

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**POLICY & RESOURCES COMMITTEE**

PROTECTING THE INTERESTS OF THE BAILIWICK OF GUERNSEY AS THE UK LEAVES THE  
EU

The States are asked to decide: -

Whether, after consideration of the Policy Letter entitled “Protecting the interests of the Bailiwick of Guernsey as the UK leaves the EU”, dated 26<sup>th</sup> September 2017, they are of the opinion:-

1. To approve the legislative proposals set out in paragraphs 6.4 and 7.1 (particularly paragraphs numbered 1, 2 and 3 of the letter from Her Majesty’s Procureur reproduced therein) of the Policy Letter.
2. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

The above Propositions have 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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EU

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

26<sup>th</sup> September 2017

Dear Sir

**1. Executive Summary**

- 1.1. The States of Deliberation will need to enact legislation to ensure that there is continuity and certainty during the Brexit process for individuals and businesses.
- 1.2. In June 2016, the States' first Brexit Policy Letter set high level objectives for Guernsey's relationships with the UK and the EU and indicated a wish to gain from any new opportunities. In March 2017, the States debated the second Brexit Policy Letter in relation to the UK's triggering of Article 50. This third Brexit Policy Letter is to update the Assembly and to set out the rationale for repealing the European Communities (Bailiwick of Guernsey) Law 1973 and implementing relevant EU measures into domestic law. This is analogous to the approach being taken in the UK, with its European Union (Withdrawal) Bill being debated in Parliament.
- 1.3. It is recommended that legislation be prepared to repeal the European Communities (Bailiwick of Guernsey) Law 1973 and to create enabling provisions for Ordinances. All of the legislative changes recommended are in response to the UK's forthcoming withdrawal from the EU. It is important to ensure that Bailiwick legislation is aligned, as appropriate, with UK and EU legislation and that the changes occur within the timescale (probably by March 2019). The States is asked to direct the Law Officers to review existing legislation and to draft appropriate legislation to enable these goals to be achieved. The legislative changes will help the Bailiwick to be well positioned

to react to the emerging situation as the UK-EU negotiations continue.

## **2. Background**

2.1. In March 2017, in anticipation of the triggering of Article 50 by the United Kingdom, the States resolved<sup>1</sup>:

- "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;*
  - 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; and*
  - d) the provision of such additional, or re-allocation of such existing, resources as the Policy & Resources Committee, following consultation with the other committees of the States, believes may be necessary to enable all committees to react appropriately in the best interests of the Bailiwick to the challenges with which they may be faced, having regard in particular to the specific functions and operations for which they are responsible under their respective mandates, as a consequence of the proposed withdrawal of the United Kingdom from the European Union; and**
- iv. To fully endorse the view expressed by the Policy & Resources Committee in paragraph 6.9(iii) of the Policy Letter, that guaranteeing the rights of EU nationals resident and economically active in Guernsey should be a*

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<sup>1</sup> Billet d'État VI of 2017, Article III (P 2017/11): <https://gov.gg/CHttpHandler.ashx?id=106095&p=0>  
The Resolutions of 8<sup>th</sup> March 2017 can be found at: <https://gov.gg/CHttpHandler.ashx?id=106445&p=0>

*priority area in any negotiations with Her Majesty's Government and to direct that committee to impress on all relevant representatives of the Government, the States' wish to see those rights assured as soon as possible and not delayed as part of any extended negotiation process over the terms of the British exit from the EU."*

- 2.2. The March 2017 States' debate and Resolutions ensured that an appropriate parliamentary process had been followed in Guernsey before 29<sup>th</sup> March 2017. That date marked the formal start of the process of the UK's withdrawal from the EU (as in paragraph 3.1 below). The process has a default two year timescale which can be shortened if an exit agreement is reached but can only be extended by mutual consent. The likely date for the UK's exit is expected to be 29<sup>th</sup> March 2019.
- 2.3. The June 2017 General Election in the United Kingdom has increased uncertainty about HM Government's Brexit negotiations and policy aims. Furthermore, the mere fact that the government was dissolved and an election held has meant that the United Kingdom has been slower in establishing firm and detailed policy positions than would otherwise have been expected. Indeed much of the detail around the United Kingdom's position in a range of critical areas, and the consequent implications for the Bailiwick, remains unclear. Clarity is beginning to emerge about the UK's and the EU's visions for Brexit. There is limited time available, before the UK's exit from the EU, for Guernsey to respond to the challenges that may be ahead and the States will need to ensure it can act quickly.
- 2.4. This Policy Letter provides the basis for the States to fulfil part iii) of the Resolutions from March 2017. These proposals take into account the timescale available and the lack of clarity from the UK-EU negotiations so far. The proposals seek to provide the States with the tools it will need to meet its objectives, as outlined in Section 4 of this Policy Letter, including mitigating any adverse impacts of Brexit and benefitting from any opportunities that are created.

### **3. Progress report on engagement**

- 3.1. On 29<sup>th</sup> March 2017, the UK Prime Minister issued a letter to the President of the European Council to commence the formal process of leaving the EU ('the Article 50 Letter'). The UK Government had sought the views of the UK Parliament before issuing that letter, a copy of which is included in **Appendix 1**. The States of Deliberation had its own debate on 8<sup>th</sup> March and its views were formally communicated in a letter from the President of the Policy & Resources Committee to the Prime Minister before the UK's Article 50 Letter was sent. The UK Government was advised that the States wishes to provide certainty on the rights of those EU nationals residing in Guernsey on exit day. A copy of the

exchange of letters relating to Article 50 between the President of the Policy & Resources Committee and the UK Prime Minister is included in **Appendix 2**.

- 3.2. The UK Prime Minister's response to the letter from the President of the Policy & Resources Committee highlighted the importance of the relationship between the UK and the islands. The letter affirmed the UK's aspiration to "*strengthen the bonds between us as we forge a new relationship with the EU and the wider world*". Importantly for the stages that lie ahead, the Prime Minister also recognised both the Bailiwick's own parliamentary processes in respect of Brexit and the UK's commitment to ensuring the Bailiwick's interests are properly taken into account.
- 3.3. The engagement with the Crown Dependencies falls under the overall policy responsibility of the UK's Ministry of Justice. Following the General Election, the UK Minister leading this engagement is the Lord Chancellor and Secretary of State for Justice, the Rt Hon David Lidington MP. In addition to this, Mr Robin Walker MP, Parliamentary Under Secretary of State at the Department for Exiting the European Union, is responsible for managing the UK's engagement with the Crown Dependencies in respect of Brexit. Mr Robin Walker MP visited Guernsey on 8<sup>th</sup> August 2017 to meet with representatives from Guernsey, Alderney and Sark. He met representatives from the finance sector and the fishing industry and also discussed immigration and customs arrangements. The visit helped to deepen Guernsey's strong and direct political link with the UK Government department responsible for negotiating the UK's exit from the EU.
- 3.4. Guernsey also has well-established and valued relationships developed through the British-Irish Council ('BIC'). The UK's General Election and uncertainty in Northern Ireland prevented the planned June 2017 BIC summit from taking place. However, the next summit is still scheduled to be held in Jersey during November 2017. Guernsey is due to host the BIC summit in June 2018.
- 3.5. The Policy & Resources Committee's strategy of political engagement with the UK Government and Parliament includes the maintenance of a wide network of contacts in the UK and across the political spectrum. Engagement with the All Party Parliamentary Channel Islands Group was re-established after the UK General Election. Relationships with other Members of Parliament are managed through a series of contact days and attendance at the main UK political party conferences, which in 2017 will be the Conservative Party Conference and the Labour Party Conference.
- 3.6. In order to support this work, Guernsey Finance and its board has now joined, and is actively engaged with, The CityUK. This is the body representing the interests of the City of London. Guernsey's finance sector is closely aligned with the City. It is important not only to understand the City's thinking and

approach to Brexit, but wherever possible to provide input into it. This work involves Guernsey Finance and representatives of the finance sector, the Guernsey Financial Services Commission, and government. The Vice-President of the Policy & Resources Committee, in his role as Chairman of the Board of Guernsey Finance, is actively involved at a senior level in The CityUK's Advisory Council. This brings together representatives of the key stakeholders to advise and lobby government on issues of concern to the financial services sector. This work helps to develop an understanding of the opportunities for and threats to the biggest part of Guernsey's economy. It also helps Guernsey to position itself to act on those opportunities and threats.

