Jersey Policy Forum

BREXIT AND JERSEY

Mark Boleat **April 2016**

Executive summary

On June 23rd voters in the United Kingdom will decide whether the UK should remain a member of the European Union. The decision will be of massive importance to the UK, a "leave" vote being followed by years of uncertainty as Britain seeks to establish a new economic relationship not just with the European Union but also with the rest of the world. By extension, the vote will also be of crucial importance to Jersey, given that Jersey's economy is closely tied to that of the UK and Jersey's prosperity depends on it being semi-detached to the UK.

When Britain decided to seek to join the then EEC in 1971 this was seen as potentially very damaging to Jersey, at the least resulting in increased competition for agricultural products, and at worst threatening the tourism and finance industries if Jersey were to be subject to the full rules of the EEC. In the event Jersey got the best possible deal – inside the common external tariff but outside the EEC generally. These arrangements were set out in Protocol 3 to the 1972 Accession Treaty. In practice, Jersey became loosely attached to the EEC as well as semi-detached to the UK. This was achieved through low-key way, but with good preparation in both Jersey and the UK.

The Brexit debate in the UK is as much emotional as rational. Business is strongly in favour of Britain remaining in the EU but finds it difficult to engage in such a debate. The expert view is that ultimately people will go for the conservative option of remaining in the European Union – but the odds of leaving the EU remain as high as 40%. Brexit would have a significantly adverse effect on the UK's financial services industry, largely as a result of the inability of institutions authorised and regulated in the UK to provide services in other EU countries. By extension, this would have some adverse effect on Jersey as the Island's finance industry is closely tied to that of the UK. But as Jersey is not in the EU much of its finance industry would not be directly affected by Brexit. More directly, Jersey could be adversely affected by whatever arrangements the UK introduced to control immigration from the EU countries, and fisheries could prove to be a difficult issue.

If the British electorate vote for Brexit the "divorce" settlement would be incredibly complex. Jersey and the other Crown dependencies would be very low down the UK's list of priorities. However, Jersey needs to be prepared to move quickly in the event of a Brexit vote, by carefully setting out its issues and ensuring that these are duly registered with the British authorities. To be effective the Jersey government must be united, and present a united front with Guernsey and the Isle of Man, whose interests are very similar.

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THE AUTHOR

Mark Boleat is Chairman of the Policy and Resources Committee of the City of London Corporation, a position he has held since May 2012. In this capacity Mark is Deputy Chairman of TheCityUK, the promotional body for the UK financial services industry, and the International Regulatory Strategy Group, a Vice Chairman of London Councils, and a member of the boards of Central London Forward, London and Partners and the Centre for London. He is also Chairman of the Housing and Finance Institute. He has previously been Director General of the Building Societies Association (1986-93) and the Association of British Insurers (1993-99) and has been a member of a number of commercial, regulatory and third sector boards. He is Chairman of the Channel Islands Competition and Regulatory Authorities and a former Chairman of the Jersey Development Company. He is the author of *Jersey's Population – A History*, and has written reports for the States on housing, consumer policy and population policy.

THE JERSEY POLICY FORUM

The Jersey Policy Forum is a not-for-profit organisation whose purpose is to: "to promote education for the benefit of all the people of Jersey on social, economic, environmental, public policy and public administration issues in the context of Jersey's status as a microstate".

The Forum is governed by a Committee comprising representatives of business, the third sector, education and public administration and includes people with significant experience in conducting and managing research.

The Forum works in the following areas: macro-economics, government, international relations, social policy, environmental policy and culture and heritage.

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INTRODUCTION

On June 23rd voters in the United Kingdom will go to the polls to decide whether the UK should remain a member of the European Union. The decision will be of massive importance to the UK, a "leave" vote at the least being followed by years of uncertainty as Britain seeks to establish a new economic relationship not just with the European Union but also with the rest of the world. The consequences are also huge for the EU itself, some speculating that Brexit could lead to a fundamental change, even a break up, of the Union.

