welfare was key.²⁵ He pointed to exports of Manx lightweight lambs to Greece, Italy and Germany, and king scallops and queenies²⁶ to the EU, as examples of industries that could be affected by the post-Brexit imposition of tariffs: “If we come out of the European customs union we will have the additional cost of setting up our own borders.”²⁷

19 [Q 1](#)

20 [Q 17](#)

21 Written evidence from Susie Alegre ([CDP0002](#))

22 [Q 30](#)

23 [Q 1](#)

24 [Q 10](#)

25 [Q 3](#)

26 Isle of Man queen scallops.

27 [Q 6](#)

35. Senator Gorst said that Jersey would wish to retain the ability to export fish into the EU (principally to France) free of tariffs. He noted that, while the industry was not quantitatively a large part of the economy, it was culturally important. If the UK were to leave the common external tariff, there would be implications for the Jersey fishing industry and other, smaller sectors of the economy.²⁸
36. With regard to fisheries quotas, the Chief Ministers of Guernsey and Jersey also noted that this was one of the principal areas of disagreement between them.²⁹ The Common Fisheries Policy does not apply to the Crown Dependencies as a matter of law. Jersey and the Isle of Man voluntarily abide by the EU quota regime by means of a Fisheries Management Agreement (FMA) with the UK. The Bailiwick of Guernsey signed an FMA in 2012, but a dispute arose with DEFRA as to whether this required the voluntary adoption of UK set quotas. This led to the suspension of the FMA—a situation which Guernsey is now working with the UK to resolve. Deputy St Pier noted that, taken as a whole, fishing would be one of the most complex areas of negotiation, in particular given the series of relationships or agreements between the UK and France that actually predated the EU.³⁰
37. On the other hand, Senator Gorst pointed out that most agricultural products, notably Jersey Royal potatoes, were exported to the UK. Therefore, “the most important relationship that needs to be maintained at the end of this process is with the UK”, including “free movement of goods into the UK”.³¹
38. According to Deputy St Pier, the key challenge was making sure that the UK would not have a different status from the Crown Dependencies in terms of tariff barriers. If the UK were to rely on WTO rules for its trading relationship with the EU post-Brexit, then Guernsey and Jersey would need to seek WTO membership in their own right. He said that they were “seeking to deal with that issue sooner rather than later”. Senator Gorst said that “the simple solution would be to extend the UK’s membership of WTO, with the authority of our Parliament, to the Channel Islands”. Mr Quayle told us that the UK’s membership of the WTO had already been extended to cover the Isle of Man in 1997.³²
39. Mr Quayle also pointed to the Isle of Man’s manufacturing industry, which makes landing gear for Boeing jets and ejector seats for many of the world’s air forces. He told us that these parts mainly went to the UK, but were then exported to the EU.³³
40. Professor Sutton suggested that it would be possible for the UK “quite seamlessly ... to add to its own negotiations of a free trade area a protocol similar in scope to Article 1 of Protocol 3 anyway, which would continue ... the trade in goods, i.e. horticultural, agricultural and even manufacturing if possible.”³⁴

28 [Q 6](#)

29 [Q 2](#)

30 European Union Committee, *Brexit: fisheries* (8th Report, Session 2016–17, HL Paper 78)

31 [Q 6](#)

32 [Q 10](#)

33 [Q 4](#)

34 [Q 17](#)

Financial services

41. The biggest transformation in the economies of the Crown Dependencies since UK accession has been the development of significant financial services sectors.³⁵
42. The Channel Islands Brussels Office notes that:
- “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. Protocol 3 does not cover services, so the Channel Islands are treated as third countries for the purposes of EU financial services legislation.”³⁶
43. Senator Gorst said that the Government of Jersey estimated that it was “a conduit of something like £188 billion into Europe ... equivalent to about 88,000 jobs”.³⁷ Deputy St Pier pointed to the fact that the Channel Islands “trade a number of financial services into the EU, whether funds or insurance”.³⁸
44. Both Senator Gorst and Deputy St Pier were confident that it would be possible for Jersey and Guernsey to continue with the terms of their existing third country relationship with the EU post-Brexit, and that, consequently, concerns over a financial services ‘cliff edge’, and over relocation, did not have the same resonance as for the City of London.³⁹
45. Senator Gorst noted that Jersey had had to make decisions for a number of years about whether it was economically beneficial to deliver equivalence⁴⁰ to EU standards in various markets, for instance in relation to the Markets in Financial Instruments Directive (MiFID) II. In some cases, indeed, it had not been appropriate for Jersey to seek equivalence, because of its financial services models. He also noted a “layer of complexity about whether equivalence is a technical process, or a technical process with a political overlay”. While it was possible to navigate technical requirements, the political process created more uncertainties. He also noted that not every directive included equivalence provisions.⁴¹
46. Deputy St Pier said that the challenge was “to what extent the rules of the game around equivalence change because the EU is now dealing with a larger third country—namely, the UK”. While he was confident that existing equivalence provisions could be maintained, he conceded that this might make obtaining equivalence more difficult in connection to any future EU Directives.⁴² Professor Sutton said that legally there was no reason why existing equivalence arrangements could not be maintained, but added

35 [Q 13](#) (Professor Alastair Sutton)

36 Channel Islands Brussels Office, *The Channel Islands and the European Union* (21 March 2016): <http://www.channelislands.eu/wp-content/uploads/2011/12/CI-EU-background-note-21-March-2016.pdf> [accessed 9 March 2017]

37 [Q 9](#)

38 *Ibid.*

39 [QQ 7-8](#)

40 For a detailed analysis of equivalence, see European Union Committee, *Brexit: financial services* (9th Report, Session 2016–17, HL Paper 81)

41 [Q 7](#)

42 *Ibid.*

that it was not clear whether equivalence had been granted to the Crown Dependencies (and the Overseas Territories) because of their links to the UK as a Member State. In his view, the EU would only grant equivalence “because it is in the EU’s interest to permit the free flow of capital from Jersey, Guernsey and the Isle of Man into EU markets. I am afraid there are some grey zones where we do not quite know what the outcome will be. It is in the lap of the gods.”⁴³