- 3.7. Following an inquiry into the effects of Brexit on the Crown Dependencies, the House of Lords EU Committee published a report on the impact of Brexit on the Crown Dependencies on 23<sup>rd</sup> March 2017<sup>2</sup>. The President of the Policy & Resources Committee appeared before the House of Lords EU Committee in December 2016 to provide oral evidence for this inquiry. In its report, the EU Committee called on the UK Government to remember its responsibilities to the Bailiwicks of Guernsey and Jersey and the Isle of Man.
- 3.8. An inquiry was also carried out by the House of Commons Justice Committee to examine the engagement by the UK and the implications of Brexit for the Crown Dependencies. The Policy & Resources Committee provided formal written evidence to that Committee as well as hosting a visit to Guernsey in January 2017. The Committee published its report on the impact of Brexit for the Crown Dependencies on 28<sup>th</sup> March 2017<sup>3</sup>. The overriding recommendation from the Committee was that there should be no changes in the relationships between the Crown Dependencies and the United Kingdom. The Committee welcomed the UK's continued commitment to represent the interests of all the Crown Dependencies during the Brexit negotiations and pushed the UK Government to represent the Crown Dependencies' interests even when they differ from the UK's own.
- 3.9. The two UK Select Committees mentioned above still have the same Chairs, following the UK's June 2017 General Election. Both of the reports from these committees on Brexit and the Crown Dependencies, although being made in the last UK Parliament, are still relevant and will require a UK Government response and may yet be subject to parliamentary debate in the UK.
- 3.10. Representatives from the Bailiwick are also discussing the implications of

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<sup>2</sup> The full House of Lords EU Committee report can be found at <https://publications.parliament.uk/pa/ld201617/ldselect/ldcom/136/136.pdf>.

<sup>3</sup> The full House of Commons Justice Committee report can be found at <https://publications.parliament.uk/pa/cm201617/cmselect/cmjust/752/752.pdf>.

Brexit, and building and maintaining relationships, with contacts within the EU (both the EU as a whole and its individual nations). The President of the Policy & Resources Committee attended meetings in Brussels in June 2017 (alongside the Minister for External Relations from Jersey) and met with members of the Permanent Representations to the EU from Estonia<sup>4</sup>, Bulgaria<sup>5</sup> and the UK, as well as a senior German MEP. The Bailiwick also hosts occasional visits from Ambassadors to the UK, which provide further opportunities to strengthen relations. This year the Austrian Ambassador visited Guernsey and in 2016 the French, Dutch and Swiss Ambassadors each visited the island. The Channel Islands have joint offices in Brussels and in Caen to ensure continuity of relations between the islands and the EU and French authorities. During 2016-17, relations with France have been strengthened at the regional level and through the French Embassy in London.

#### 4. Brexit objectives

- 4.1. In June 2016, the States considered the first Brexit Policy Letter entitled “Managing the implications for Guernsey because of the UK’s changing relationship with the EU”<sup>6</sup>. That Policy Letter set the high level objectives, which can be summarised as:

##### “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.

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<sup>4</sup> Estonia has the rotating EU Presidency in the second half of 2017.

<sup>5</sup> Bulgaria has the rotating EU Presidency in the first half of 2018.

<sup>6</sup> Considered as an ‘Urgent Proposition’ at the States’ Meeting of 29<sup>th</sup> June 2016 (P.2016/19):

<https://gov.gg/CHttpHandler.ashx?id=102958&p=0>

The Resolutions of 29<sup>th</sup> June 2016 can be found at: <https://gov.gg/CHttpHandler.ashx?id=102996&p=0>

- (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 a third country.<sup>7</sup>*
- (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. 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."*

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<sup>7</sup> This may be as third country seeking market access separately to the UK or as a third country taking part in any future UK-EU relationship alongside the UK.



4.2. Guernsey's objectives were set before the UK's objectives for Brexit were set. The UK Prime Minister, the Rt Hon Theresa May MP, delivered a speech on 17<sup>th</sup> January 2017 outlining the UK's negotiating objectives for its withdrawal from the EU<sup>8</sup>. A white paper entitled "The United Kingdom's exit from and new partnership with the European Union" built on the detail in that speech ("the white paper")<sup>9</sup>. The UK's 12-point negotiating objectives can be summarised as follows:

- 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.*

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<sup>8</sup> 17<sup>th</sup> January 2017, UK PM speech: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>

<sup>9</sup> 2<sup>nd</sup> 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>

**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.”**

- 4.3. The second Brexit Policy Letter entitled “Acknowledging the triggering of Article 50 of the Treaty on European Union in respect of ‘Protocol 3’” was considered by the States on 8<sup>th</sup> March 2017<sup>10</sup>. The similarities between the Guernsey and UK sets of objectives were summarised in that Policy Letter.
- 4.4. On 29<sup>th</sup> March 2017, the Article 50 letter from the UK Prime Minister to the President of the European Council included proposed principles for the negotiations. That letter also set out the overall objectives of agreeing a “*deep and special partnership between the UK and the EU, taking in both economic and security cooperation*”; a “*partnership that contributes towards the prosperity, security and global power of our continent*”.
- 4.5. On 29<sup>th</sup> April 2017, the European Council published its guidelines for the Article 50 negotiations.<sup>11</sup> These guidelines reiterated the Council’s wish to have the UK as a close partner in the future. However, the Council maintains a core principle that access to the single market cannot be sector specific and the four freedoms of the single market are indivisible. It set out that the negotiations must be transparent and a single package. The Council set out a phased approach whereby the most immediate issues be tackled first, to:
- “*provide as much clarity and legal certainty as possible to citizens, businesses, stakeholders and international partners on the immediate effects of the United Kingdom’s withdrawal from the Union*”;
- and to
- “*settle the disentanglement of the United Kingdom from the Union and from all the rights and obligations the United Kingdom derives from commitments undertaken as Member State*”.
- 4.6. The Council intends to monitor progress and to determine when negotiations can move on to the second phase, which will aim to identify the framework for a future relationship between the UK and the EU.
- 4.7. The Brexit objectives of the UK Government have not changed following the UK General Election held on 8<sup>th</sup> June 2017.

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<sup>10</sup> Billet d’État VI of 2017, Article III (P 2017/11): <https://gov.gg/CHttpHandler.ashx?id=106095&p=0>  
The Resolutions of 8<sup>th</sup> March 2017 can be found at: <https://gov.gg/CHttpHandler.ashx?id=106445&p=0>

<sup>11</sup> <http://www.consilium.europa.eu/en/press/press-releases/2017/04/29-euco-brexit-guidelines/>

- 4.8. On 19<sup>th</sup> June 2017, following discussion about the structure of negotiations, terms of reference were agreed<sup>12</sup>. The parties have agreed that the default will be transparency. The phase one negotiations were to be grouped into citizen's rights, the financial settlement, other separation issues and dialogue on Ireland/Northern Ireland. This will inform the terms of the exit agreement which will provide clarity about the rights and obligations of individuals in the UK and EU and businesses trading with the UK and EU on exit day. The new EU-UK relationship, and associated rights and obligations after exit day, will be subject to any new partnership the UK manages to secure with the EU. In its Article 50 letter, the UK Government envisaged a need for an implementation period to allow transition from the UK being a full member of the EU to the new EU-UK relationship. This will help to minimise disruption and give as much certainty as possible.
- 4.9. The phase one negotiations were scheduled to continue until early October 2017. The EU negotiation team would need to return to the European Council after this in order to get a mandate to proceed with the next phase.
- 4.10. Since the commencement of the negotiations, the EU and the UK have started to publish a series of papers.<sup>13</sup> In order to meet the joint commitment to transparency, these papers provide for the UK and EU negotiating position to be placed in the public domain for scrutiny before each negotiation session. The UK has begun to publish a series of 'position papers' and 'future partnership papers'. These papers are intended to inform discussion and are published in advance of formal negotiating rounds with the EU. The future partnership papers set out key issues that form part of the Government's vision for the 'deep and special partnership' between the UK and the EU. The UK papers make assertive references to taking the interests of the Crown Dependencies into account.
- 4.11. The UK's position papers and future partnership papers have started to clarify the UK Government's aspirations and to indicate how it foresees their implementation, including for the future EU-UK relationship. The UK intends to leave the EU Single Market and the Customs Union. This is a prerequisite to being able to make new trade agreements with other countries.
- 4.12. One of Guernsey's objectives is to seek opportunities for Guernsey in any new UK trading relationships and to ensure that the island can continue to benefit from the collection of import duties. To achieve this, the States may need to

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<sup>12</sup> <https://www.gov.uk/government/publications/terms-of-reference-for-the-article-50-negotiations-between-the-united-kingdom-and-the-european-union>

<sup>13</sup> [https://ec.europa.eu/commission/brexit-negotiations/negotiating-documents-article-50-negotiations-united-kingdom\\_en](https://ec.europa.eu/commission/brexit-negotiations/negotiating-documents-article-50-negotiations-united-kingdom_en) and <https://www.gov.uk/government/collections/article-50-and-negotiations-with-the-eu>

move quickly to engage with the development of the UK's trade policy and consider implementing any necessary or desirable parts of it, including meeting the UK's World Trade Organisation ('WTO') obligations. In its recent discussion paper on the future customs arrangements, the UK Government stated that *"the Crown Dependencies will have the opportunity to engage with and to contribute to [its] trade policy"*<sup>14</sup>.