Brexit also has implications for other jurisdictions. For the Republic of Ireland it would mean major changes to the relationship with its dominant trading partner, and in the island of Ireland is seen as being distinctly unhelpful to the peace process, which has been significantly helped by British and Irish membership of the EU. The Channel Islands, Gibraltar and the Isle of Man would also be affected, as they are British territories in Europe and all heavily reliant on international business.

The people of Jersey, properly, will not have a vote in the Referendum, and the position of the Channel Islands will not feature in the debate – or if it does it will not be in a way that will be favourable to the islands. This is therefore an issue where Jersey must simply watch – and perhaps be prepared if there is a Leave vote. An extreme analogy would be that of a punter who has just bet his house on a horse race on the other side of the world and over which he has no influence.

WHY THE BREXIT DEBATE IMPORTANT TO JERSEY

Jersey is prosperous primarily because it is semi-detached from the UK. It enjoys many of the benefits of being British, particular the confidence that that gives to international businesses to operate in and from the Island, but combined with relative freedom to set its own tax rates and system of financial regulation although having to comply with international standards. This issue has been explored in my paper "The causes of the Jersey's economic prosperity" (Boleat, 2015). The conclusions of that paper are relevant to the Brexit issue –

> "Economic prosperity depends on a complex mixture of natural resources, accessibility, external security, internal security and the rule of law, the quality of the workforce, political leadership and good governance, and regulatory and fiscal regimes. In small communities physical isolation and the cost of maintaining a political system can be constraint on economic prosperity.
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> By any standards Jersey is a wealthy community. Disposable income per capita for Jersey is more than a sixth greater than that of the UK and two fifths greater than the average across all OECD countries. Jersey's prosperity can be partly attributed to its natural features, it being the equivalent of a "fortress town" for much of the second millennium, and its semi-detached status, able to set its own tax rates and regulatory policies. It has used these advantages well, predominantly through

having good and wise government over many years, which has meant that the Island has been a safe and attractive place to do business. Jersey has skilfully managed the delicate relationship it must inevitably have with the United Kingdom, and has avoided making the sorts of mistakes that could easily have done significant damage to Jersey's economy and to the prosperity of its people.

Seven of the 21 wealthiest territories in the world are either British Overseas Territories or British Crown Dependencies (Jersey, Guernsey, Bermuda, the Isle of Man, the Cayman Islands, the Falkland Islands and Gibraltar). With the exception of the oil producing state of Brunei, Luxembourg and Liechtenstein there are no independent states with populations of under one million that are prosperous."

One of conclusions of this paper was that Jersey should –

> "Maintain and enhance its "semi-detached" status with the UK. This includes maintaining strong links with politicians and officials in London, being sensitive to British and international political issues and demonstrating Jersey's value to the UK."

It follows from this analysis that the possibility of Brexit is very relevant to Jersey; it would alter Britain's place in the world, and by extension Jersey's place in the world, and possibly also Jersey's relationship with the UK.

A LOOK BACK TO 1972

An historical perspective is always valuable so it is helpful to look back at Jersey's experience when Britain joined the then European Economic Community (EEC). The decision to seek membership posed a threat to Jersey and was taken seriously in the Island. I speak with just a little knowledge of that issue as I was there. A thesis I wrote as part of an MA degree in European Studies in 1971 was entitled "The Jersey Economy and the European Economic Community" (Boleat, 1971). It is helpful to quote parts of it, as they provide a good contemporary description of the issues and also illustrate some of the politics that are as true today as they were then.

> "The analysis so far has shown that British entry into the EEC will have harmful effects on Jersey, whether the island goes in or cuts her links with Britain and remains outside. Consequently, it is vital that Jersey should obtain special arrangements if it wants to retain and increase its present prosperity. This was roughly the conclusion of the Report on Jersey and the EEC [(States of Jersey, 1967)]: "It is clear from consideration of the main factors set out in this report that if the UK enters the Community, grievous results would flow for the island unless special arrangements made". The recommendation of the report was that: "In the event of the UK entering the EEC, it is the wish of the island to remain outside the EEC but that it should be included within the CET, or failing that, that the island should retain its ancient right to export goods into the United Kingdom free of duty".