47. Professor Bates said that the Crown Dependencies might be forced to choose between equivalence with the UK and with the EU. This would require “a bit of political as well as legal sophistication—probably more political than legal sophistication. Once you have decided what you are going to do, it is fairly easy to achieve the equivalence.”⁴⁴
48. Senator Gorst stressed the importance in relation to financial services provision of “navigating together with the City [of London] because of our symbiotic, mutually beneficial relationship with the UK economy”.⁴⁵ He added that “the most important equivalent standards for us to follow are the UK’s, because the UK is our main trading partner as well as our historical constitutional loyalty”. He also noted that there was already some divergence between EU standards and international standards emanating from the IMF and the OECD. He stressed that Jersey was:

“Absolutely committed to the international standards coming out of the international standard-setting bodies where there is appropriate peer review ... There will be a challenge, but it will be a challenge that we will share and navigate with the United Kingdom as they become third countries about that divergence of standards between the EU standards and those of the rest of the world.”⁴⁶

49. Deputy St Pier agreed that “the most significant trade relationship in financial services remains with the United Kingdom, but the rest of the European Union is a significant trading bloc for us. Maintaining our current level of access is a key objective.”⁴⁷ He noted:

“As part of being a responsible financial services jurisdiction, we are committed to meeting international standards, which continually evolve ... Our funds industry in particular funnels around £25 billion of inward investment into the UK and £50 billion into the EU. Around £35 billion of Guernsey funds are invested in various UK infrastructure assets. In summary, while Guernsey is not part of the United Kingdom or of the European Union, we place huge value on all those relationships, our ability to move freely and our access to markets. Our objective through this process is to try to preserve as much of that as we possibly can.”⁴⁸

50. Mr Quayle said that, while the Isle of Man shared the concerns of the Channel Islands, it was not as exposed in respect of financial services. It undertook more worldwide investments than with the EU, and diversification

43 [Q 17](#)

44 [Q 21](#)

45 [Q 7](#)

46 [Q 8](#)

47 [Q 9](#)

48 [Q 1](#)

into e-business and manufacturing had reduced its exposure in financial services.⁴⁹

51. Nevertheless, Professor Bates noted that e-gaming represented about 8% of the Isle of Man's GDP, and the EU was beginning to take serious steps towards regulating e-gaming: "If we visit a situation where e-gaming is not part of any Brexit agreement, you then have quite a difficult situation for the Isle of Man."⁵⁰ More broadly, he stated that "it is almost inevitable that there will be significant areas of financial services affected in the Crown Dependencies if there is a downturn in the City of London. It will be exacerbated should there be a significant move of institutions or part of institutions elsewhere in the EU".⁵¹
52. Professor Sutton was concerned about the implications of Brexit for the Crown Dependencies' financial sectors. He argued that the international climate had changed as a result of the financial crisis, and that international action in the G20, the OECD, the IMF and the EU presented a challenge to the Crown Dependencies' financial services model, such that "the historic advantages over the last 30 years of jurisdictions such as Jersey, Guernsey and the Isle of Man to attract investment by virtue of advantageous taxes or different types of regulation are probably going to diminish anyway." He argued that the difference between UK policy in financial services and taxation and that in the Crown Dependencies made it difficult for the UK to represent the Crown Dependencies in international fora (see Chapter 4).⁵²
53. Professor Sutton said that the EU was undertaking a:

"so-called blacklisting process where serious damage to the economies of Jersey, Guernsey, the Isle of Man ... could be done if the EU blacklist these Territories despite the fact that they have ticked all the boxes internationally in the OECD for compliance with tax, anti-money laundering legislation and financial regulation".⁵³

He saw this as part of the European Union's drive "to deal with what they call 'low, no or zero tax jurisdictions'".⁵⁴ He observed that, by the end of 2017, ECOFIN⁵⁵ would have to decide which countries to blacklist, and which sanctions to apply: "If the United Kingdom is not there to fight our corner in ECOFIN, of course it will be more difficult."⁵⁶

54. Professor Sutton cited the pressure that was brought to bear on the Crown Dependencies to accept the disciplines of the Tax on Savings Directive,⁵⁷ which resulted in them negotiating agreements with each EU Member State for the exchange of information under the Directive. Further initiatives had followed:

49 [Q 9](#)

50 [Q 21](#)

51 [Q 25](#)

52 [Q 17](#) and [Q 19](#)

53 [Q 13](#)

54 [Q 14](#)

55 The Economic and Financial Affairs Council.

56 [Q 23](#)

57 Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments ([OJ L 157/38](#), 26 June 2003) which was later repealed by Council Directive (EU) 2015/2060 of 10 November 2015 repealing Directive 2003/48/EC on taxation of savings income in the form of interest payments ([OJ L 301/1](#), 18 November 2015)

“The next step was the code of conduct on harmful business taxation, which was extended extraterritorially to [the Islands] despite the provisions of Protocol 3. They also submitted their corporate tax law to the Code of Conduct Group in Brussels, and their corporate tax legislation, after some discussion, was approved by Brussels by the Code of Conduct Group. That was a unique occasion when a representative of Jersey was allowed into the room to sit next to the British Treasury to explain Jersey’s zero-ten corporate tax legislation.”⁵⁸

Case study: the Alternative Investment Fund Managers Directive (AIFMD)

55. The current debate over the Alternative Investment Fund Managers Directive (AIFMD) illustrates in microcosm the concerns over the potential impact of Brexit on the Crown Dependencies’ financial sectors. Both the Chief Ministers of Guernsey and Jersey noted that the Crown Dependencies’ attempts to attain passporting rights under the AIFMD had already become politicised after the referendum.⁵⁹ Senator Gorst explained that the Channel Islands had met the technical requirements that ESMA⁶⁰ had set out in order to issue a passport. However, in order to obtain a passport, a Member State of reference was required, which meant that, “while the UK is leaving, the requirement for member state of reference and the issuing of the passport could easily acquire a political overlay”.⁶¹

56. Professor Bates noted that ESMA had given an opinion in July 2016,

“saying that there was no problem with Guernsey or Jersey but they did not extend that to the Isle of Man because there was insufficient information available to them. Since then, post the prospect of Brexit, the Commission has put all those initiatives on hold for all three Crown Dependencies.”

