

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

ACKNOWLEDGING THE TRIGGERING OF ARTICLE 50 OF THE TREATY ON EUROPEAN UNION
IN RESPECT OF 'PROTOCOL 3'

The States are asked to decide:-

Whether, after consideration of the Policy Letter under the above title dated 14th February 2017, they are of the opinion:-

- i. To note that Her Majesty's Government intends to issue a notice under Article 50 of the Treaty on European Union;
- ii. To note and recognise the subsequent impact this and the withdrawal of the United Kingdom from the European Union will have on the Bailiwick's domestic legislation and on the legislative and other measures that ought to be taken in consequence of the issue of the notice and withdrawal;
- iii. To direct that a Policy Letter be prepared and submitted to the States together with suitable Propositions recommending:
 - a) the repeal and/or amendment of the European Communities (Bailiwick of Guernsey) Law 1973 and any other enactments identified in the Policy Letter;
 - b) the enactment of legislation necessary to preserve those EU measures which are applicable in the Bailiwick by virtue of Protocol 3 and which it is appropriate to preserve as part of the Bailiwick's domestic legislation following withdrawal of the United Kingdom from the European Union, and;
 - c) the enactment of any other legislation or the taking of any measures which it may be appropriate, necessary or prudent for the States to enact or take.

The above Proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

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ACKNOWLEDGING THE TRIGGERING OF ARTICLE 50 OF THE TREATY ON EUROPEAN UNION
IN REPSECT OF 'PROTOCOL 3'

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

14th February 2017

Dear Sir

1. Executive summary

- 1.1. On 26th January 2017, the European Union (Notification of Withdrawal) Bill was laid before Parliament ('the Brexit bill'). The Brexit bill will confer power on the Prime Minister to notify, under Article 50(2) of the Treaty on European Union, the United Kingdom's intention to withdraw from the European Union ('EU'). Once this bill has been given Royal Assent the UK will start the formal procedure of leaving the EU. This policy letter ensures that there has been due parliamentary process undertaken by the States of Deliberation during the UK's exit from the EU, recognising its impact on the Bailiwick.

2. Introduction

- 2.1. Following the UK EU Referendum held on 23rd June 2016, the States of Deliberation debated a policy letter entitled "Managing the Implications for Guernsey because of the UK's Changing Relationship with the EU"¹ on 29th June 2016 ('the 2016 policy letter'). The 2016 policy letter provided the basis on which the Policy & Resources Committee has been engaging with the UK Government and promoting Guernsey's interests.

¹ Billet d'État XX 2016 P.2016/17

- 2.2. In January 2017, the UK's negotiating objectives were announced. The UK Government announced the intention for the UK to leave the single market and EU Customs Union, excluding itself from the Common External Tariff and the Common Commercial Policy. The UK will seek to replace these with new trade and customs agreements. For the Bailiwick this means that upon withdrawing from the EU, the provisions concerning free movement of goods and the EU customs territory contained within Protocol 3 will cease to exist and need to be replaced in order to fulfil the objectives the States set out in the 2016 policy letter.
- 2.3. This policy letter outlines the impact of the UK's withdrawal from the EU, asking the States to acknowledge and note this effect on Bailiwick law. The UK Government has been advised that the States are considering this matter. This is to ensure that when the Prime Minister notifies the European Council of the UK's intention to leave, in accordance with Article 50, it is being done with the acknowledgement of the impact on the Bailiwick.

3. Engagement of the States in the EU relationship

- 3.1. The islands' relationship with the EU is a matter that has been considered by the States of Deliberation on a number of occasions since the creation of European Economic Community in 1958. A summary of this engagement is attached in Appendix 1.
- 3.2. Appendix 1 demonstrates that the States have been involved in the process of the EU's developments at various stages. However, the States were not involved directly in any of the treaty negotiations that led the UK's accession to the EU. The States worked closely with the UK Government to secure the Bailiwick's best interests. Delegations from the States were dispatched, from time to time, to London to discuss the UK's accession, the constitutional impact, the economic impact and the impact on individual rights.
- 3.3. In 1971, concerns were raised that the Bailiwick would be impacted adversely by the UK's accession to the EU if the Bailiwick's interests were not respected, both in terms of the constitution and the economy. The concerns lead to the debate of a requête on 29th September 1971 and a petitioning of Her Majesty's Privy Council by 14,758 inhabitants of the Bailiwick of Guernsey. This resulted in an Order in Council being made on 12th November 1971 entitled '*Constitutional Relationship with the Crown*'. The Privy Council's Committee of the Affairs of Jersey and Guernsey agreed that if the Bailiwick did not find the terms negotiated by the UK acceptable then accession to the European Community would not be imposed upon the islands. It also acknowledged that legislation would not be imposed seeking to change the constitutional relationship between the Crown and the Bailiwick.

3.4. The terms of the agreement with the EU that the UK subsequently negotiated were laid out by the UK's chief negotiator, Geoffrey Rippon, in person when he addressed representatives of the States of Guernsey, States of Alderney and Chief Pleas of Sark in the Royal Court on 19th November 1971. These terms allowed for trading arrangements for industrial and agricultural products, a non-discrimination clause and a safeguard clause. The terms were included in Protocol 3 to the UK's Accession Treaty 1972 ('Protocol 3') contained in Appendix 2. These principles still govern the constitutional relationship between the Bailiwick and the EU as described below.

- i. By virtue of Protocol 3, Guernsey is part of the EU Customs Union and is effectively able to trade in goods and agricultural products as if it were a Member State of the EU. This means that trade is unrestricted by tariffs, quotas or other barriers (except VAT). Any traded products must meet the relevant standards and environmental requirements of the EU.
- ii. Protocol 3 requires the Channel Islands to treat all natural and legal persons of the EU in the same way, which means that the Channel Islands cannot treat someone from the UK, for example, differently from someone from any other EU member state. However, Guernsey is not bound by other EU free movement rules such as free movement of persons, capital or services and is able to maintain restrictions on the right to reside and work, in accordance with domestic law, provided this is done in a non-discriminatory way.
- iii. Protocol 3 excludes "Channel Islanders" from the provisions allowing the free movement of persons and services. 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" for the purposes of Protocol 3 and enjoys free movement throughout the EU (including the right to work and reside).