- 4.13. The UK envisages a deep and special partnership with the EU that is based on economic and security cooperation. The economic cooperation sought by the UK with the EU is a matter of direct interest. The UK wishes its future trading arrangements with the EU to be underpinned by a comprehensive free trade agreement that will cover access to markets. This will provide the UK with greater access to markets above the baseline of WTO standards. The UK is also striving for a new customs regime with the EU which relies on one of two models: an innovative streamlined customs arrangement or a new customs partnership with the EU. It is not yet clear how these arrangements might work in detail because they will be subject to negotiation. Guernsey's objective is to benefit from these arrangements so that it can trade with the EU alongside the UK. In order to do this Guernsey will need to be able to move quickly to implement legislation that gives effect to any new partnerships agreed between the UK and the EU (or any individual countries within the EU). This will enable Guernsey to achieve its objectives on trade. Furthermore, the new UK-EU partnership may impact on customs matters and trade between Guernsey and the UK as well as between Guernsey and the rest of the world. This means there may also be a need to move quickly to preserve or enhance Guernsey's longstanding trading arrangements with the UK and to embrace new opportunities.
- 4.14. Security considerations include the island's co-operation on law enforcement, information sharing, cybersecurity and the application of foreign policy, such as through the application of international sanctions. Security co-operation is also a matter which relates to the UK's constitutional role in defence.
- 4.15. In order to achieve Guernsey's Brexit objectives it is desirable to ensure that the States have the necessary legislative powers in place. As many of the same challenges and opportunities will also exist in Alderney and Sark, these proposals are intended to ensure that the Bailiwick is well placed as a whole.

## **5. The Withdrawal**

- 5.1. The European Communities (Bailiwick of Guernsey) Law 1973 (as amended) ('the

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<sup>14</sup> <https://www.gov.uk/government/publications/future-customs-arrangements-a-future-partnership-paper>

1973 Law'<sup>15</sup>), which is similar to the UK's European Communities Act, 1972 ('the 1972 Act'), was enacted primarily to give effect within the Bailiwick to the rights and obligations set out in Protocol 3. The 1973 Law, amongst other things:

- 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.
- Deals with the treatment and proof of the treaties and community instruments in legal proceedings in the Bailiwick.
- Provides for the collection of customs duties at community rate and the introduction of community customs procedures.
- Provides for the collection of agricultural levies at community rates.
- Makes it a criminal offence, punishable in the Bailiwick, to give false evidence on oath before the European Court of Justice.

5.2. The UK's European Union (Withdrawal) Bill ('the UK Withdrawal Bill'<sup>16</sup>) will, in effect, 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 and to end the supremacy of European Union (EU) law in UK law. The UK is a 'dualist' state, meaning that a treaty ratified by the Government does not alter the laws of the state unless and until it is incorporated into domestic law by legislation. This means that the UK Parliament has to pass legislation before the rights and obligations in a treaty can have effect domestically. The UK Parliament must repeal the same legislation to remove that treaty's domestic effect. The UK Withdrawal Bill repeals the 1972 Act on the day the UK leaves the EU. This will remove the mechanism that allows for the automatic flow of EU law into UK law and remove the power to implement EU obligations. It reflects the fact that the UK will no longer be a member of the EU and will, therefore, cease to have obligations under EU law. A similar exercise will need to be carried out in the Bailiwick.

5.3. In addition to the 1973 Law, the States enacted the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 ('the 1994 Law'<sup>17</sup>) to allow

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<sup>15</sup> Order in Council No. XI of 1973 (in Ordres en Conseil Vol. XXIV, p87)

Original text can be found at:

<http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=71407&p=0>

Consolidated text can be found at:

<http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=71408&p=0>

<sup>16</sup> This was formerly referred to as the Great Repeal Bill. The text of the European Union (Withdrawal) Bill 2017-19 can be found at:

<http://services.parliament.uk/bills/2017-19/europeanunionwithdrawal.html>

<sup>17</sup> Order in Council No. III of 1994 (in Ordres en Conseil Vol. XXXV(1), p65)

Original text can be found at: <http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=71415&p=0>

Consolidated text can be found at:

<http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=71411&p=0>

the implementation of any necessary EU measures by Ordinance, whenever it was necessary or expedient to do so and not just when it was required to do so by virtue of the Bailiwick's obligations under Protocol 3. Various measures have been implemented using the 1994 Law, including matters relating to customs, EU international sanctions, food supplements and the Euro. As noted at paragraph 1(d) of the "Legislative proposals" section of the letter from HM Procureur included in paragraph 7.1 of this Policy Letter, it is desirable to retain the 1994 Law in order to enable flexibility in the Bailiwick's legislative response to the UK's withdrawal from the EU.

- 5.4. There are also other laws and agreements in Guernsey which refer 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.
- 5.5. In order to ensure that all necessary EU measures remain in force in Guernsey on the UK's exit day, the States will need to legislate to provide the certainty necessary for individuals and businesses. The steps required are laid out in paragraph 1 of the "Legislative proposals" section of the letter from HM Procureur included in paragraph 7.1 of this Policy Letter.
- 5.6. The UK Withdrawal Bill will ensure that the EU '*acquis*' – the body of European law – is implemented in UK domestic law at the moment the UK repeals the European Communities Act. The UK has been clear that it needs to ensure a smooth and orderly transition from being a European Member State to a Non-Member State, in a way that supports the move to the freest possible future economic relationship. The UK intends that this approach will provide maximum certainty as the UK leaves the EU. The same rules and laws will therefore apply on the day after exit as on the day before. The UK Parliament will then decide any subsequent changes to that domestic law. This will provide an added benefit for any future trading partnership because it will ensure that the UK has a regulatory standard equivalent to EU standards. The same principle will apply in relation to any EU regulatory matters that apply in Guernsey before exit day by virtue of Protocol 3. This includes food standards, sanitary and phytosanitary measures as well as quality and marketing standards that apply by virtue of EU Regulation 706/73, concerning trade in agricultural products.

## **6. Areas of priority**

- 6.1. The Crown Dependencies have established four main priorities: Customs and Trade; Free Movement of People (including Immigration and the Common Travel Area); Fisheries and Agriculture; and Financial Services. In addition, work has been undertaken in the fields of Transport, Energy Supply, and Communications. The States may need to legislate quickly in some of these

areas to ensure that appropriate provision is made in a timely fashion. Therefore, it is recommended that the States enact a series of *Projets de Loi* which provides for general enabling provisions to ensure it can legislate in the limited time available before the UK leaves the EU (see paragraph 3 of the "Legislative proposals" section of the letter from HM Procureur included in paragraph 7.1 of this Policy Letter).