There was a feeling that the regime of passports might replace equivalence, which “would make life even more difficult for the Crown Dependencies”.⁶²

57. Mr Walker said that the AIFMD had been discussed at his formal meetings with the Chief Ministers of the Crown Dependencies, and although Treasury Ministers had not attended those meetings, “we are taking a conversation forward with the Treasury and other departments to ensure that their views are understood and reflected”. The UK would continue to engage on equivalence discussions while it remained a Member State, although he did not give any reassurance over how the issue would be resolved.⁶³

58 [Q 14](#)

59 [Q 7](#)

60 The European Securities and Markets Authority.

61 [Q 9](#); For a detailed analysis of passporting, see European Union Committee, *Brexit: financial services* (9th Report, Session 2016–17, HL Paper 81)

62 [Q 22](#)

63 [Q 28](#)

A bilateral financial services agreement?

58. Professor Sutton was fearful that, “for the Crown Dependencies and the Overseas Territories, life after Brexit will be more difficult without the UK having a seat at the EU table and being able to shape and drive EU policy”.⁶⁴ Professor Le Sueur agreed that “life after Brexit is almost certainly going to be more difficult and that the Islands are going to be in a more vulnerable position than they are now”.⁶⁵
59. Professor Sutton said that the Crown Dependencies therefore had three options: to align themselves with the UK in seeking a free trade agreement in services, in effect saying, “We will accept whatever you can negotiate in terms of market access”; to ask the UK Government to negotiate a separate agreement in their name, which he considered possible but “extremely difficult”; or to seek to be entrusted to undertake their own negotiations with the EU. He thought that, given the current political tendency in Brussels to seek a level playing field across the EU’s periphery, “the idea of doing *sui generis ad hoc* deals with small non-sovereigns is very difficult to imagine, and I wonder whether the political will would be there”.⁶⁶ Yet he hesitated about maintaining the *status quo* of alignment with the UK, arguing that some form of bilateral agreement would provide greater legal certainty.⁶⁷
60. Professor Bates thought that a bilateral agreement on financial services was a “non-starter”:
- “I do not think the United Kingdom Government are going to let the Crown Dependencies loose to negotiate their own financial services agreement ... I cannot see the EU being interested in doing it anyway.”⁶⁸
61. Professor Le Sueur commented:
- “The stability of the islands, in terms of their position as international finance centres, is really built on changing as little as possible and maintaining the *status quo*. They have built up their industries on the basis of being third countries so far as financial services are concerned, and I think that as little change as possible is clearly the preferred way. I can understand the political reasons for that.”⁶⁹

We return to this issue in Chapter 4.

The rights of EU citizens to reside and work in the Crown Dependencies

62. Subject to the provisions in Protocol 3 that prohibit discrimination between EU Member States (including the UK), the Crown Dependencies can, and do, operate different policies with regard to the rights of EU citizens to take up employment. Senator Gorst explained that the Crown Dependencies:

64 [Q 23](#)

65 [Q 24](#)

66 [Q 17](#)

67 [Q 21](#)

68 [Q 19](#)

69 *Ibid.*

“Benefit—if I may use that word—from the free movement of people who come into the United Kingdom; because of the common travel area, they can come over to our Islands. Each of us puts a layer of legislation over that, which acts as a control, but it acts in a non-discriminatory manner ... The way in which we devise and operate that control is where there are slight differences.”⁷⁰

63. The Isle of Man currently operates a work permit system, where EU nationals (including UK nationals) have restricted access to the labour market.⁷¹ Jersey does not have a work permit system, although its employers are required to apply for a work licence if they wish to employ someone without residential qualifications. Within the Bailiwick of Guernsey, while Guernsey does not operate a work permit regime, Alderney applies an employment permit regime on EU nationals, and Sark has a similar provision on the statute book, although it is not in force.
64. The Isle of Man Government noted that, under Protocol 3, it had several obligations, including to treat all persons from the European Union in the same way, including people from countries that joined the EU after Protocol 3 was agreed. EU nationals therefore have the right of free movement into the Isle of Man and are not subject to immigration controls. Similarly Isle of Man residents have the right of free movement across the EU, and do not need visas to enter EU countries. Protocol 3 does not prevent the Isle of Man operating a work permit system, or limiting services or benefits, provided this applies equally to people from all EU countries—including from the UK.⁷²
65. Howard Quayle told us that there were approximately 4,000 non-British EU nationals living in the Isle of Man.⁷³ He said that maintaining as much as possible the current freedom of movement of people was one of the Isle of Man’s primary concerns, in large part because of the island’s ageing population:
- “In the next 20 years there will be a 53% increase in people over the age of 65, with only a 2% to 3% increase in the working population. As an economy, we are looking to grow the working population on the Isle of Man to get over that hurdle ... we have an unemployment rate of 1.2%, which is dangerously low. We really need to grow our 20 to 40 year-old skilled workforce ... Losing the freedom of movement of people we rely on from the European Union, as well as the United Kingdom, would be a major concern.”⁷⁴
66. Professor Bates concurred, noting that the Isle of Man’s death rate exceeded its birth rate. He pointed out that there would be particular difficulties for the Island’s health service and financial services sector. Although the Isle of Man’s work permit system, which currently requires applicants to be filling a job for which there is no available local person, could be revised to encourage immigration, he conceded that “it would be quite a sensitive issue in domestic Manx politics to broaden the ability of people coming freely to work in the Isle of Man”.⁷⁵

70 [Q 8](#)

71 Supplementary written evidence from Isle of Man Government ([CDP0003](#), [CDP0004](#))

72 Supplementary written evidence from Isle of Man Government ([CDP0004](#))

73 [Q 5](#)

74 [Q 6](#) and [Q 11](#)

75 [Q 18](#)

67. With regard to the Channel Islands, Professor Le Sueur noted that Alderney also had a rapidly declining population. Jersey, by contrast, was one of the most densely populated places in the world, with a rapidly rising population. In 2015 there was net inward migration of 1,500 out of a total population of 100,000. The vast majority were British people moving from the UK. The next largest populations were people born in Portugal (7% of the population) and in Poland (3% of the population). Although these figures were “quantitatively much less important”, he noted that they were of “huge importance in relation to the hospitality and agricultural sector”.⁷⁶
68. Senator Gorst told us that Jersey, out of its total population of approximately 100,000, had about 15,000 non-British EU nationals:

“We are very mindful of their place in the Channel Islands going forward and throughout this process. We support the work of the Prime Minister in, if at all possible, getting a resolution to that earlier rather than later. They are important members of our community and it is important that they are dealt with fairly so that they continue to feel welcomed and valued.”⁷⁷

Although this issue did not arise in the evidence we received from Deputy St Pier, we note that in a recent speech, he stated that Guernsey also wished to guarantee the rights of EU citizens currently residing there.⁷⁸

Free movement and the Common Travel Area

69. We examined the future of the Common Travel Area at length in our recent report on *Brexit: UK-Irish relations*.⁷⁹ While the creation of an EU external border will not arise in the case of the Crown Dependencies, our witnesses were alive to the implications for the CTA. For instance, Professor Sutton suggested that allowing the Crown Dependencies to negotiate their own arrangements on the free movement of EU citizens might not be compatible with continuation of the CTA, although “in legal theory, a solution would be possible”.⁸⁰ Professor Bates did not think that the Crown Dependencies would want to negotiate something that deprived their citizens of their ability to travel freely to the UK.⁸¹
70. Deputy St Pier observed:

“The free movement of people between the Islands and the UK is a long-standing constitutional position, derived from successive royal charters. The Common Travel Area is just a modern manifestation of how that is delivered, so for us it would become a significant constitutional issue if that free movement of people between the islands and UK did not continue. In other words, whatever replaces the CTA would need to recognise that historic constitutional relationship and those historic charters that give those rights for our people to move freely between the Islands and the UK.”⁸²

76 *Ibid.*

77 [Q 5](#)

78 Government of Guernsey, Statement from Deputy Gavin St Pier, President of the Committee for Policy and Resource, *Triggering of Article 50 of the Treaty on European Union in respect of Protocol 3* (8 March 2017): <https://www.gov.gg/article/158759/Statement-from-Deputy-Gavin-St-Pier-President-of-the-Committee-for-Policy--Resources> [accessed 15 March 2017]

79 European Union Committee, *Brexit: UK-Irish relations* (6th Report, Session 2016–17, HL Paper 76)

80 [Q 18](#)

81 [Q 19](#)

82 [Q 10](#)

71. Mr Walker stressed the UK Government’s commitment to maintaining the Common Travel Area, “recognising the special importance of that to people in their everyday lives—particularly in the Crown Dependencies”. He acknowledged the concerns that the Crown Dependencies had raised about the interests of their economies in continuing to attract key talent, and “also the fact that they take a slightly differentiated approach to the UK, particularly on settlement rights”. The Minister stressed that the Crown Dependencies’ legislatures were able to make their own legislation on migration and the right to work and live on the islands, and therefore to take a slightly different approach to the UK, “so long as they maintain the common travel area and freedom of movement within that”. He said that the UK Government was working closely with them, and noted that Home Office officials had attended formal meetings with the Crown Dependencies to answer questions.⁸³

Other issues

Data protection

72. Susie Alegre noted that while the Crown Dependencies were not in the EU, they had significant service industries that relied on their ability to trade internationally. The EU General Data Protection Regulation (GDPR), agreed earlier this year, significantly strengthens data protection for people in the EU. Ms Alegre pointed out that the territorial scope of the Regulation meant that, if the Crown Dependencies wished to continue to provide goods and services to the EU, they would need to conform to the GDPR, even if the UK were to depart from EU standards of data protection. This would require a careful and ongoing assessment of the impact of UK legal developments on the data protection regimes of the Crown Dependencies.⁸⁴
73. Deputy St Pier told us that Guernsey and Jersey were committed to adopting the new General Data Protection Regulations from 2018, and were working together to achieve equivalence.⁸⁵ Senator Gorst acknowledged that this issue would need to be considered carefully in the context of the Brexit negotiations,⁸⁶ and Professor Sutton cited it as an area of potential uncertainty: “If you are going to co-operate on financial services and you cannot exchange data because people do not trust your data protection rules, that would be a serious disadvantage.”⁸⁷

Transport and communications

74. Senator Gorst raised the issues of air security and transport.⁸⁸ He noted that “our economies are broad and our relationship with Europe is broad and deep. Things like air and shipping links are important to us.”⁸⁹ The Government of Jersey has pointed out that flight operators need to meet relevant EU standards in order to operate to EU destinations, and therefore need to know if the UK still intends to participate in the European Single Sky. For the purposes of the EU’s Single European Sky Regulations, Jersey airspace is (for reasons of geography) part of the functional airspace block with France

83 [Q 31](#)

84 Written evidence from Susie Alegre ([CDP0002](#))

85 [Q 7](#)

86 [Q 2](#)

87 [Q 22](#)

88 [Q 2](#)

89 [Q 12](#)

(and the airspace controlled by Jersey sits under airspace administered by France).⁹⁰ Mr Walker agreed that transport and communications were key issues.⁹¹

Energy and environment

75. Senator Gorst noted that there would be implications of Brexit for the Crown Dependencies' future energy supply.⁹² He noted that “in Jersey and Guernsey we buy all our electricity from EDF in France. Energy, and its supply into the future, is important.”⁹³
76. With regard to the environment, Susie Alegre noted:
- “Much of the UK’s environmental law is based on EU law. When the UK leaves the EU, there is a risk that the legislative frameworks and environmental protections applicable in the UK will be weakened. The Crown Dependencies are geographically part of the British Isles sharing seas with the UK. The environment is important for island communities that can be vulnerable to climate change and environmental degradation—the Isle of Man became the first whole jurisdiction to be awarded UNESCO Biosphere Reserve status in 2016. Reductions in environmental protection in the UK that affect air and water quality, for example could have a serious detrimental effect on Crown Dependencies and on the health, well-being, and livelihoods of their residents. It is difficult to predict what changes will occur over time and how environmental law will be affected.”⁹⁴
77. The implications of Brexit for future UK environment policy were explored in our recent report on *Brexit: environment and climate change*.⁹⁵ We endorse Ms Alegre’s observation that any change in UK environmental standards, and any divergence from EU environmental standards, could have a substantial impact upon the Crown Dependencies.