3.5. The constitutional relationship between Guernsey, the Crown and the United Kingdom means that although Guernsey is a self-governing Crown Dependency, the UK is responsible for Guernsey's defence and formal international representation. When the UK acts in the international plane it is able to do so in respect of Guernsey, and by convention would only do so with the island's consent. In this regard it is notable that on 15th December 1971² the States agreed to accept the terms of Protocol 3 before the UK Accession Treaty was signed on 22nd January 1972.

² See Appendix 1, para 12 and Billet d'État XVI 1971

- 3.6. The States have acknowledged the impact of significant changes to the EU's constitution, such as those arising from the Treaty of the European Union ('the Maastricht Treaty') and Treaty of Lisbon ('the Treaty of Lisbon'), and ensured that Guernsey's domestic legislation recognised these treaties under the 1973 Law. On occasion, the States has only been able to consider the application of certain EC Treaties after they have been agreed by the UK Government.
- 3.7. In 1994, the States enacted the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 ('the 1994 Law') in order to allow the implementation of any necessary EU measures by Ordinance, when it was necessary or expedient to do so and not just when it was necessary do so by virtue of the Bailiwick's obligations under Protocol 3.
- 3.8. Guernsey is only able to act in the international plane where it is entrusted to do so by the UK Government. This is an area where the States wishes to expand its competence, as agreed following the signing of the International Identity Framework in 2008³ and the acceptance of the proposals of the Constitutional Investigation Committee in 2016.⁴
- 3.9. The States worked closely with the UK Government in the run up to its renegotiations including taking part in the UK's Balance of Competencies review and in the run up to the EU Referendum. This engagement is described the 2016 policy letter. The engagement since this date is described in section 6 of this policy letter. Given this level of engagement, it is entirely appropriate that the States expressly acknowledges any formal stages or milestones in the process as the UK leaves the EU.

4. The exit process

- 4.1. The process by which any EU Member State can leave the EU is laid out in Article 50 of the Treaty on European Union ('Article 50'). This is subject to the UK's own constitutional requirements. Notification of the intention to leave the EU must be given to the European Council in accordance with 'Article 50' ('triggering Article 50'). In October 2016, the UK Government announced its deadline for triggering Article 50 was the end of March 2017.
- 4.2. The UK initially sought to use its prerogative powers to trigger Article 50 but that action was subject to a judicial review in the UK. In November 2016 the UK High Court handed down a judgment in respect of *R (Miller) v Secretary of State for Exiting the*

³ Framework for developing the international identity of Guernsey:
<https://www.gov.gg/CHttpHandler.ashx?id=2174&p=0>

⁴ [Billet d'État I, 2016](#)

EU ('the Miller case')⁵ holding that the UK Parliament must be engaged before Article 50 is triggered. The UK Government appealed this to the Supreme Court, but this was dismissed in a judgment handed down on 24th January 2017⁶.

- 4.3. On 26th January 2017, the European Union (Notification of Withdrawal) Bill was laid before Parliament ('the Brexit bill'). The Brexit bill will confer power on the Prime Minister to notify, under Article 50, the United Kingdom's intention to withdraw from the EU. The Brexit bill as originally drafted has a simple set of provisions:

1 Power to notify withdrawal from the EU

(1) The Prime Minister may notify, under Article 50(2) of the Treaty on European Union, the United Kingdom's intention to withdraw from the EU.

(2) This section has effect despite any provision made by or under the European Communities Act 1972 or any other enactment.

- 4.4. Once the Brexit bill has received Royal Assent, the formal process of leaving the EU, and the required negotiations, can commence. The exact date for the triggering of Article 50 has not yet been set, but the UK Government is understood to be continuing to work to the self-imposed deadline of the end of March 2017.
- 4.5. The triggering of Article 50 will lead to the UK's exit from the EU. Once triggered the UK would then start the process of leaving the EU which will eventually lead to the EU Treaties ceasing to apply to the UK. Under Article 50 the timing of this will be at a date to be set by agreement, or failing that, they will cease to apply after a default period of two years after notification. The UK's membership of the EU creates a legal framework of reciprocal rights and obligations between states, which also confers rights and obligations to businesses and individuals. When the UK leaves the EU, some of those legal rights and obligations will fall away. Many of these rights and obligations will need to continue where they are of benefit to the UK. There will have to be a change to the UK's domestic legislation to reflect this. The same issue will arise in the Bailiwick insofar as Protocol 3 applies. As reported in the 2016 policy letter, the impact of this is much more limited in the Bailiwick than the UK because of the narrower obligations under Protocol 3, which relates to a relative small area within the body of EU law.
- 4.6. Given this impact on Guernsey domestic legislation, it is right to have an appropriate parliamentary process in the States of Deliberation. This recognises that the Crown Dependencies are constitutionally different to the UK. It will also provide a parallel parliamentary process to the UK that, whilst not identical in nature, will acknowledge that the UK's exit will inevitably impact the islands to the limited extent that Protocol 3 has effect. The effect of the change in relationship between the UK and EU will seek

⁵ [2016] EWHC 2768 (Admin)

⁶ [2107] UKSC 5

to be mitigated, as set out in the 2016 policy letter. The way that this can be achieved will depend on the UK's exit agreement and the new arrangements with the EU, as discussed in part 6 below.