- 6.2. **Customs and Trade** – The UK Government’s current position is that the UK will be withdrawing from the EU Single Market. This presents an unprecedented issue for the Bailiwick. The islands rely on the relationship established by Protocol 3 for the free trade in goods with the EU, whilst also maintaining the historic right of free trade with the UK. The future trading arrangements with both the UK and EU will depend on the terms of the exit negotiations. One of the possible options could include the extension of the UK's membership of the WTO to the Bailiwick. The benefits for Guernsey joining the UK’s WTO Membership would be to ensure that Guernsey has access to other WTO Member markets using WTO trading rules and access to the dispute resolution services. Guernsey may also benefit from any new free trade agreements established between the UK and any other WTO member country. The States will need to consider the necessary infrastructure to retain its trading borders and to support trans-border shipments, which may include the provision of IT to monitor goods in transit. Guernsey will need to have the ability to act swiftly as the future shape of the UK and EU position on customs and trading matters becomes clear. It will be necessary to ensure that the States can enact any necessary provisions quickly. This means a general Ordinance making power relating to customs and trade is desirable. The States may also need to implement any international agreement relating to trade to ensure that the islands can accede to the UK’s membership of the WTO if requested.
- 6.3. **Immigration** – In July 2017, the UK and the EU set out their respective proposals to protect the rights of EU and British Citizens in the UK and EU on exit day. This matter is subject to ongoing negotiations between the UK and the EU. The UK’s proposals include provisions about the 'settled status' of EU nationals who are resident in the UK. If these proposals are agreed, Guernsey should seek to extend that concept to the Bailiwick. The Policy & Resources Committee is working with the Committee *for* Home Affairs to engage with the UK Government so that Bailiwick residents who are British nationals are considered when the UK’s exit agreement is agreed (between the UK and EU). This is particularly important if they happen to be resident in the EU on exit day. This includes those islanders defined as "Channel Islanders" in accordance with Protocol 3. The Bailiwick’s immigration regime is based on UK legislation which has been modified and extended to the islands. Currently any citizens who are not from the UK/EEA (i.e. non UK or non EEA citizens) need to comply with immigration legislation before they can take employment in Guernsey or the other islands of the Bailiwick. The Bailiwick has close constitutional links

with the UK and is part of the Common Travel Area for Britain and Ireland (see paragraph 6.5 below).

- 6.4. Guernsey will need to continue to consult closely with HM Government on developments in relation to immigration matters, to ensure that the Bailiwick's interests continue to be taken into account. Following the UK's exit from the EU, it is anticipated that any new immigration legislation made in the UK will also be extended to the Bailiwick. The legislation will need to be modified to ensure that it meets the specific requirements of the Bailiwick while satisfying the considerations of the Common Travel Area. Any relevant rules will then be made domestically. This reflects the way that the immigration system currently works. However, in the current circumstances, it would not be desirable to restrict the ability to move quickly by other means should it become necessary. Significant work, led by the Committee *for* Home Affairs, will need to be undertaken to implement a new immigration regime. This will require close working with the UK Government, the other Crown Dependencies, the Law Officers and the wider States of Guernsey.
- 6.5. The UK has clearly stated that one of its high level objectives is to maintain the existing Common Travel Area ('CTA') and associated arrangements which, in part, uphold the Belfast ('Good Friday') Agreement, including the principles of continued North South and East West (Ireland/ Northern Ireland) cooperation. The CTA ensures continuation of the longstanding constitutional arrangement relating to the free movement of people between the Crown Dependencies and the UK. The immigration rules state that the UK, the Channel Islands, the Isle of Man and the Republic of Ireland collectively form the CTA. The States shares the UK's commitment to ensuring that the CTA is maintained, which will require Guernsey to maintain a very similar immigration regime to that in the UK. This has been reiterated on a number of occasions through the States' engagement with the UK and is noted in written material produced by the UK, including a letter from the UK Prime Minister to the President of Policy & Resources (Appendix 2).
- 6.6. The UK's negotiations will not have any direct impact on the Island's Population Management Law ('PML') which came into force on 3<sup>rd</sup> April 2017. The PML requires each person (aged 16 or over) who lives and/or works in the Island to hold a certificate or permit to show that they are allowed to live and/or work in the Island. The PML does not recognise, or have any need to recognise, the nationality of those applying for a certificate or permit to work in Guernsey. Therefore, the PML is separate to any existing or new immigration legislation. Consideration will need to be given to the relationship between the PML and any new immigration rules.
- 6.7. **Fisheries and Agriculture** – On 2<sup>nd</sup> July 2017, the UK Government announced its



intention to withdraw from the 1964 London Fisheries Convention. This will take effect two years after the notification of the intention to withdraw. One of the purposes of the Convention is to provide for access rights for certain EU Member State vessels to commercially fish within the 6-12 nautical mile limit of the UK's coastal waters. The extension of this convention to the Bailiwick included fisheries access rights for all French vessels within the 6-12 nautical mile limits of the Bailiwick. This means that the UK's decision to withdraw from the Convention will have an impact in Bailiwick waters. The States will work closely with the UK to ensure that any unintended consequences are mitigated. One option is to consider the extension of the Bailiwick's territorial seas from 3 to 12 nautical miles. The States, working in partnership with the States of Alderney and Chief Pleas of Sark, will also continue to engage with the Normandy fishermen who have a particular interest in commercial fishing within Bailiwick waters. Consideration will need to be given to any necessary measures to manage the fisheries and to facilitate trade in fisheries products with the EU. It is unclear how the UK and EU will trade in agricultural and fisheries products after the UK has left the EU. In order to act swiftly as the negotiations on fisheries and agricultural matters progress the States may need to be able to make relevant provisions quickly. This means a general Ordinance making power would be desirable to facilitate this.

- 6.8. **Financial services** – The Bailiwick is a third country to the EU in respect of certain financial services. It has successfully negotiated its own limited access to EU financial markets as a non-EU jurisdiction. These relationships are not expected to change directly, but Guernsey will need to be ready to respond to the terms of the new UK/EU partnership particularly in relation to market access for services. The UK has set out its objective of achieving a deep and special partnership with the EU and is seeking to enter into a comprehensive free trade agreement with the EU as part of this relationship. It is also seeking free trade agreements with other jurisdictions. A free trade agreement would further liberalise trade from the baseline of WTO standards. Guernsey will be looking to explore the benefits and opportunities which arise by being within the WTO for financial services, as well as being open to any benefits which may flow from any new free trade agreements secured by the UK. In order to act swiftly if any market opportunities emerge during the negotiations (or beyond), the States will need to be able to make relevant provisions by Ordinance. This should enable Guernsey to respond to those opportunities, including possible participation in any free trade agreements which the UK might negotiate (including any with the EU). A general Ordinance making power relating to financial services and trade would be desirable to facilitate this<sup>18</sup>. The States may also need to implement any international agreement relating to trade to ensure that the island can accede to the UK membership of the WTO if

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<sup>18</sup> In making any changes to financial services legislation, it remain the firm intention of the States of Guernsey that all such changes should be fully compatible with the relevant international standards.

requested.

- 6.9. **Transport** – The Bailiwick is dependent on transport links to move people and goods to and from the islands. The Channel Islands’ airspace (The Channel Island Control Zone – ‘CICZ’) is layered. The lower layers are managed locally and then centrally from Jersey. The airspace above this (from 19,500ft) falls within the jurisdiction of harmonised European Air Traffic Control Management (‘Eurocontrol’) and within the French functional airspace block (‘FABEC’). All air traffic movements and operations are required to meet the relevant EU harmonised standards. The future relationship between the UK and EU could impact the management of the airspace adjacent to the Channel Islands. Air transportation, aircraft maintenance and aviation security are regulated in accordance with Bailiwick, UK and European regulations together with the Civil Aviation Authority (‘CAA’), and European Aviation Safety Agency (‘EASA’). Sea transport is regulated, in accordance with Bailiwick, UK and international regulations together with the Marine Coastguard Agency (‘MCA’) and the International Maritime Organisation (‘IMO’). The maintenance of continued mutual recognition of driving licences and other road transport issues are also considerations. The importance of maintaining effective transport links amidst the uncertainty means that a general Ordinance making power relating to transport would be desirable to facilitate this.
- 6.10. **Energy** – Whilst Guernsey is able to generate enough electricity on-island to supply the island’s needs, the majority of the supply is imported from EDF in France through the Channel Islands Electricity Grid (‘CIEG’) submarine cables. Guernsey Electricity Limited is investigating the possibility of laying an additional cable to connect directly into the French grid. Whilst this supply contract with EDF is not expected to be directly impacted by the future of the UK’s participation in the EU energy market, that participation may be important to the island’s supply of electricity as well as other forms of energy. It is recommended that any Ordinance making powers rest with the States to enable it to mitigate against any uncertainty in the status of this critical infrastructure as a result of the UK’s exit from the EU.
- 6.11. **Communications** – Communications are an essential part of the Bailiwick’s infrastructure and inherently include matters that are inter-jurisdictional. Any changes to the UK-EU relationship which affect communications are likely to affect Guernsey due to its business links and geographical proximity. The UK Office of Communications (‘OFCOM’) manages and licences spectrum for use in the Bailiwick and represents Guernsey’s interests internationally in these matters. The issue of cyber security is increasingly important and the States is developing its cyber security strategies to respond to evolving global threats. There are businesses within Guernsey which rely on the trade in digital goods and services which is known collectively as the digital sector. The access to these markets will form part of Guernsey’s aspiration to take part in any trading

arrangement between the UK and the EU. In order to continue to exchange data with the EU and trade with the Single Market, work has begun on a *Projet de Loi* to implement the necessary measures of the General Data Protection Regulation ('GDPR'). Taking this into account, it is not expected that any general Ordinance making powers will be required for communication matters.