The legislative impact on the Crown Dependencies

78. We asked whether the Crown Dependencies would be required to prepare their own equivalents of what the UK Government has called the ‘Great Repeal Bill’. Senator Gorst told us that the Government of Jersey was developing a draft bill, and that Jersey’s law officers were working with UK Government law officers to ensure that “we have covered everything appropriately. I think there is an acceptance, certainly in Jersey, that it might be that some things fall through the net and we have to come back and deal with them, but I do not think that is an insurmountable issue.”⁹⁶

90 Written evidence from the Government of Jersey to the House of Commons Justice Committee: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/implications-of-brexit-for-the-crown-dependencies/written/43489.pdf>

91 [Q 28](#)

92 [Q 2](#)

93 [Q 12](#)

94 Written evidence from Susie Alegre ([CDP0002](#))

95 European Union Committee, *Brexit: environment and climate change* (12th Report, Session 2016–17, HL Paper 109)

96 [Q 3](#)

79. Mr Quayle said that the Isle of Man Government had not yet specified the issues that would need to be dealt with in legislation, although he predicted that the Isle of Man’s customs and excise agreement with the UK (which provides for VAT and other revenues to be shared) would need to be looked at closely, as would policy areas including agriculture and animal welfare.⁹⁷
80. Deputy St Pier said that the Government of Guernsey had identified the necessity for a bill, but the quantity of legislation required was considerably less than that needed for the UK.⁹⁸
81. Professor Le Sueur identified four categories of law that would need to be examined:
- Constitutionally significant pieces of legislation that link the Crown Dependencies into the EU within the ambit of Protocol 3 (in the case of Jersey, the European Union (Jersey) Law 1973).
 - Legislation currently in force that may be affected by Brexit. The Jersey Legal Information Board legislation database contained 107 different enactments in Jersey (both primary and secondary law) using the words “European Union”. The Guernsey Legal Resources database contained 105 different enactments. Professor Le Sueur suggested that these were mostly legislation bringing different EU Directives into Island law, which had been necessary for the purposes of Protocol 3 and for matters relating to goods.
 - EU Regulations that have direct applicability in the Crown Dependencies. Professor Le Sueur acknowledged that the Islands “will have work to do” to identify “black holes appearing if those regulations are not incorporated into Island law at the point of Brexit.”
 - Laws making no express reference to the EU, but inspired by EU laws and standards, or law shadowing UK legislation, which had in turn been shaped by the EU. He said that such legislation would be “quite difficult to identify”, and would “require a considerable amount of research.”⁹⁹
82. Professor Bates identified Isle of Man company law as an example of legislation that largely followed UK company law, which in turn transposed EU company law Directives.¹⁰⁰
83. Professor Sutton said:
- “It is the same for the Channel Islands and the Isle of Man as it is for the United Kingdom. If we and they want continued access to EU markets, experience shows that you have to pretty much align your legislation on what is in force in the EU. If it is trade in goods under Protocol 3, the legislation that is now in force that allows free trade in goods with the Isle of Man and the Channel Islands will have to stay. If financial services is where we want access, we will have to replicate, for example, the AIFMD directive or the insurance directive. I do not see a great deal of scope for widespread repeals of legislation if the aim is to preserve access.”

97 [Q 3](#)

98 *Ibid.*

99 [Q 20](#)

100 *Ibid.*

He added that legislation would be needed subsequently to ensure that, where necessary, the Crown Dependencies stayed in line with future EU legislative developments.¹⁰¹

84. Deputy St Pier said that preparations for the UK ‘Great Repeal Bill’ and the parallel legislation in the Crown Dependencies demonstrated the requirement for “a close working relationship between the Crown Dependencies and Her Majesty’s Government on exactly these sorts of issues so that nothing falls between the cracks.”¹⁰² The Isle of Man Government confirmed that the Crown Dependencies had had the opportunity to meet UK officials working on the Great Repeal Bill.¹⁰³
85. Mr Walker stressed that it was not the Government’s responsibility to legislate for the Crown Dependencies, but confirmed that officials would be available to provide support to the Crown Dependencies both in drafting their own legislation, and in explaining the process being undertaken in relation to the Great Repeal Bill, in order to help the Crown Dependencies look to their own legislative requirements.¹⁰⁴

101 [Q 20](#)

102 [Q 3](#)

103 Supplementary written evidence from Isle of Man Government ([CDP0003](#))

104 [Q 29](#)

CHAPTER 4: THE BREXIT NEGOTIATIONS AND FUTURE RELATIONS WITH THE UK

The Crown Dependencies and the Brexit negotiations

86. The significant implications of Brexit for the Crown Dependencies, and the potential knock-on consequences for their relationship with the UK, highlight the importance of ensuring that the Crown Dependencies are able to contribute to and engage in the Brexit negotiations.
87. The Isle of Man Government noted that, immediately after the referendum, the Chief Ministers of the Crown Dependencies wrote to the then Prime Minister, David Cameron, stressing the Islands' interest in the withdrawal process. The new Prime Minister, Theresa May, replied in July 2016: "I can confirm that as we prepare for a new negotiation with the EU we will engage your Governments. It is right that the Crown Dependencies are kept informed and offered the opportunity to contribute where it is relevant and appropriate to do so."¹⁰⁵
88. The Minister, Robin Walker MP, acknowledged the UK Government's constitutional responsibility for representing the Crown Dependencies in the Brexit negotiations.¹⁰⁶ The UK Government was seeking to engage with the Crown Dependencies on all issues of concern, to "make sure that they have an understanding of the UK Government's position and also make sure that we are ready to lend them official support where they might need it to work through some of the solutions on some of these points".¹⁰⁷ He added:
- "Our efforts need to be focused on getting the best possible deal for the UK and Crown Dependencies as a whole in negotiations with the EU ... A single UK position in relation to the future relationship with the EU is vital in protecting the interests of both the UK and the Crown Dependencies in the long run. So I think the best focus is on market access and the comprehensive trade agreement which the Prime Minister has talked about and on making sure that the Crown Dependencies have as much access to that and benefits of it as possible."¹⁰⁸
89. Mr Walker outlined the structure of engagement. He and the Chief Ministers held quarterly formal "forum" meetings, with other UK ministers and departmental officials in attendance as necessary. This was not a Joint Ministerial Committee (JMC), because "the Crown Dependencies are under the Crown but not under the rule of Parliament, so the rules are slightly different". Less formal meetings had taken place on the fringes of the British-Irish Council, and officials from across the Government had been involved in technical meetings, "so they could pick up some of the views and feed them into the working of their own departments".¹⁰⁹
90. The Chief Ministers were broadly satisfied with the level of consultation and engagement. Mr Quayle said that engagement had "improved considerably", compared to the process of UK accession in the 1970s. The Crown