- 4.7. This approach aligns itself to the principle set out in the International Identity Framework document signed by the States in 2008⁷, in particular, the first principle:

1) *The UK has no democratic accountability in and for Guernsey which is governed by its own democratically elected assembly. In the context of the UK's responsibility for Guernsey's international relations it is understood that:*

- *The UK will not act internationally on behalf of Guernsey without prior consultation.*
- *The UK recognises that the interests of Guernsey may differ from those of the UK, and the UK will seek to represent any differing interests when acting in an international capacity. This is particularly evident in respect of the relationship with the European Union where the UK interests can be expected to be those of an EU member state and the interests of Guernsey can be expected to reflect the fact that the UK's membership of the EU only extends to Guernsey in certain circumstances as set out in Protocol 3 of the UK's Treaty of Accession.*

- 4.8. Furthermore the greater engagement in international matters, including the making (and unmaking) of treaties, is aligned to the objectives set out in the policy letter of the Constitutional Investigation Committee entitled *"Proposal to achieve greater autonomy in the legislative process and international affairs for Guernsey"*⁸ approved by the States in January 2016. Having a parliamentary process before the triggering of Article 50 will protect Guernsey's international identity and help the States meet those objectives.

- 4.9. On 31st January 2017, the Minister for External Relations for the States of Jersey laid a proposition entitled: *"Brexit report: steps taken by the government of Jersey before notification by the government of the United Kingdom under Article 50 of the UK's intention to withdraw from the EU"*⁹. In the proposition the States of Jersey are asked to decide if they are of the opinion:

- a) *to recognise that the Government of the United Kingdom is likely to issue a notice under Article 50 of the Treaty on European Union to withdraw from the European Union; and*

⁷ Billet d'État XV 2008

⁸ Billet d'État I 2016

⁹ P.7/2017 <http://www.statesassembly.gov.je/AssemblyPropositions/2017/P.7-2017.pdf>

- b) *to endorse the Council of Ministers' intention to propose the repeal of the European Union (Jersey) Law 1973.*

- 4.10. In light of the desire to protect Guernsey's international identity and acknowledge the impact which triggering Article 50 will have on Bailiwick legislation, it is recommended that, the States should endorse the proposition in this policy letter.

5. The Great Repeal Bill

- 5.1. On 2nd October 2016, the UK Government announced that it will introduce a Bill to repeal the 1972 Act which gives direct effect to all EU laws. This is a separate parliamentary process to that relating to the triggering of Article 50. The Bill will effectively convert existing EU law into domestic law, wherever practical and appropriate. The purpose of the Bill is to ensure that the UK's domestic statute book is ready in advance of the exit from the EU. This Bill, known as the "Great Repeal Bill", is possibly one of the biggest administrative processes that will have ever taken place in UK Government and will involve considerable additional legal and policy work.
- 5.2. It is currently being considered whether a similar exercise may need to be carried out with regards to Guernsey's 1973 Law and 1994 Law. As noted, the 1994 Law enables the implementation of certain EU legislation, where necessary, by virtue of Protocol 3 or where expedient to do so. Various measures have been implemented using these provisions, this includes *inter alia*, matters relating to customs, EU international sanctions, food supplements and the euro.
- 5.3. There are also other areas of law and agreements in Guernsey which make reference to certain EU directives and regulations and there is likely to be a need to identify these and to consider whether relevant EU references should remain, be amended or be replaced.

6. UK's position and engagement with Guernsey

- 6.1. The UK Prime Minister, Theresa May MP, delivered a speech¹⁰ on 17th January 2017 outlining the UK's negotiating objectives for its withdrawal from the EU. A white paper entitled "*The United Kingdom's exit from and new partnership with European Union*"¹¹ built on the detail in this speech ('the white paper'). The UK's 12-point negotiating objectives can be summarised as follows:

¹⁰ 17th January 2017, UK PM speech: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>

¹¹ 2nd February 2017, the United Kingdom's exit from, and new partnership with, the European Union White Paper: <https://www.gov.uk/government/publications/the-united-kingdoms-exit-from-and-new-partnership-with-the-european-union-white-paper>

- 1) **Providing certainty and clarity** – We will provide certainty wherever we can as we approach the negotiations.
- 2) **Taking control of our own laws** – We will take control of our own statute book and bring an end to the jurisdiction of the Court of Justice of the European Union in the UK.
- 3) **Strengthening the Union** – We will secure a deal that works for the entire UK – for Scotland, Wales, Northern Ireland and all parts of England. We remain fully committed to the Belfast Agreement and its successors.
- 4) **Protecting our strong and historic ties with Ireland and maintaining the Common Travel Area** – We will work to deliver a practical solution that allows for the maintenance of the Common Travel Area, whilst protecting the integrity of our immigration system and which protects our strong ties with Ireland.
- 5) **Controlling immigration** – We will have control over the number of EU nationals coming to the UK.
- 6) **Securing rights for EU nationals in the UK, and UK nationals in the EU** – We want to secure the status of EU citizens who are already living in the UK, and that of UK nationals in other Member States, as early as we can.
- 7) **Protecting workers' rights** – We will protect and enhance existing workers' rights.
- 8) **Ensuring free trade with European markets** – We will forge a new strategic partnership with the EU, including a wide reaching, bold and ambitious free trade agreement, and will seek a mutually beneficial new customs agreement with the EU.
- 9) **Securing new trade agreements with other countries** – We will forge ambitious free trade relationships across the world.
- 10) **Ensuring the UK remains the best place for science and innovation** – We will remain at the vanguard of science and innovation and will seek continued close collaboration with our European partners.
- 11) **Cooperating in the fight against crime and terrorism** – We will continue to work with the EU to preserve European security, to fight terrorism, and to uphold justice across Europe.
- 12) **Delivering a smooth, orderly exit from the EU** – We will seek a phased process of implementation, in which both the UK and the EU institutions and the remaining EU Member States prepare for the new arrangements that will exist between us.