- 6.12. In order to ensure that the States can be nimble and act swiftly, it is recommended that the States be able to act quickly by Ordinance in a range of areas that will not be covered by any withdrawal provision envisaged under section 5 of this Policy Letter. In addition, the States may need to implement international agreements related to trade to ensure the Bailiwick can accede to the UK membership of the WTO. The steps required are laid out in paragraphs 2 and 3 of the "Legislative proposals" section of the letter from HM Procureur included in paragraph 7.1 of this Policy Letter.

## **7. Legislative requirements**

- 7.1. On 13<sup>th</sup> September 2017, HM Procureur wrote to the Policy & Resources Committee to set out the rationale for legislation that will be required in light of Brexit:

Dear Sir,

### Brexit – introduction

Since the triggering of Article 50 by the United Kingdom in March 2017, which began the 2 year timescale for Brexit, HM Government has been slow to set out its negotiating position and has not provided the clarity expected. This lack of detail has not permitted the Bailiwick (as a whole and as separate jurisdictions) to consider how it might be affected by Brexit and therefore how best to plan ahead.

This means that, more than ever, the Bailiwick's legislation giving effect to and otherwise in response to Brexit needs to provide for quick and flexible responses to an uncertain and swiftly changing political and legal situation, while providing as much stability as possible. The need to provide for speedy and appropriate legislative action is especially pronounced in relation to Guernsey as much of the necessary legislation will need to be enacted on a Bailiwick-wide basis, requiring the approval of three separate legislatures, and (in the absence of the enabling powers recommended below) by *Projet de Loi*, which would require the sanction of Her Majesty in Council.

### Legislative proposals

In my view, to give effect to the Resolution of the States of 8<sup>th</sup> March 2017, while ensuring that the interests of the Bailiwick and its residents are protected and promoted in these challenging circumstances, the following

legislative steps need to be taken.

1. The enactment of a Bailiwick-wide *Projet de Loi* ("the Withdrawal Law"), broadly equivalent in scope and content to the United Kingdom's European Union (Withdrawal) Bill, which will –
  - (a) repeal the European Communities (Bailiwick of Guernsey) Law, 1973 ("the 1973 Law"),
  - (b) preserve the effect in domestic law of the EU measures which are directly effective or otherwise binding in the Bailiwick on the date the United Kingdom leaves the European Union ("exit day") by virtue of Protocol 3 ("retained EU law"), which will (subject to express agreement to the contrary of the remaining member states) be the 29<sup>th</sup> March, 2019,
  - (c) provide powers to amend, repeal, adapt or modify by statutory instrument –
    - (i) retained EU law (whether by reference to specific provisions, classes of provision, or otherwise),
    - (ii) Ordinances in force on exit day giving effect to EU measures under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 ("the Implementation Law"), and
    - (iii) any other Bailiwick legislation (including *Projets*), where necessary or expedient in consequence of Brexit. Such amendments, etc, may be required for practical reasons – for example, the legislation in question may make provision for reciprocal arrangements which no longer exist, refer to bodies that no longer have functions in respect of the Bailiwick or be otherwise deficient in the post-Brexit world (effectively, what one might describe as statutory house-keeping). These powers must be subject to appropriate democratic scrutiny while providing the necessary flexibility and speed of implementation. To that end the powers should, in my view, take the form of regulations made by the relevant Committees which would subsequently be laid before the States of Deliberation. Equivalent powers will need to be granted to the States of Alderney and the Chief Pleas of Sark in respect of Alderney-only or Sark-only legislation,

- (d) make any necessary consequential amendments to the Implementation Law. I consider that it is desirable that this Law, which provides a simple mechanism to give effect by Ordinance to EU measures in domestic law, should continue in force, as should Ordinances made under it and in force on exit day (subject to any amendment, repeal, adaptation or modification by regulation as described above). This proposal would not oblige the States (or the States of Alderney or Chief Pleas of Sark) to make any Ordinances under the Implementation Law after exit day, but the continued ability so to do would, in my view, provide further valuable flexibility to the Bailiwick's legislative Brexit armoury,
- (e) make appropriate provision in relation to extant applicable jurisprudence of the Court of Justice of the European Union ("the European Court") on exit day on a similar basis to the proposed position in the United Kingdom under the Withdrawal Bill, whereby such jurisprudence is to be recognised within domestic law, but that the courts should not be bound by any principles laid down or decisions made by the European Court after exit day, and
- (f) contain any necessary incidental, supplemental and saving provisions or powers (for example, ancillary and transitional arrangements in respect of rights, powers, liabilities and duties currently available in domestic law under the 1973 Law).

**2.** The enactment of a Bailiwick-wide enabling Law empowering the States by Ordinance to make strategic, substantive and policy amendments to retained EU law and Ordinances made under the Implementation Law which cannot be dealt with by the regulation-making powers proposed at 1 above.

Such is the state of the United Kingdom's negotiations and policy development at the time of writing that it is not possible to provide a comprehensive list of the legislation, or even the policy areas, to which these powers may need to apply. They are likely to include customs and trade, financial services, transport, energy, agriculture and fisheries. However, there would, in the current circumstances, be an unacceptable risk to the fundamental interests of the Bailiwick were this

power to be restricted to particular provisions or areas. Incidental, supplemental and saving provision will also need to be made.

**3.** The UK no doubt intends, by exit day, to have made arrangements (including transitional arrangements) in a wide range of areas including (but not restricted to) trade, tariffs, the common customs area and access to the single market, whether with the EU or other sovereign states and international organisations. There may also be arrangements and agreements to be made with the World Trade Organisation ("WTO"). However, at the moment it is impossible to predict what those arrangements and agreements will be and who they will be made with. It is essential that the Bailiwick is able to accede, where appropriate, to whatever arrangements are made and agreements are struck so as to preserve its own trading position. Accession to such international agreements and other instruments may be subject to our demonstrating compliance with whatever restrictions and obligations are incumbent on the signatories. If the Bailiwick cannot demonstrate compliance (a task which, incidentally, may throw a considerable burden onto government), it may find itself excluded from the arrangement to its substantive economic detriment. To demonstrate compliance the insular authorities may in many cases need to show that they have the necessary implementing legislation on the statute book: they must be in a position to enact it quickly if that is not the case.

I therefore recommend the enactment of another enabling *Projet de Loi* for the purpose of the implementation of any international agreement relating to trade, etc. This *Projet* would be based on the Implementation Law but of course would refer to international trading agreements and other instruments and associated materials rather than European Union provisions.

Implementation would be by means of an Ordinance of the States (or, in the case of Alderney or Sark, of the States of Alderney or Chief Pleas of Sark).

### Conclusion

Brexit presents a significant challenge to the Bailiwick in legislative terms. In my view, the enactment of *Projets de Loi* making the provision described above would give the necessary flexibility in responding to that challenge, while ensuring an appropriate and effective level of democratic scrutiny and oversight. We would be grateful therefore if you could make arrangements to put this letter and our legislative recommendations before the States.

I must emphasise that the proposed *Projets de Loi* have not yet been the

subject of any discussion with the UK authorities and in particular the Ministry of Justice. It is quite possible that they will take the view that some of the legislation being proposed is far-reaching and may wish to explore the terms of the proposed drafts. However, in addition to the Implementation Law, there is precedent for such legislation in the form of the Human Rights (Implementation and Amendment) (Bailiwick of Guernsey) Law, 2004, the Income Tax (Guernsey) Law, 1975 (section 75CC - implementation of approved international agreements relating to tax) and the Privileges and Immunities (Bailiwick of Guernsey) Law, 2004 (power to implement international agreements relating to diplomatic privileges and immunities).

I will therefore be communicating with the Ministry of Justice and its legal team as to the scope of the drafts and I will of course keep the Committee apprised of any developments. However, it is essential that these proposals and other associated workstreams proceed concurrently rather than sequentially as I anticipate that it may take at least 12 months for the necessary *Projets de Loi* to proceed through the three insular parliaments and the Privy Council and (at the date of this letter) exit day is only, approximately, 19 months away.