105 Supplementary written evidence from Isle of Man Government ([CDP0003](#))

106 [Q 29](#)

107 [Q 28](#)

108 [Q 30](#)

109 [Q 29](#); Written evidence from Robin Walker MP ([CDP0005](#)); Oral evidence taken on 2 February 2017 (Session 2016–17), [Q 22](#) (Robin Walker MP)

Dependencies had been invited to take part in the Balance of Competences Review in 2014, and were now engaged in discussions with a number of Government departments to develop the UK's negotiating position. They had also engaged with the devolved administrations in the British-Irish Council. He was also heartened by the engagement of parliamentary committees, including this Committee and the House of Commons Justice Committee.¹¹⁰ He concluded that the Crown Dependencies felt "exceedingly well looked after at the moment: long may it continue".¹¹¹

91. Mr Quayle added:

"We know that we are not part of the EU and so are not actually leaving. This means that the impact will be less than was felt in the United Kingdom. We also know that we must accept, in large part, the new relationship which the UK wishes to negotiate. When that becomes clear, we will consider how best to make the most of the opportunities and minimise the risks for the Island."¹¹²

92. Senator Gorst welcomed the UK Government's recognition of the importance of engaging the Crown Dependencies, and the Prime Minister's acknowledgement of the "valued, historical and special relationship" between the Crown Dependencies and the UK.¹¹³ Engagement with the UK Government had been strengthened at ministerial level, and was also working "incredibly well" at official level, where Crown Dependency officials had been involved in working groups with their UK counterparts on free movement, the Common Travel Area, financial services, the customs union, market access, agriculture and fisheries. In his view, it had been "a model of engagement and consultation", with "excellent relationships" with the Ministry of Justice. Nevertheless, this model needed to be sustained in a meaningful way throughout the process, and it was therefore "vital" that it be properly resourced. For Jersey's part, £4 million had been set aside to create a Brexit unit at the heart of government.¹¹⁴

93. Deputy St Pier observed that the real test would come when Article 50 was triggered, "when there will be a huge level of activity. Our challenge ... is to ensure that we and our interests are not forgotten in the process."¹¹⁵ At the same time, the UK needed to understand the risks around some of the positions it might adopt, and their impact, even if inadvertent, on the Crown Dependencies.¹¹⁶

94. Deputy St Pier flagged up a broader concern, over "the process of education that is constantly required, at all sorts of levels, for officials and others to understand that our jurisdictions are not part of the United Kingdom and that, as Crown Dependencies, they have a unique status". He also emphasised "the United Kingdom's responsibility to represent our interests, even where they may not be the same as the United Kingdom's".¹¹⁷

110 [Q 1](#) and [Q 3](#). See House of Commons Justice Committee [Implications of Brexit for the Crown Dependencies](#) inquiry.

111 [Q 11](#)

112 [Q 5](#)

113 [Q 1](#)

114 [Q 3](#) and [Q 11](#)

115 [Q 3](#)

116 [Q 6](#)

117 [Q 11](#)

95. Susie Alegre expressed doubt that, in an international negotiation as wide-ranging as Brexit, the Crown Dependencies would be able to make their voices heard. She also noted that “the way this is managed will set a precedent for future decisions on the international stage that could have even more serious consequences for the Crown Dependencies and their people”.¹¹⁸
96. Professor Bates said that the UK accession experience had been symptomatic of Whitehall’s tendency “to lose the Dependencies in the heat of wider issues, and also, rather less understandably, to be rather cavalier in their attitude to the Dependencies on some occasions”. Although the situation had improved, he advised the Crown Dependencies to be “slightly less benign than they have appeared to be in public and to just remember that default position”. In support of this view, he cited the absence of references to the Crown Dependencies in the Prime Minister’s Lancaster House speech, and the lack of direct Crown Dependency access to the Joint Ministerial Committee (EU Negotiations).¹¹⁹
97. Professor Bates was confident, though, that the Crown Dependencies had become more sophisticated and professional, and acknowledged that good lines of communication with Whitehall had been built up. Nevertheless, he warned that such relationships “work very smoothly when there is no serious action going on, but ... tend to unravel in the heat of hot negotiations”.¹²⁰
98. Professor Le Sueur focused on Alderney and Sark. It was not clear that “in the current Brexit process the constitutional formal arrangements for ensuring that the two smallest islands have a voice are in place.” He noted that the Ministry of Justice had acknowledged the importance of this issue. Nevertheless, he stressed that “the smallest Islands should not be overlooked”.¹²¹ Deputy St Pier told us that Guernsey was working closely with Alderney and Sark to ensure that they were fully briefed on and involved in the process.¹²²

UK free trade agreement negotiations and the Crown Dependencies

99. There was recognition that the impact of Brexit on the Crown Dependencies would go beyond the scope of the negotiations with the EU. Deputy St Pier stressed that the UK needed to ensure that any future worldwide free trade agreements were capable of extension to the Crown Dependencies.¹²³ Professor Bates expressed concern at the number and complexity of such agreements:

“As the plethora of those negotiations start, it will be quite difficult for the Crown Dependencies to keep track of what is going on and they will be stretched to put their position. We all recognise that New Zealand seems to be heading the race to get there. From the perspective of the Isle of Man, if there is a free trade agreement between the UK and New Zealand, what impact will that have on the Manx lamb industry? ... Just keeping track of all those trade agreements will be a major task for the Administrations of the Crown Dependencies.”¹²⁴

118 Written evidence from Susie Alegre (CDP0002)

119 [Q 13](#)

120 [Q 13](#) and [Q 24](#)

121 [Q 13](#)