Jersey is thus asking for a continuation of the present relationship with Britain and should this be achieved then the only immediate adverse effects would be more competition for island farmers in the UK market and higher food prices. Certainly there are precedents for special arrangements within the EEC for small countries or islands with strong ties with a member country.........

The conclusion of this paper is clear: British entry into the EEC, whatever Jersey does, is the greatest threat that the island has ever had to face. Britain, rightly or wrongly, has decided that it is in her interests to join the EEC and cannot be expected to sacrifice any of her interests for those of Jersey. By being dependent on tourism and tax avoidance, Jersey's economy is insecure and the island government, by default rather than by design, has allowed the situation to develop. Jersey now looks like having to pay the price for these insecure foundations.

The ideal solution, of course, is that the negotiations between Britain and the EEC should break down. However, if negotiations succeed then Jersey must make the best of a bad job and plea for special concessions. The word plea is appropriate. Some sections of opinion in Jersey are demanding that the island should get tough with Britain and ensure that Jersey's "rights" are maintained. Such people should be warned that the first essential of gunboat diplomacy is a gunboat. It would be convenient of Britain and the EEC to forget Jersey but one hopes that they will not do this. Jersey must rely for its special arrangements on the goodwill of the British government and the willingness of the Community to allow a major exception to Article 227-4.

Jersey cannot look forward to many special terms. What the island wants, i.e. inside the CET but outside the EEC, is likely to be achieved for industrial goods as the effects of this on the operation of the common market would be negligible. However, this is not likely to be achieved for agriculture and thus a decision to stay out would ruin Jersey farmers. It is in the interests of the agricultural sector that the island should enter the EEC along with Britain, but surprisingly the farmers are not pushing for this. With respect to tourism and finance and banking the evidence points in the opposite direction. However, the island would be well advised to make a very detailed study of the extent to which tax harmonisation is likely to be achieved in the Community and the degree to which Jersey would be able to remain a tax haven should it join; the Thurston Report [incorporated in States of Jersey (1967)] is thoroughly inadequate in this respect.

It would be foolish at this stage to say what Jersey should do because this depends on any special arrangements. There are terms on which Jersey would be advised to go in but these would have to be very generous. However, at present, the likelihood is that such terms will not be achieved and that Jersey will stay out. All that one can say at the moment is that the island will probably be better wholly out than wholly in; the idea of a common market is anathema to an economy that survives by being different."

In the event Jersey got the best possible deal – inside the common external tariff but outside the EEC generally. These arrangements are set out in Protocol 3 to the 1972 Accession Treaty (reproduced in the Appendix). The website of the Channel Islands office in Brussels usefully summarises the current position" –

> "The formal relationship between the Channel Islands and the EU is enshrined in Protocol 3 of the UK's 1972 Accession Treaty, and confirmed in what is now Article 355 (5) (c) of the EU Treaties. Under Protocol 3, the Islands are part of the Customs Union and are essentially within the Single Market for the purposes of trade in goods, but are third countries (ie outside the EU) in all other respects. However the Channel Islands have a close relationship with the EU in many different fields, not simply those covered by the formal relationship under Protocol 3, as this note explains. Both Jersey and Guernsey voluntarily implement appropriate EU legislation or apply the international standards on which they are based."

In practice Jersey maintained its semi-detached relationship to the UK while acquiring a much looser relationship with the EEC. While I was not party to the discussions my understanding is that this was achieved by some good diplomacy by the Island – ensuring that its position was known to the British government but not seeking publicity. Similarly, the British government played the issue well, leaving the Crown Dependencies issue to the last minute and presenting it as a minor issue with no significant implications for the EEC as a whole. Often, this sort of diplomacy is the most effective.