6.2. The UK's negotiating objectives offered a degree of reassurance because they are well aligned to the objectives outlined within the 2016 policy letter¹², in particular the negotiation objectives included in appendix 3 to that policy letter. The principles

¹² P.2016/19, Managing the implications for Guernsey because of the UK's changing relationship with the EU: <https://www.gov.gg/article/154352/Managing-the-Implications-for-Guernsey-because-of-the-UKs-Changing-Relationship-with-the-EU>

underpinning these objectives are to, where possible: maintain the status quo in relationship with the UK, maintain the benefits of Protocol 3 in respect of the EU and strengthen Guernsey's trading relationships. These objectives can be summarised as follows:

Negotiating considerations - relationship with the UK

- (i) For trade in **goods**, including agriculture and fisheries products, there is a long-standing historic trading arrangement which provides for tariff-free reciprocal trade.
- (ii) There are no arrangements in place that make reference to trade in **services**, including financial services.
- (iii) For **people**, the Common Travel Area should continue to apply (it predates UK Accession, and is not dependent on EU law).

Negotiating objectives: relationship with the EU

- (i) In order to maintain the status quo for Guernsey, the States of Guernsey will need to maintain the free **trade in goods** with the EU hitherto provided under Protocol 3. In principle, it is possible that this may be replaced by extending the goods provisions of any new UK/EU agreement to Guernsey, subject to the precise terms.
- (ii) The existing work exploring extension of the UK **membership of the WTO** should be given a higher priority. This will provide lower tariffs for any imported goods coming direct from the EU or elsewhere (not via the UK) and will underpin an agreement on free movement of goods as well as other trading relationship.
- (iii) For **trade in services**, the States will seek to maintain its current position of being outside the EU, with market access on a case by case basis as third countries.
- (iv) For **people**, the States will need to seek to ensure any commitments made by the UK as part of its withdrawal agreement with respect to the grandfathering of rights of EU (non-UK) citizens in the UK and in the Channel Islands and that the legal status 'Channel Islander' (for the purposes of Protocol 3) is considered.

Main areas for engagement with the UK Government for the States of Guernsey

In order to ensure that Guernsey's interests are best served in the negotiations with the UK it will need to ensure it monitors and engages with the UK Government to:

- (i) Ensure the interests of Guernsey residents are taken into account by the UK / EU exit agreement. This includes ensuring that Guernsey residents/persons with EU rights do not suffer any detriment compared to those resident in the UK;*
- (ii) Ensure, where possible, the arrangements for free movement of goods described in Protocol 3 are replicated in some way. This may be through extension of the relevant part of any new UK / EU relationship. The States should also ensure that the best interests of Guernsey residents and businesses are served under that new agreement;*
- (iii) Ensure there is no detriment to the existing, and historic, constitutional relationship between Guernsey and the UK. Explain and work to mitigate against any risks of unintended consequences; and*
- (iv) Seek opportunities for Guernsey in any new UK trading relationship including with the EU and with other countries outside of the EU, including any new free trade agreements and exploring extension of the UK membership of the WTO.*

- 6.3. Whilst set out differently, there are many areas of parity or interoperability in these two summaries of objectives. Of most interest to the Bailiwick of Guernsey at this stage, is that the UK will be seeking to leave the EU Customs Union (and going outside the EU Common External Tariff that we currently apply in accordance with Protocol 3). The UK will seek a new customs arrangement in order to try and seek tariff free access to the EU market. This reflects our own objectives set in 2016 with respect to replacing, where possible, the effect of Protocol 3 for trade with the EU, as well as ensuring there are no barriers to trade with the UK.
- 6.4. Also of interest to Guernsey, is that the UK Government will seek a new network of regional and free trade agreements, including with the EU alongside some sort of new customs arrangement. The opportunity for Guernsey to have access to any such agreements as being essential.
- 6.5. The UK Government will also seek to retain the Common Travel Area, of which Guernsey forms part. The UK wishes be able to respect worker rights and guarantee the rights of EU nationals in the UK. The control on immigration that is being sought is intended to work in the UK's national interests, including permitting the inward migration of workers. We have shared objectives in this regard.
- 6.6. All three Crown Dependencies have experienced a concerted effort from the UK Government to be engaged in the Brexit process so far. This has been welcomed and should be commended. This engagement commenced shortly after the 2016 policy letter was agreed. It has provided an additional benefit that more people now

understand the UK's constitutional relationship with the Crown Dependencies than ever before.

- 6.7. With regard to engagement with Whitehall, in addition to the ongoing liaison with the Ministry of Justice (MoJ), there has been regular and productive liaison with the Department for Exiting the EU (DExEU), HM Treasury and the Cabinet Office. Senior contacts at official level have been established at each of the above, all of whom visited the island following the referendum result in order to gain a greater understanding of the challenges and opportunities that the UK's withdrawal from the EU would present for the Bailiwick of Guernsey. Political engagement has also included quarterly meetings at political level between the President of the Policy & Resources Committee, Deputy Gavin St Pier, and Robin Walker MP, Parliamentary Under Secretary of State at the DExEU with responsibility for working with the Crown Dependencies.
- 6.8. The UK Government white paper recognised the position of the Crown Dependencies and the importance of this engagement and the need to respect the islands' interests. This reflects the premise of the 1971 Order in Council. The white paper states:

3.09 As the UK leaves the EU, the unique relationships that the Crown Dependencies of the Isle of Man and the Channel Islands and the Overseas Territories have with the EU will also change. Gibraltar will have particular interests, given that the EU Treaties apply to a large extent in Gibraltar, with some exceptions (for example, Gibraltar is not part of the Customs Union).