Finally, further legislation might be required depending on the outcome reached as a result of the negotiations between the UK and the EU. In addition, some areas of law within the Bailiwick are dealt with by UK legislation, the terms of which have been extended by Order in Council. The Bailiwick has not to the best of my knowledge experienced significant difficulties with this legislation or the manner of its enactment to date, but it is at least conceivable that issues may emerge in the light of Brexit.

In either of these events the Law Officers may have to consider making further proposals to the Policy and Resources Committee for submission to the States (should it agree).

Yours faithfully,  
[signed]

Megan Pullum QC  
HM Procureur

## **8. Resource and implementation plan**

- 8.1. In accordance with Rule 4(5) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the proposal to approve the legislation outlined in paragraph 7.1 of this Policy Letter is strategically aligned to the objectives of the States of Guernsey. Phase One of the Policy &

Resource Plan<sup>19</sup> set out the vision for Guernsey in 20 years' time and the priority areas for the next five years. It was approved on 16<sup>th</sup> November 2016. 'Our Place in the World' is one of four key themes and is supported by the measures outlined in this Policy Letter. The underlying priorities of this theme are for Guernsey to maintain its reputation as a "*centre of excellence and innovation*" and to develop further its "*mature international identity*". The 'Our Economy' and 'Our Quality of Life' themes are also significant in regard to this Policy Letter.

- 8.2. Phase Two of the Plan<sup>20</sup>, which sets out the Committees' policy plans, was approved on 30<sup>th</sup> June 2017. Phase Two focusses on the work that Principal Committees need to do to move towards achieving the vision set out in Phase One. In response to the "mature international identity" priority, the Policy & Resources Committee's policy plan recognises that a significant focus of the Committee's work in the short to medium term will be on the protection of the island's interests in the aftermath of Brexit. One of the objectives identified within Phase Two is to "*ensure our interests are taken into account in the UK/EU exit agreement and seek new opportunities where possible*". The Committee considers this work to be one of its top priorities to support the Policy & Resource Plan.
- 8.3. The mandate of the Policy & Resources Committee includes responsibilities to, "*advise the States and to develop and implement policies and programmes relating to: (a) leadership and co-ordination of the work of the States*" and "*(c) external relations and international and constitutional affairs, which includes: 2. relations with the United Kingdom and other jurisdictions; 3. relations with the European Union and other supranational organisations; 4. relations with the other islands of the Bailiwick ...; [and] representing, or overseeing the representation of, and negotiating for, the Island; ...*" The Committee considers that the measures outlined in this Policy Letter touch on all those aspects of its mandate.
- 8.4. In regard to Rule 4(3) of the Rules of Procedure of the States of Deliberation and their Committees, part of the Policy & Resources Committee's Brexit Group's<sup>21</sup> activity includes regularly monitoring the resources dedicated to

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<sup>19</sup> The 'Future Guernsey' document was amended by and then approved by the States on 16<sup>th</sup> November 2016. The final version is available at <https://gov.gg/CHttpHandler.ashx?id=105052&p=0>. (The final version includes the amendments made by the States. An earlier version was published in Billet d'État XXVIII of 2016.) The Resolutions of 16<sup>th</sup> November 2016 can be found at:

<https://gov.gg/CHttpHandler.ashx?id=104885&p=0>

<sup>20</sup> Billet d'État XII of 2017: <https://www.gov.gg/CHttpHandler.ashx?id=107774&p=0>

The Resolutions of 30<sup>th</sup> June 2017 can be found at: <https://gov.gg/CHttpHandler.ashx?id=108566&p=0>

<sup>21</sup> The Policy & Resources Committee's Brexit Group is a strategic group which includes politicians and officials from its own Committee, the Committee for Home Affairs and the Committee for Economic Development along with the Law Officers and representatives from the Guernsey Financial Services Committee and industry where appropriate.



managing the implications of Brexit and to assessing the opportunities that may arise. Significant resources may be required to prepare the necessary legislation so that the States can act swiftly to mitigate and respond to any uncertain and changing political and legal situations that may arise during the exit negotiations. The use of resources across the organisation will also be kept under review as details emerge of the negotiations, the exit process and the future arrangements. The discussion papers that have been published on citizen's rights and customs matters suggest that technology and IT systems will play an important role in the UK's immigration and border controls. Provisions may be required to ensure that the island's own systems are able to work alongside those that are implemented in the UK.

## **9. Engagement and consultation on these proposals**

- 9.1. The Policy & Resources Committee's Brexit Group meets fortnightly to ensure that the Committees which are directly engaged in work responding to Brexit are well briefed. It helps to co-ordinate the work of the Policy & Resources Committee with the Committees *for* Home Affairs and *for* Economic Development and to align the work with the States-approved strategy. The Policy & Resources Committee leads on co-ordinating policy and draft legislation required as a result of the UK's withdrawal from the EU and co-ordinates the cross-Committee decision-making process. This huge amount of work will have to be dealt with both effectively and flexibly and, in some cases, very quickly to keep pace with the UK-EU negotiations. The Group will also ensure that any opportunities for the Bailiwick created by any extension of the UK's future relationship with the EU are seized upon and maximised where possible. The Group has been consulted on the proposals contained in this Policy Letter. This includes representatives from the Committee *for* Home Affairs and the Committee *for* Economic Development.
- 9.2. The Law Officers of the Crown have advised on the legislative changes that will be necessary to achieve the objectives agreed by the States following consideration of the second Brexit Policy Letter (in March 2017). The Law Officers have outlined the legislative proposals, as shown in paragraph 7.1/section 7 of this Policy Letter.
- 9.3. Discussions have been held with the UK Government in relation to the UK's Withdrawal Bill. The UK Government is aware that the Bailiwick will require analogous legislation (the proposed Withdrawal Law) to perform a similar function as the UK's Withdrawal Bill, to the extent that is required because of the ending of Protocol 3.
- 9.4. The Policy & Resources Committee continues to work with the States of Alderney and the Chief Pleas of Sark to ensure that both those islands are fully informed and engaged in this process. The proposals in this Policy Letter have

also been discussed in meetings of the Bailiwick Council.

- 9.5. The Committee will also continue to work closely with counterparts in Jersey and the Isle of Man. The Crown Dependencies stand to gain more by sharing a unified approach, wherever there are shared interests, during this process. The States of Jersey and the Isle of Man Government are working on similar legislation to Guernsey's proposed Withdrawal Law. The Law Officers of the Crown are also working closely with their counterparts in Jersey and the Isle of Man.

## **10. Propositions**

The States are asked to decide whether they are of the opinion:-

1. To approve the legislative proposals set out in paragraphs 6.4 and 7.1 (particularly paragraphs numbered 1, 2 and 3 of the letter from Her Majesty's Procureur reproduced therein) of the Policy Letter.
2. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

## **11. Committee support for Proposition(s)**

- 11.1. 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 Committee.

Yours faithfully

G A St Pier  
President

L S Trott  
Vice-President

A H Brouard  
J P Le Tocq  
T J Stephens

**UK Prime Minister's letter to the President of the European Council triggering Article 50<sup>22</sup>**

On 29<sup>th</sup> March 2017, the UK Prime Minister, The Rt Hon Theresa May MP, wrote to the President of the European Council, His Excellency Mr Donald Tusk, to formally commence the exit process from the EU under Article 50 of the Treaty on European Union:

Dear President Tusk

On 23 June last year, the people of the United Kingdom voted to leave the European Union. As I have said before, that decision was no rejection of the values we share as fellow Europeans. Nor was it an attempt to do harm to the European Union or any of the remaining member states. On the contrary, the United Kingdom wants the European Union to succeed and prosper. Instead, the referendum was a vote to restore, as we see it, our national self-determination. We are leaving the European Union, but we are not leaving Europe – and we want to remain committed partners and allies to our friends across the continent.

Earlier this month, the United Kingdom Parliament confirmed the result of the referendum by voting with clear and convincing majorities in both of its Houses for the European Union (Notification of Withdrawal) Bill. The Bill was passed by Parliament on 13 March and it received Royal Assent from Her Majesty The Queen and became an Act of Parliament on 16 March.