122 [Q 1](#)

123 [Q 12](#)

124 [Q 27](#)

100. Professor Sutton said that the Crown Dependencies would need to think carefully about whether to “piggy-back on the UK” in such arrangements, or to do their own thing. His view, in the broader context of the Brexit negotiations, was that:

“The position of the UK in leaving is not what it was in joining. The leverage of the UK in negotiating for the Crown Dependencies and Overseas Territories is less than it would be. Therefore it behoves them to take matters into their own hands as much as they reasonably can, and to enlist the help of the UK as much as they reasonably can.”¹²⁵

The evolving relationship between the Crown Dependencies and the UK

101. The Crown Dependencies’ relationship with the UK has been evolving in recent years, in particular in relation to the development of their international identities. In 2008 an agreement between the UK and the Crown Dependencies was signed, stating that the UK would not act internationally on the Crown Dependencies’ behalf without prior consultation and recognising that in international matters, particularly in relation to the EU, UK and Crown Dependency interests may differ. The agreement also set out a framework for the further development of the international identities of the Crown Dependencies.¹²⁶
102. Deputy St Pier noted that, compared with the 1970s, there was now much greater recognition of the Crown Dependencies’ international identity. This was “hugely encouraging”, and he welcomed the time and effort that the UK had devoted to addressing the issue.¹²⁷
103. Deputy St Pier noted that, while the Channel Islands’ access to the Commission and to Permanent Representatives in Brussels remained as good as in the past, there had since the referendum been “a change in tone which recognised that an event of significance had happened for the United Kingdom and would inevitably have consequences for us”. That made it all the more important for the Crown Dependencies to maintain, and enhance, their presence in Brussels, including through “direct dialogue to the extent that is possible, recognising the United Kingdom’s responsibility for us in international affairs, to ensure that our voice and interests are heard directly where that is appropriate”. Senator Gorst agreed: “Our relationship with Europe is about building relationships with other Member States. We will need more and deeper relationships with Member States because they will replace the United Kingdom around the table of the EU when the UK finds itself a third country.”¹²⁸
104. Although Professor Sutton was confident that the UK took its obligations to represent the interests of the Crown Dependencies (and the Overseas Territories) in international relations seriously, he noted that it was becoming more difficult for it to do so, in particular in the field of financial services, given the pressure being exerted on “low, no or zero tax jurisdictions”:

125 [Q 27](#)

126 Ministry of Justice, *Fact sheet on the UK’s relationship with the Crown Dependencies* (12 April 2013): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/564373/factsheet-on-the-uks-relationship-with-the-crown-dependencies.pdf [accessed 8 March 2017]

127 [Q 3](#)

128 [Q 4](#)

“When it comes to defending a particular tax regime or a particular piece of asset management legislation, it is not easy to do that for ... [the UK Government] if they have to deal with six or seven separate jurisdictions with separate and different legislation. It is not easy for them to go to Brussels in the Code of Conduct Group and put one hat on and say, ‘Mr Chairman, I am speaking on behalf of Jersey’, ‘Oh, now I am speaking on behalf of BVI’¹²⁹, and ‘Now I am speaking on behalf of Bermuda’.”¹³⁰

105. As we have seen, in Professor Sutton’s view, “the need for the Islands to be able to better defend their interests internationally is quite urgent. That would require a greater degree of entrustment by the United Kingdom so that they can conduct their own affairs in fora such as the OECD and particularly the EU.” He suggested that Hong Kong’s ability, when under British sovereignty, to negotiate independently in international economic fora offered a model of greater entrustment and autonomy.¹³¹ On the other hand, he acknowledged the resource limitations that the Crown Dependencies would face in representing their interests internationally. There would also need to be a willingness on the part of the international community to acknowledge the international identity of the Crown Dependencies.¹³²
106. Professor Bates agreed that the UK’s ability to represent the interests of the Crown Dependencies as low tax jurisdictions would be “seriously weakened post Brexit and it might be exacerbated by what appears to be a move to project the UK itself as a low tax area”.¹³³
107. Professor Bates said that one of the knock-on effects of the pressure on double taxation agreements and exchange of tax arrangements was that “the quite limited constitutional convention of the Crown being responsible for foreign affairs has been softened in that there is delegated competence, for example, for the Isle of Man to enter into these—effectively—treaties”. He suggested that the UK may have tired of representing the Isle of Man in international human rights discussions, which led to the Isle of Man, to its surprise, being invited to represent itself before the UN Committee on Human Rights. He thought that, post-Brexit, if the Crown Dependencies pursued a position at variance from the UK, the UK Government might say “off you go and do it, but you can do it yourselves”.¹³⁴
108. Professor Le Sueur observed that “everybody accepts” that the Crown Dependencies’ relationship with the UK was changing, and described the 2008 framework on developing international identity as “a big step forward”.¹³⁵ Furthermore, he believed that “Brexit has a real capacity to be a catalyst for change, and I think that will be driven forward if the Islands feel that they are not being listened to or well represented under current arrangements”.¹³⁶ He predicted that the most likely catalyst for constitutional change would be in the field of taxation, given the importance of financial services to the Islands.¹³⁷

129 The British Virgin Islands.

130 [Q 13](#)

131 *Ibid.*

132 [Q 16](#)

133 [Q 14](#)

134 [Q 16](#)

135 [Q 21](#)

136 [Q 15](#)

137 [Q 24](#)

109. Professor Le Sueur envisaged a range of possibilities for future development, including closer cooperation between the Crown Dependencies, a confederation of the Channel Islands, a formal federation of Crown Dependencies, or even full independence. He noted that the Joint Channel Islands Office in Brussels and the joint Data Protection Commissioner were embryonic steps in the direction of closer working, and told us that “contingency planning has been taking place in Guernsey and Jersey for a number of years now to work out how independence might be achieved, how much it would cost and what the implications would be”. Nevertheless, Professor Le Sueur conceded that such discussion was not currently a matter of public debate, but was “very much a project driven by political elites”.¹³⁸
110. We observe that the likelihood of any imminent constitutional change is low, and the readiness to contemplate such change is not uniform between the Islands. Professor Bates, for instance, did not sense “any move in the Isle of Man, even in the fairly distant future, of seeking independence for all sorts of reasons”.¹³⁹