*3.10 We have ensured that their priorities are understood through a range of engagement including new fora dedicated to discussing the impact of EU exit: the Joint Ministerial Council on EU Negotiations, with representatives of the governments of the Overseas Territories, a new Joint Ministerial Council (Gibraltar EU Negotiations) with the Government of Gibraltar, and formal quarterly meetings with the Chief Ministers of the Crown Dependencies. **We will continue to involve them fully in our work, respect their interests and engage with them as we enter negotiations, and strengthen the bonds between us as we forge a new relationship with the EU and look outward into the world.** (emphasis added)*

- 6.9. Working with the UK government and the other Crown Dependencies, Jersey and the Isle of Man, four initial priority areas were established, these were:
- (i) **Fisheries and agriculture:** Protocol 3 allows Guernsey to freely trade in these products and the States of Guernsey wishes to preserve that right. Although the economic impact of these sectors is perhaps small in simple GDP terms for Guernsey they are significant for the economies of Alderney and Sark.

Fisheries and agriculture are part of our unique history and cultural identity and the States are determined to preserve that.

- (ii) **Financial services:** over the years Guernsey has successfully negotiated its own access to EU financial markets as a non-EU jurisdiction. These relationships are not going to change directly. However, the geopolitical landscape and politics of the EU will change when the UK leaves the EU. The States will need to be ready to respond to the terms the UK negotiates with the EU in relation to its market access and consider how to mitigate any political and economic impact that may be experienced because of the UK's exit from the EU.
- (iii) **Free movement of people:** this is a highly complex area due to our ancient rights and links to British Nationality, the Common Travel Area (CTA) and the particular status of Channel Islanders as set out in Protocol 3. The States have been engaging with the UK Government at a technical level so that the needs of the island are understood, including the rights of our residents, as well as those on the island for professional purposes. Like the UK, it is desirable to be able to guarantee the rights of those EU nationals resident and economically active in Guernsey and this will be a priority area in the negotiations.
- (iv) **Customs and goods:** the maintenance of Guernsey's trade links with the UK and the EU provides stability and protection for its businesses in order to safeguard and build on its trading relationships. No doors for new trading opportunities should be closed to the islands and with that in mind, the extension of the UK's membership of the World Trade Organisation (WTO) will become a priority.

6.10. Working with the other Crown Dependencies, there has been coordination of discussions with officials from the relevant UK Government Departments as well as the DExEU on three out of the four priority areas, with a further meeting on financial services to be arranged for the end of February 2017. Discussions have already begun with regard to secondary areas of interest for the Crown Dependencies, such as transport, energy and communications.

6.11. There has also been engagement with Westminster. The States of Guernsey has submitted evidence to the House of Commons Foreign Affairs Committee and the Justice Committee for their inquiries on Brexit which reference the Crown Dependencies. The Justice Committee followed up this evidence with a visit of the representatives to the island at the invitation of the Policy & Resources Committee. The President of the Committee also attended a hearing of the House of Lords EU Committee for their inquiry on Brexit and the Crown Dependencies. Facilitation of

meetings with the All Party Parliamentary Channel Islands Group is an ongoing work stream.

7. Resource and implementation plan

- 7.1. No legislation is directly required to give effect to these proposals. However, when the UK has issued notice under Article 50 then consideration of a local version of the Great Repeal Bill considered in section 5 of this policy letter will need to be considered.
- 7.2. No additional resources will be required as a direct consequence of this proposition. However, in terms of general resources in this area to date, the External Relations & Constitutional Affairs team has been effective and efficient at coordinating activities but it is becoming stretched. The Policy & Resources Committee has recently agreed to the funding of additional secondment posts in the External Relations & Constitutional Affairs team, to manage the additional workload coordinating the response of various States' committees to Brexit. Securing additional staffing to manage the islands engagement in the UK's exit process will ensure there is the ability to engage at the pace and level that the UK will be setting and engaging at over the next two years, whilst managing to meet other priorities.

8. Engagement and consultation on these proposals

- 8.1. The engagement of the Policy & Resources Committee will be required across the States. It will be for individual principal committees to work on the various policy areas with particular interests for the Committee *for* Home Affairs on immigration and customs matters and the Committee *for* Economic Development on trade, including on trade agreements, financial services and fishing. Close liaison will also be required with the Law Officers' Chambers.
- 8.2. Matters will be laid before the States in order to keep the assembly informed as and when required, alongside regular statements. However, it should be acknowledged that there are likely to be certain stages in the process where matters will need to be dealt with sensitively to respect and maintain the open channels of communication with the UK Government.
- 8.3. Since the UK's EU referendum, the Policy & Resources Committee and the Committee *for* Economic Development have been engaging with businesses, industry bodies and other stakeholders. This engagement has been undertaken to ensure that the island's businesses are aware of the work that has been undertaken to date and to discuss their interests and concerns. These ongoing discussions will help inform the negotiations.

- 8.4. A successful Brexit for the island has become one of the key priorities for this term of government. Accordingly, the Policy & Resources Committee have agreed that its political engagement will be led by a triumvirate, headed by the President of the Policy & Resources Committee and supported by the Vice President and the member with responsibility for external relations. This will ensure that there is clear leadership for the work involved. The group will meet regularly to keep track of developments, provide overviews and engage with all other principal committees – particularly the Committees *for* Home Affairs and Economic Development - as well as business representatives and individual stakeholders. This will ensure that the Committee remains engaged with residents and local industry.
- 8.5. The Policy & Resources Committee has engaged with the relevant authorities in Alderney and Sark throughout the process of engagement following the resolutions of the States in June 2016. It is acknowledged that this engagement will need to continue during the course of the negotiations which will commence when Article 50 has been triggered.