Today, therefore, I am writing to give effect to the democratic decision of the people of the United Kingdom. I hereby notify the European Council in accordance with Article 50(2) of the Treaty on European Union of the United Kingdom's intention to withdraw from the European Union. In addition, in accordance with the same Article 50(2) as applied by Article 106a of the Treaty Establishing the European Atomic Energy Community, I hereby notify the European Council of the United Kingdom's intention to withdraw from the European Atomic Energy Community. References in this letter to the European Union should therefore be taken to include a reference to the European Atomic Energy Community.

This letter sets out the approach of Her Majesty's Government to the discussions we will have about the United Kingdom's departure from the European Union and about the deep and special partnership we hope to enjoy – as your closest friend and neighbour – with the European Union once we leave. We believe that these objectives are in the interests not only of the United Kingdom but of the European Union and the wider world too.

It is in the best interests of both the United Kingdom and the European Union that we should use the forthcoming process to deliver these objectives in a fair and orderly manner, and with as little disruption as possible on each side. We want to

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<sup>22</sup> <https://www.gov.uk/government/publications/prime-ministers-letter-to-donald-tusk-triggering-article-50>

make sure that Europe remains strong and prosperous and is capable of projecting its values, leading in the world, and defending itself from security threats. We want the United Kingdom, through a new deep and special partnership with a strong European Union, to play its full part in achieving these goals. We therefore believe it is necessary to agree the terms of our future partnership alongside those of our withdrawal from the European Union.

The Government wants to approach our discussions with ambition, giving citizens and businesses in the United Kingdom and the European Union – and indeed from third countries around the world – as much certainty as possible, as early as possible.

I would like to propose some principles that may help to shape our coming discussions, but before I do so, I should update you on the process we will be undertaking at home, in the United Kingdom.

### **The process in the United Kingdom**

As I have announced already, the Government will bring forward legislation that will repeal the Act of Parliament – the European Communities Act 1972 – that gives effect to EU law in our country. This legislation will, wherever practical and appropriate, in effect convert the body of existing European Union law (the “acquis”) into UK law. This means there will be certainty for UK citizens and for anybody from the European Union who does business in the United Kingdom. The Government will consult on how we design and implement this legislation, and we will publish a White Paper tomorrow. We also intend to bring forward several other pieces of legislation that address specific issues relating to our departure from the European Union, also with a view to ensuring continuity and certainty, in particular for businesses. We will of course continue to fulfil our responsibilities as a member state while we remain a member of the European Union, and the legislation we propose will not come into effect until we leave.

From the start and throughout the discussions, we will negotiate as one United Kingdom, taking due account of the specific interests of every nation and region of the UK as we do so. When it comes to the return of powers back to the United Kingdom, we will consult fully on which powers should reside in Westminster and which should be devolved to Scotland, Wales and Northern Ireland. But it is the expectation of the Government that the outcome of this process will be a significant increase in the decision-making power of each devolved administration.

### **Negotiations between the United Kingdom and the European Union**

The United Kingdom wants to agree with the European Union a deep and special partnership that takes in both economic and security cooperation. To achieve this, we believe it is necessary to agree the terms of our future partnership alongside those of our withdrawal from the EU.

If, however, we leave the European Union without an agreement the default position is that we would have to trade on World Trade Organisation terms. In

security terms a failure to reach agreement would mean our cooperation in the fight against crime and terrorism would be weakened. In this kind of scenario, both the United Kingdom and the European Union would of course cope with the change, but it is not the outcome that either side should seek. We must therefore work hard to avoid that outcome.

It is for these reasons that we want to be able to agree a deep and special partnership, taking in both economic and security cooperation, but it is also because we want to play our part in making sure that Europe remains strong and prosperous and able to lead in the world, projecting its values and defending itself from security threats. And we want the United Kingdom to play its full part in realising that vision for our continent.

### **Proposed principles for our discussions**

Looking ahead to the discussions which we will soon begin, I would like to suggest some principles that we might agree to help make sure that the process is as smooth and successful as possible.

#### **i. We should engage with one another constructively and respectfully, in a spirit of sincere cooperation**

Since I became Prime Minister of the United Kingdom I have listened carefully to you, to my fellow EU Heads of Government and the Presidents of the European Commission and Parliament. That is why the United Kingdom does not seek membership of the single market: we understand and respect your position that the four freedoms of the single market are indivisible and there can be no “cherry picking”. We also understand that there will be consequences for the UK of leaving the EU: we know that we will lose influence over the rules that affect the European economy. We also know that UK companies will, as they trade within the EU, have to align with rules agreed by institutions of which we are no longer a part – just as UK companies do in other overseas markets.

#### **ii. We should always put our citizens first**

There is obvious complexity in the discussions we are about to undertake, but we should remember that at the heart of our talks are the interests of all our citizens. There are, for example, many citizens of the remaining member states living in the United Kingdom, and UK citizens living elsewhere in the European Union, and we should aim to strike an early agreement about their rights.

#### **iii. We should work towards securing a comprehensive agreement**

We want to agree a deep and special partnership between the UK and the EU, taking in both economic and security cooperation. We will need to discuss how we determine a fair settlement of the UK’s rights and obligations as a departing member state, in accordance with the law and in the spirit of the United Kingdom’s

continuing partnership with the EU. But we believe it is necessary to agree the terms of our future partnership alongside those of our withdrawal from the EU.

**iv. We should work together to minimise disruption and give as much certainty as possible**

Investors, businesses and citizens in both the UK and across the remaining 27 member states – and those from third countries around the world – want to be able to plan. In order to avoid any cliff-edge as we move from our current relationship to our future partnership, people and businesses in both the UK and the EU would benefit from implementation periods to adjust in a smooth and orderly way to new arrangements. It would help both sides to minimise unnecessary disruption if we agree this principle early in the process.

**v. In particular, we must pay attention to the UK's unique relationship with the Republic of Ireland and the importance of the peace process in Northern Ireland**

The Republic of Ireland is the only EU member state with a land border with the United Kingdom. We want to avoid a return to a hard border between our two countries, to be able to maintain the Common Travel Area between us, and to make sure that the UK's withdrawal from the EU does not harm the Republic of Ireland. We also have an important responsibility to make sure that nothing is done to jeopardise the peace process in Northern Ireland, and to continue to uphold the Belfast Agreement.

**vi. We should begin technical talks on detailed policy areas as soon as possible, but we should prioritise the biggest challenges**

Agreeing a high-level approach to the issues arising from our withdrawal will of course be an early priority. But we also propose a bold and ambitious Free Trade Agreement between the United Kingdom and the European Union. This should be of greater scope and ambition than any such agreement before it so that it covers sectors crucial to our linked economies such as financial services and network industries. This will require detailed technical talks, but as the UK is an existing EU member state, both sides have regulatory frameworks and standards that already match. We should therefore prioritise how we manage the evolution of our regulatory frameworks to maintain a fair and open trading environment, and how we resolve disputes. On the scope of the partnership between us – on both economic and security matters – my officials will put forward detailed proposals for deep, broad and dynamic cooperation.

**vii. We should continue to work together to advance and protect our shared European values**

Perhaps now more than ever, the world needs the liberal, democratic values of Europe. We want to play our part to ensure that Europe remains strong and prosperous and able to lead in the world, projecting its values and defending itself from security threats.

## **The task before us**

As I have said, the Government of the United Kingdom wants to agree a deep and special partnership between the UK and the EU, taking in both economic and security cooperation. At a time when the growth of global trade is slowing and there are signs that protectionist instincts are on the rise in many parts of the world, Europe has a responsibility to stand up for free trade in the interest of all our citizens. Likewise, Europe's security is more fragile today than at any time since the end of the Cold War. Weakening our cooperation for the prosperity and protection of our citizens would be a costly mistake. The United Kingdom's objectives for our future partnership remain those set out in my Lancaster House speech of 17 January and the subsequent White Paper published on 2 February.

We recognise that it will be a challenge to reach such a comprehensive agreement within the two-year period set out for withdrawal discussions in the Treaty. But we believe it is necessary to agree the terms of our future partnership alongside those of our withdrawal from the EU. We start from a unique position in these discussions – close regulatory alignment, trust in one another's institutions, and a spirit of cooperation stretching back decades. It is for these reasons, and because the future partnership between the UK and the EU is of such importance to both sides, that I am sure it can be agreed in the time period set out by the Treaty.