138 [Q.15](#)

139 [Q.16](#)

CHAPTER 5: CONCLUSIONS

111. **The Crown Dependencies are neither part of the EU nor of the UK, and their citizens did not as of right participate in the June 2016 UK referendum. Nevertheless, they have a unique constitutional relationship both with the UK and, as encapsulated in Protocol 3 to the UK's Treaty of Accession, with the EU. The consequences of Brexit for the Crown Dependencies are therefore significant.**
112. **The evidence we have received has drawn attention to three intertwined, and potentially conflicting, priorities for the Crown Dependencies in the context of the Brexit negotiations, namely:**
- **Maintenance of their centuries-old constitutional relationship with the UK;**
 - **Notwithstanding the loss of Protocol 3 upon UK withdrawal, retention so far as possible of the benefits of the existing relationship between the Crown Dependencies and the EU;**
 - **The evolution of the Crown Dependencies' international identities, while respecting the UK's constitutional obligation to represent them in matters of defence and international relations.**

Seeking to keep these priorities in balance during the negotiation process will not be easy.

113. **We note in particular the implications of Brexit for:**
- **The Crown Dependencies' continued ability in trade freely in goods, including fisheries, agriculture and manufacturing, both with the UK and the EU;**
 - **The financial services sectors in the Crown Dependencies, and in particular the Crown Dependencies' continued ability to secure regulatory equivalence where appropriate;**
 - **The ability to continue to attract EU citizens to live and work in the Crown Dependencies, in particular in sectors such as agriculture, health, financial services and tourism, while at the same time retaining the Common Travel Area between the Crown Dependencies and the UK;**
 - **Existing data protection cooperation, transport and communication links, and energy cooperation between the Crown Dependencies and the EU.**
114. **The UK Government has a constitutional responsibility to represent the interests of the Crown Dependencies in the Brexit negotiations. The Chief Ministers of the Crown Dependencies expressed their satisfaction at the Government's engagement thus far in relation to Brexit. The real test of this engagement will come as negotiations begin. We call on the Government to ensure that the Crown Dependencies remain fully involved as negotiations proceed, and that their concerns and priorities are properly taken into account by the UK negotiators.**

115. **We acknowledge the evidence we have received that the Crown Dependencies' close constitutional, economic and cultural relationships with the UK remain paramount. It is therefore important that the terms of the future relationship between the Crown Dependencies and the EU do not undermine the Crown Dependencies' relationship with the UK, whether in terms of the free movement of goods and people to and from the UK, or the symbiotic link between the Crown Dependencies' financial services sectors and the City of London.**
116. **We urge the Government to reflect on the implications for the Crown Dependencies of the UK's post-Brexit policy priorities. In particular, the Government must ensure that the Crown Dependencies are kept fully apprised of, and are given the opportunity where appropriate to participate in, future free trade agreements with countries beyond the EU. We also call on the Government to support Guernsey and Jersey in their efforts to ensure that the UK's WTO membership is extended to cover them, as it already does the Isle of Man.**
117. **We have heard evidence that Brexit could prove a further impetus in the development of the Crown Dependencies' international identities. This remains to be seen. The evolution of these identities is a matter for bilateral discussion and agreement between the Crown Dependencies and the UK Government. While taking into account any future developments, the UK Government must continue to fulfil its constitutional obligations to represent the interests of the Crown Dependencies in international relations, even where these differ from those of the UK, both during the Brexit negotiations and beyond.**

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Baroness Armstrong of Hill Top
 Lord Boswell of Aynho (Chairman)
 Baroness Brown of Cambridge
 Baroness Browning
 Baroness Falkner of Margravine
 Lord Green of Hurstpierpoint
 Lord Jay of Ewelme
 Baroness Kennedy of The Shaws
 The Earl of Kinnoull
 Lord Liddle
 Baroness Prashar
 Lord Selkirk of Douglas
 Baroness Suttie
 Lord Teverson
 Lord Trees
 Baroness Verma
 Lord Whitty
 Baroness Wilcox
 Lord Woolmer of Leeds

Declarations of interest

Baroness Armstrong of Hill Top
No relevant interests declared
 Lord Boswell of Aynho (Chairman)
No relevant interests declared
 Baroness Brown of Cambridge
No relevant interests declared
 Baroness Browning
No relevant interests declared
 Baroness Falkner
No relevant interests declared
 Lord Green of Hurstpierpoint
No relevant interests declared
 Lord Jay of Ewelme
No relevant interests declared
 Baroness Kennedy of The Shaws
No relevant interests declared
 Earl of Kinnoull
No relevant interests declared
 Lord Liddle
No relevant interests declared
 Baroness Prashar
No relevant interests declared
 Lord Selkirk of Douglas
Diversified investment portfolio in McInroy & Wood income fund, managed by third party
 Baroness Suttie
No relevant interests declared

Lord Teverson

No relevant interests declared

Lord Trees

No relevant interests declared

Baroness Verma

No relevant interests declared

Lord Whitty

No relevant interests declared

Baroness Wilcox

No relevant interests declared

Lord Woolmer of Leeds

No relevant interests declared

A full list of Members' interests can be found in the Register of Lords Interests:
<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at <http://www.parliament.uk/brexit-crown-dependencies/> and available for inspection at the Parliamentary Archives (020 7219 3074).

Oral evidence in chronological order

Senator Ian Gorst, Chief Minister of Jersey	QQ 1–12
Hon. Howard Quayle MHK, Chief Minister of the Isle of Man	
Deputy Gavin St Pier, Chief Minister of Guernsey	
Professor St John Bates, St. John Bates Consultancy	QQ 13–27
Professor Andrew Le Sueur, Head of Law School, University of Essex	
Professor Alastair Sutton, Brick Court Chambers	
Robin Walker MP, Parliamentary Under Secretary of State, Department for Exiting the European Union	QQ 28–31

Written evidence in alphabetical order

Susie Alegre	CDP0002
Jefferies Greenhouse PCC Ltd	CDP0001
Isle of Man Government	CDP0003 and CDP0004
Robin Walker MP, Parliamentary Under-Secretary of State, Department for Exiting the European Union	CDP0005
Anthony Webber	CDP0006