9. Proposition

- 9.1. **The States are asked whether, after consideration of the Policy Letter under the above title dated 14th February 2017, they are of the opinion:-**
- i. To note that Her Majesty's Government intends to issue a notice under Article 50 of the Treaty on European Union;**
 - ii. To note and recognise the subsequent impact this and the withdrawal of the United Kingdom from the European Union will have on the Bailiwick's domestic legislation and on the legislative and other measures that ought to be taken in consequence of the issue of the notice and withdrawal;**
 - iii. To direct that a Policy Letter be prepared and submitted to the States together with suitable Propositions recommending:**
 - a) the repeal and/or amendment of the European Communities (Bailiwick of Guernsey) Law 1973 and any other enactments identified in the Policy Letter;**
 - b) the enactment of legislation necessary to preserve those EU measures which are applicable in the Bailiwick by virtue of Protocol 3 and which it is appropriate to preserve as part of the Bailiwick's domestic legislation following withdrawal of the United Kingdom from the European Union, and;**

- c) **the enactment of any other legislation or the taking of any measures which it may be appropriate, necessary or prudent for the States to enact or take.**

10. Statement of support

- 10.1. In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of the Policy & Resources Committee.

Yours faithfully

G A St Pier
President

L S Trott
Vice-President

A H Brouard
J P Le Tocq
T J Stephens

Appendix 1

The States of Guernsey and the European Union Treaties.

1. In 1955 six members of the European Coal and Steel Community put forward proposals at the Messina Conference which culminated in the signing of the Treaties of Rome in 1957 establishing the European Economic Community (EEC) and the European Atomic Energy Community (Euratom). The UK had sent a representative to the Messina Conference but then subsequently withdrew.
2. In 1959 the UK signed the Stockholm Convention with other non-EEC European countries (Austria, Denmark, Norway, Portugal, Sweden and Switzerland) which led to the creation the European Free Trade Association ('EFTA'). In the run up to the establishment of EFTA, the States established a Free Trade Area Committee on 30th July 1958¹³. The Committee reported on 11th November 1959¹⁴, recommending that should the EFTA be established and should the UK become a member thereof, that its membership should be extended to Guernsey. The same was recommended of the bilateral Anglo-Danish Agriculture Agreement¹⁵.
3. The UK signed the Convention Establishing the European Free Trade Association on 4th January 1960 which lead to the establishment of EFTA on 3rd May 1960. Guernsey was included in the territorial extent of this Convention. The Convention was implemented by the European Free Trade Association (Guernsey) Law, 1960¹⁶ ('the 1960 Law'). This enabled Guernsey to participate in the co-ordination of trade within EFTA. The UK withdrew, including in respect of Guernsey, from the Convention on 31st December 1972 (on accession to the EEC). The 1960 Law was subsequently repealed on 12th January 1977.
4. Before the UK joined the EEC in 1973 it had previously sought membership in 1963 and again in 1967, both times were vetoed by President Charles de Gaulle of France. In the run up to the UK's first attempt to join the EEC, the States Free Trade Committee reported to the States on 20th September 1961¹⁷ following discussions with the UK Government. The Committee expressed concerns regarding the effect joining the EEC might have on the horticultural sector which would be far reaching compared to the participation in EFTA. The Committee was renamed as the "States European Free Trade Association and Economic Community Committee" and its mandate was amended to keep joining the EEC in its scope. The Committee undertook a review of the impact of

¹³ Billet d'État XI 1958

¹⁴ Billet d'État XII 1959

¹⁵ Agreement on Agriculture between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Denmark: signed 8 April 1960. <http://treaties.fco.gov.uk/treaties/treatyrecord.htm?tid=7254&pg=3>

¹⁶ Order in Council II 1960

¹⁷ Billet d'État XVI 1961

joining the EEC in the horticultural sector in 1962¹⁸. By January 1963, after negotiations, it was clear that President de Gaulle would veto the UK's application to join the EEC and the UK's plans to apply to join were delayed.

5. The Committee submitted a preliminary report on the European Economic Community on 31st May 1967¹⁹. This followed the renewed attempts by the UK to join the EEC. Also published in the same Billet was a statement from the then UK Prime Minister Harold Wilson announcing in the House of Commons the UK Government decision to apply to join the EEC²⁰. Whilst the statement made no reference to the Crown Dependencies in itself, the covering letter from the Lieutenant Governor noted that:

"The Secretary of State [for the Home Department] is aware that the Insular Authorities have already given anxious consideration to the implications for the island of entry into the Community alongside the UK. As they will know, Article 227(4) of the Treaty of Rome provides that the Treaty shall apply to the European territories for whose external relations a Member State is responsible. Article 227(4) of the Treaty of Rome provides that the Treaty shall apply to the European territories for whose external relations a Member State is responsible. If, therefore, the UK were to accede to the Treaty, it would apply to Guernsey, unless it were possible to negotiate some modification of the Article in its application to Guernsey. The chances of securing such a modification must be considered remote; but in any event it must be questionable whether such arrangements would be desirable, because, if Guernsey were excluded, the island would have to face the Common External Tariff that would need to be erected against it by the UK and the other Community countries. From its present position of enjoyment of a protected market in the United Kingdom it would at one bound be faced with tariff barriers that could amount to virtual exclusion from the markets of both the United Kingdom and a large part of the European continent."

6. The Committee reported to the States on 25 October 1967²¹ outlining the result of discussions with the UK and an analysis of the options that Guernsey had. In summary to join the EEC would mean losing part of the island's autonomy but retaining the ability to trade with the UK and EEC. It was acknowledged that Guernsey's economy would be threatened by the common market, resulting in more competition for the island's businesses in its main market. It was also recognised that Guernsey would lose part of its autonomy while having no direct representation in the Community institutions and there were concerns that membership might put at risk the long standing constitutional position whereby the UK did not legislate on matters of taxation or domestic autonomy for the island. If the islands did not join, it was likely the island's horticultural and light

¹⁸ Billet d'État VIII 1962

¹⁹ Billet d'État VII 1967 Appendix III

²⁰ Billet d'État VII 1967 Appendix IV

²¹ Billet d'État XV 1967

industry would end with little chance of diversification. The States agreed to ensure the UK were aware of the concerns and potential impact on the island and to request the UK to take mitigating measures and to seek to safeguard the constitutional position of the island. A month later, the UK application to join the EEC was again rebuffed by President de Gaulle.