The task before us is momentous but it should not be beyond us. After all, the institutions and the leaders of the European Union have succeeded in bringing together a continent blighted by war into a union of peaceful nations, and supported the transition of dictatorships to democracy. Together, I know we are capable of reaching an agreement about the UK's rights and obligations as a departing member state, while establishing a deep and special partnership that contributes towards the prosperity, security and global power of our continent.

Yours sincerely

Theresa May

**Exchange of letters with the UK Prime Minister in relation to Article 50<sup>23</sup>**

On 17<sup>th</sup> February 2017, the President of the Policy & Resources Committee, Deputy Gavin St Pier, wrote to the UK Prime Minister, The Rt Hon Theresa May MP.

Dear Prime Minister

I welcomed the commitment made in your letter of 26th July 2016 to engage with the government of Guernsey following the Referendum on the UK's Membership of the EU. Since that time, the effort put in by your government, in particular Robin Walker MP, Parliamentary Under Secretary of State at the Department for Exiting the EU, must be recognised and commended. This engagement has been moved forward by officials concentrating on our priority areas of interest, to ensure that the UK Government understands and is cognisant of the impact of the UK's exit on Guernsey. The challenge will be maintaining this level of engagement when the negotiations commence.

At this stage in the process, before the UK Government formally notifies the European Council of its intention to leave the EU, the government of Guernsey would like to ensure that this formal process respects the constitutional relationship it has with the Crown and the UK. The act of leaving the EU will have an impact upon our own relationship with the EU and our domestic law, including individual rights insofar as Protocol 3 to the UK's Act of Accession applies.

Given the unique constitutional relationship with the Crown deriving from our Royal Charters, in contrast to the devolved administrations, it is essential that the island's parliamentary assembly, the States of Deliberation, takes its own steps to ensure that these changes are recognised, just as it did at the time of the UK's accession to the EU. Consequently, the States of Deliberation will soon be considering a proposition to acknowledge the UK's decision in respect of the notification under Article 50 of the Treaty on European Union. This motion is not only constitutionally appropriate, but it also respects and highlights the international identity of the islands, which is an identity the UK is responsible for representing, even where these interests diverge.

In 1971, when the UK was preparing to join the EU, it provided a formal assurance that it had no "intention of seeking in any way to impose upon the Bailiwick [of Guernsey] a change in its constitutional relationship with the Crown or unilaterally to abrogate any of the rights and privileges enjoyed by its inhabitants". In this regard, it is worth noting that an effective customs union and common travel area between the UK and Guernsey long pre-date the EU and are among the rights and privileges enjoyed by the inhabitants of the islands as a result of the ancient constitutional relationship with the

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<sup>23</sup> <https://gov.gg/article/159077/The-Policy--Resources-Committee-welcomes-assurances-from-the-UK-Prime-Minister-before-the-triggering-of-Article-50>



Crown. It is therefore important this commitment stands equally as the UK leaves the EU and your confirmation in this regard would be greatly appreciated.

The UK Government's recent White Paper entitled "The United Kingdom's exit from and new partnership with the European Union" demonstrates that the UK's objectives are aligned to Guernsey's in the key areas of: access to markets; maintaining the Common Travel Area; controlling immigration; and seeking to respect the rights of EU nationals resident in these islands. These objectives align with our own and provide a solid basis on which we can, in the language of the White Paper, "strengthen the bonds between us as we forge a new relationship with the EU and look outward into the world". Sharing access to markets for financial services, forging new customs arrangements for goods and aligning our status in respect of the WTO will all be an important part of this process. We believe that these objectives can be met while respecting our interests.

Continued close engagement during the exit process will be vital to ensure that the UK does not unintentionally act contrary to Guernsey's interests. I look forward to working with your Government as the negotiations commence after you notify the European Council of its intention to leave the EU, an act which will apply to Guernsey in respect of Protocol 3 of the UK Act of Accession, and an act which will have been acknowledged by Guernsey's parliamentary assembly.

Accordingly, I would be grateful if you would formally confirm that the language of the notification under Article 50 will be fully compatible with the constitutional relationship between the United Kingdom and the Bailiwick of Guernsey.

Yours sincerely,

Deputy Gavin A St Pier Chief Minister of Guernsey/Le Prumier de Giernes

cc. The Rt Hon Sir Oliver Heald QC MP; Mr Robin Walker MP

On 22<sup>nd</sup> March 2017, the President of the Policy & Resources Committee, Deputy Gavin St Pier received a letter of reply from the UK Prime Minister, The Rt Hon Theresa May MP:

Dear Deputy St Pier,

Thank you for your letter of 17 February about engagement with Guernsey during the UK's negotiations on leaving the European Union (EU).

I am pleased to hear the positive feedback on the UK Government's engagement with the Governments of the Crown Dependencies since the Referendum, in particular your engagement with Parliamentary Under-Secretary of State, Robin Walker. As I set out in my letter of 26 July, it is right that the Crown Dependencies are kept informed as we prepare to leave the EU, and that they are offered the opportunity to contribute where it is appropriate to do so.

The constitutional relationship between the United Kingdom and the Crown Dependencies is a valued, historical and special one, and I want to take this opportunity to assure you that the Referendum result will not change this relationship. I would also like to assure you that throughout the process of leaving the EU we will ensure that our actions are compatible with the constitutional relationship.

Our White Paper, published on 2 February, confirms the commitment that our governments share to maintaining the Common Travel Area (CTA). These arrangements long pre-date that UK's accession to the EU and we want to ensure they are preserved.

As the White Paper makes clear, we will work with the Crown Dependencies, alongside the Northern Ireland Executive and Irish Government, to deliver a practical solution that allows for the maintenance of the CTA, while protecting the integrity of the UK's immigration system. The White Paper also confirms our continued commitment to respecting the interests of the Crown Dependencies, strengthening the bonds between us as we forge a new relationship with the EU and with the wider world.

Thank you for writing to update me on the work of the States of Deliberation in relation to recognising the UK's plans to trigger Article 50. We recognise that our exit from the EU will have implications for the Crown Dependencies and fully acknowledge your desire to ensure that these changes are recognised by your Parliamentary Assembly.

I look forward to building on the positive working relationships between the Crown Dependencies and the UK as we move into the next phase of this process, including discussions on customs and trade, immigration, agriculture and fisheries, financial services, and a range of other issues. We remain committed to engaging with Guernsey to ensure that your interests are properly taken into account.

Yours sincerely  
Theresa May

On 28<sup>th</sup> March 2017, the President of the Policy & Resources Committee, Deputy Gavin St Pier, replied to the UK Prime Minister, The Rt Hon Theresa May MP:

Dear Prime Minister

Thank you for your letter dated 22 March 2017 and for your reassurances that the Bailiwick of Guernsey will continue to be kept informed and engaged in the process as the UK prepares to leave the EU. I am grateful too for your reaffirmation of the UK's commitment to the preservation of the Common Travel Area, your confirmation that our unique constitutional position will be respected and the rights of islanders will not be abrogated without consent.

I also wanted to take this opportunity to provide an update in relation to the debate in our parliament that took place on 8 March and to which I referred to in my letter on 17 February, regarding the triggering of Article 50. Guernsey's parliament unanimously approved the propositions subject to two amendments. The first amendment is in recognition of the wide reaching resource implications on Guernsey's government. The second amendment, which it was requested should be formally brought to the UK Government's attention, is self-explanatory in relation to the rights of EU nationals resident in Guernsey, namely that:

"... the rights of EU nationals resident and economically active in Guernsey should be a priority area in any negotiations with Her Majesty's Government and to direct that [the Guernsey government] impress on all relevant representatives of the Government, the States' wish to see those rights assured as soon as possible and not delayed as part of any extended negotiation process over the terms of the British exit from the EU."

I have also read with interest the recent Brexit reports in respect of the Crown Dependencies from the European Union Committee of the House of Lords and the Justice Committee of the House of Commons. We welcome both reports, which reiterate our objectives and the importance of respecting the interests of the Crown Dependencies. Further the reports recommend that there should be no change to the current constitutional relationships between Guernsey and the UK. We look forward to the UK Government's response to these reports in due course and hope that their recommendations can be fully endorsed.

Finally, as the process of exiting the EU is formally initiated by you this week, I wish you every success with the negotiations which are about to begin. I look forward to our governments working together as part of the British family to achieve the objectives which both have set out.

Yours sincerely,

Deputy Gavin St Pier Chief Minister of Guernsey/Le Prumier de Giernes

cc. The Rt Hon Sir Oliver Heald QC MP; Mr Robin Walker MP