7. On 30th January 1969 the States European Free Trade Association and Economic Community Committee was dissolved. Its mandate was transferred to the Advisory and Finance Committee in light of the remote probability of the UK joining the EEC. At the time a Royal Commission had been formed to review the UK's constitutional position including the relationship with the Crown Dependencies (which became known as the 'Kilbrandon Commission')²².
8. On 28th April 1967 President de Gaulle resigned, having lost a referendum on constitutional reform, and was replaced by President Georges Pompidou. This led to the re-opening of negotiations between the UK and the EEC on 30th June 1970.
9. Given the success of negotiations, concerns were raised within Guernsey about the impact in the island. On 29th September 1971, the States debated a requête entitled "Approval of Special Arrangement, etc"²³ and resolved to:

Request the Secretary of State to ensure that Authorities in the United Kingdom responsible for negotiating terms on which Great Britain may enter the European Economic Community be respectfully requested –

- 1) *Not to enter into any formal commitment on behalf of the Island of Guernsey until –*
 - a) *the European Economic Community have been fully informed of the special constitutional relationship that exists between the Crown and the Bailiwick; and*
 - b) *there have been laid before and approved by the States of Deliberation the derogations, exceptions and conditions of the Treaty of Rome 1957 and special arrangements which the present six member States of the European Economic Community may be willing to grant to the island; and*
- 2) *To ensure that until the above derogations, exceptions, conditions and special arrangements are approved by the States of Deliberation no legislative instrument relating to the membership of the European Economic Community shall be applied to the island without prior approval of the States of Deliberation.*

²² Billet d'État II 1969

²³ Billet d'État XIII 1971

10. Following the subsequent resolution of the States, correspondence was sent through official channels outlining the constitutional relationship with the Crown and seeking assurance that, in light of the proposal for the UK to join the EEC, that the constitutional relationship would be respected. A petition was signed by 14,758 inhabitants of the Bailiwick of Guernsey and then submitted to the Privy Council. This resulted in an Order in Council being made on 12th November 1971 entitled 'Constitutional Relationship with the Crown'²⁴. This Order in Council acknowledged the concerns that if the Treaty of Rome was to apply to the islands it would constitute a "unilateral abrogation of the constitutional rights, privileges and exemptions enjoyed by inhabitants of the Bailiwick of Guernsey". The petition also requested that no legislation be passed by the UK Government which would alter and modify the constitutional relationship that existed between the Crown and the Bailiwick. The Privy Council's Committee of the Affairs of Jersey and Guernsey agreed that there was no present intention of seeking in any way to impose any such change and the terms of any agreement must be acceptable to the Bailiwick.
11. During this time consultation between the States and the UK Government had been taking place. A ministerial conference was held in Brussels on 9th November 1971 attended by the UK Government, without representatives of the States present. At that meeting a special arrangement was secured for the Channel Islands and the Isle of Man by the UK Government. A joint meeting of the States of Guernsey, States of Alderney and Chief Pleas of Sark was held on 19th November 1971 and Geoffrey Rippon, the UK Chief Negotiator and the Chancellor of the Duchy of Lancaster, briefed the islands on the proposal secured by the UK in Brussels.
12. On 15th December 1971, the States debated a policy letter from the Advisory and Finance Committee entitled 'Membership of the European Economic Community'²⁵. The report set out these special arrangements, which included the trading arrangements for industrial and agricultural products, a non-discrimination clause and a safeguard clause. The principles set out what would become Protocol 3 to the UK Act of Accession and were set out in a letter from the Home Office. A policy letter setting out the impact of the proposed new arrangements and implications of not accepting the proposals was also brought before the States. The States agreed to accept the proposals to enter into the EEC on the terms set out. This provided the necessary approvals from the States of Guernsey to accept the addition of Protocol 3 to the UK's accession treaty.
13. The UK Accession Treaty was signed on 22nd January 1972 in Brussels. The details of Protocol 3 are contained in Appendix 2. The UK Accession treaty became effective on 1st January 1973.

²⁴ Order in Council XIII 1971

²⁵ Billet d'État XVI 1971

14. In July 1972, the States debated a policy letter from the Advisory and Finance Committee entitled 'European Economic Community – non-discrimination clause and immigration labour control'²⁶. The policy letter acknowledged that Protocol 3 was attached to the UK accession treaty in line with the States resolution from December 1971. Given the non-discrimination clauses within Protocol 3 it was necessary to recognise this principle by amending or repealing certain legislation and bringing forward new legislation to underpin this principle. The European Communities (External Tariffs and Non-Discrimination) (Bailiwick of Guernsey) Law, 1972²⁷ came into force on 1st January 1973.
15. In May 1973, a report from the Advisory and Finance Committee entitled 'Relationship with the European Communities'²⁸ was laid before the States as an appendix. The report reviewed the events since the debate held on 15th December 1971. The European Communities (Bailiwick of Guernsey) Law 1973, which is similar to the UK's European Communities Act, 1972²⁹ ('the 1972 Act') was laid before the States on 30th May 1973 and came into force on 23rd August 1973. The 1973 Law, amongst other things:
- a) Provides that EC Regulations within the scope of Protocol 3 have force in the Bailiwick and, where there is doubt, for a certificate to be issued by the relevant UK Secretary of State which would be conclusive as to its effect.
 - b) Deals with the treatment and proof of the treaties and community instruments in legal proceedings in the Bailiwick
 - c) Provides for the collection of customs duties at community rate and the introduction of community customs procedures.
 - d) Provides for the collection of agricultural levies at community rates
 - e) Makes it a criminal offence, punishable in the Bailiwick, to give false evidence on oath before the European Court of Justice.
- The 1973 Law repealed the 1972 law, it becoming unnecessary in light of these new provisions.
16. The UK accession to the EEC was placed before a referendum in the UK on 6th June 1975 and was supported by 67% of UK voters. Guernsey residents were not directly included in the franchise of this referendum.
17. The next significant amendments to the Treaty of Rome were not made until over a decade later. The Single European Act ('the SEA') was signed by EC member states in

²⁶ Billet d'État XIII 1972

²⁷ Order in Council XXX 1972

²⁸ Billet d'État IX 1973

²⁹ Order in Council XI 1973

February 1986. The States considered a policy letter on 28th May 1986³⁰ which provided the approval for the amendment of the 1973 Law to include the SEA³¹.

18. The Treaty on European Union ('the Maastricht Treaty') was signed on 7th February 1992 and came into effect on 1st November 1993. The Maastricht Treaty restructured how the European Communities institutions worked, led to the coordination of foreign policy and paved the way for the creation of the Euro. The European Economic Area (EEA) Agreement was signed on 2nd May 1992 and came into force on 1st January 1994. The EEA Agreement provided for the free movement of persons, goods, services and capital within the European Single Market. A report entitled "Guernsey and the European Community" was appended to the Policy Planning, Economic and Financial Report in 1992³². The report noted that the Maastricht Treaty and the EEA agreement did not alter the formal relationship between the Bailiwick and the EC but recognised that the application of some EC measures in relation to Protocol 3 was not always clear cut.
19. The States considered a further report on the Maastricht treaty and EEA Agreement on 28th July 1994³³ considering the implications for the island and the impact of the concept of union citizenship. This followed discussions with the UK Government in 1993, after the Maastricht Treaty been signed. The States resolved to note the Maastricht Treaty and EEA Agreement and to direct the preparation of legislation to implement the treaties. The 1973 law was amended by Ordinance on 28th September 1994 in respect of the Maastricht Treaty. The European Economic Area (Bailiwick of Guernsey) Law 1996 came into force on 15th April 1996.
20. In May 1993 the States considered a report entitled "EC Regulations and Directives"³⁴ which outlined the requirement to create a power to implement EC regulations and directives, where necessary, by virtue of Protocol 3 or where it was expedient to do so when it was not binding on the Bailiwick. The power to implement EU obligations was contained in the UK's 1973 Act (section 2(2)) but the same power was not contained in the Bailiwick's 1973 Law. The States subsequently enacted the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994³⁵ ('the 1994 Law'). The 1994 law also contained a power to amend the 1973 Law to add to or revise the definition of the EEC Treaties when they were created, amended or replaced³⁶. Various measures have been implemented using these provisions, this includes *inter alia*, on matters relating to EU international sanctions, food supplements and the euro.

³⁰ Billet d'État XI 1986

³¹ Order in Council XXX 1986

³² Billet d'État XIII 1992 (Appendix 4)

³³ Billet d'État XVI 1994

³⁴ Billet d'État VIII 1993

³⁵ Order in Council III 1994

³⁶ This includes amendments from time to time after the accession treaty of each new member state during the process of EU enlargement.

21. The Amsterdam Treaty was signed on 2nd October 1997. The treaty saw the extension of EU competencies and greater co-ordination in the areas of foreign and security policy as well as immigration and police and law enforcement. The 1973 Law was amended in 1998 by Ordinance to take account of the Amsterdam Treaty.
22. The Nice Treaty was signed on 26th February 2001 and came into effect on 1st February 2003. The treaty reformed the institutions to allow for further enlargement of the community and established a Charter of Rights. The 1973 Law was amended in 2001 by Ordinance to take into account of the Nice Treaty.
23. A Policy Letter entitled “Amendment To The European Communities (Bailiwick Of Guernsey) Law, 1973”³⁷ was laid before the States on 28th November 2001 suggesting that the 1973 Law be amended to account for changes in the European Courts. These amendments were incorporated by the European Communities (Bailiwick of Guernsey) Law, (Amendment) Law, 2002³⁸.
24. In December 2001 a Convention on the Future of Europe was created and agreed a “Draft Treaty Established a Constitution for Europe” in June 2003. The draft treaty was rejected in referendum in France and the Netherlands and the project was abandoned.
25. Following this abandoned ‘constitutional treaty’, the EU treaties were reformed by the Treaty of Lisbon, which was signed in December 2007. The Lisbon Treaty established the ‘European Union’ as a legal personality able to enter into international agreements. It also reformed the architecture of the European institutions, changed some procedures, and extended the areas of EU competences by enhanced co-ordination in areas like foreign policy. The treaty expressly set out the procedure for leaving the EU, namely Article 50 of the Treaty on European Union. The 1973 Law was amended once more following consideration of a States Report entitled “European Communities Law – Definition of Community Treaties” on 27th November 2013³⁹.
26. In 2015-2016 the UK Government has pursued an agenda of reform and renegotiation to deliver change in the UK relationship with the European Union, which was then put to the UK electorate in a referendum on the UK’s membership of the EU on 23 June 2016. The result of this referendum was 52% in favour of leaving. On 29th June 2016 the States considered the 2016 policy letter entitled “Managing the Implications for Guernsey because of The UK’s Changing Relationship with the EU”⁴⁰. Guernsey residents were not directly included the UK referendum franchise, for the reasons explained in the 2016 policy letter. This policy letter provided the basis on which the

³⁷ Billet d’État XXII 2001

³⁸ Order in Council XXV 2002

³⁹ Billet d’État XX 2013

⁴⁰ Billet d’État XX 2016 P.2016/17

Policy & Resources Committee has been engaging and negotiating with the UK to promote Guernsey's interests.

Appendix 2:
Protocol 3 to the UK Act of Accession of 1972

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 there from 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 subparagraphs 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.