THE BREXIT DEBATE IN BRITAIN

To politicians in other countries the question is often "why on earth are you contemplating leaving the EU" and "why are spending so much money and energy on a referendum on the issue when there are far more serious issues to consider – the refugee crisis, Syria, Russia, terrorism and instability in the Eurozone?"

The Prime Minister famously said in 2006 that the Conservative Party should stop "banging on about Europe". He probably did not want the current debate and the Referendum, but the Party has banged on and he decided that he had no choice but to bring the issue to a head by calling a Referendum in the hope that this would calm the issue down in the following few years and then settle the issue once and for all in the Referendum itself. The first hope was not realised; it remains to be seen whether the second one will be.

At first sight British membership of the EU is not an appropriate subject for a referendum. It is highly complex and does not lend itself to the sort of issue that can be decided by popular vote. It is also an "all or nothing" issue. Many referenda are merely advisory, leaving the government to ignore the results if it so wishes (as the States of Jersey did when it ignored the result of the Referendum on the composition of the States). Others are on relatively minor matters – such a treaty change, and some can be reversed if they give the wrong result – as has occurred in Ireland and the Netherlands and as may well occur in Switzerland. The Brexit referendum is not like that; it is on a huge issue and is irreversible. If 50%+1 of the electorate vote to leave, Britain will leave. The notion that a Leave vote will simply encourage the Europeans to "see sense and give Britain a much better deal" is untenable.

Like all referenda the vote will not largely, or even primarily, be on the subject, partly because most people do not, and cannot reasonably be expected to, understand the issues. And in practice all referenda tend to be influenced by wider issues, particularly the economic circumstances of the country, the popularity of the government of the day, and extraneous issues. So if on June 23rd the government is riding high in the polls, the Conservative Party is seen to be united, the economy is growing and unemployment is falling, and all is quiet across the Channel, then that will help secure the vote that the government wants. By contrast, a worst case scenario would be some bad economic news, a dip in the government'snpopularity caused by unforeseen circumstances (serious flooding, a health service crisis, a political crisis with surprise resignations from the government or some leading Conservatives transferring the Brexit camp), a refugee crisis and serious terrorist attacks anywhere in "Europe" would increase the likelihood of a Leave vote. This was amply demonstrated in the week following the March Budget, when mishandling of the benefits issue and the related resignation from the Government of Ian Duncan Smith led to a sharp fall in the popularity of the government and an increase in the odds of Britain leaving the EU. The terrorist atrocity in Brussels probably had the same effect, although more muted.

The debate will be to some extent be heart against head. The Leave campaign will be strong on emotion – a reaction to being "ruled by Brussels bureaucrats", stressing the important of decisions about Britain being taken in Britain, and the strength of links with other countries. The Remain campaign will be along the lines of – the EU is far from perfect, but on balance the benefits have exceeded the costs and leaving would be a leap into the dark, which at the least would cause years of uncertainty. The challenge for the Leave campaign will be to answer the question – "what does "out" look like", and the answer needs to be much more sophisticated that those offered so far. For the Remain campaign the challenge will be to demonstrate the benefits of membership rather than point to the risks of leaving.

For business, the issue is both crucial and difficult. The overwhelming business view is that Britain needs to be a member of the European Union – to have access to the European single market, to be able to have a say in the rules governing the single market, to benefit from trade agreements between the EU and other countries and to take advantage of free movement of labour within the European Union. The effect of Brexit on a particular business would depend on the nature of its business and would vary from none at all to quite substantial. I have yet to see any evidence from any trade body that its members would benefit by Brexit. When businesses claim that they are "strangled by red tape from Brussels" they are generally, when challenged, hard pressed to give examples.

But business has been reluctant to engage in the debate. This is partly because business is not well equipped to engage in emotional debates that can often be devoid of facts or sound evidence. And businesses with retail customers are reluctant to alienate a proportion of those customers. So, many businesses are hoping for a Remain vote but intend to do little or nothing to secure it, in some cases relying on their trade associations to set out an industry position. But such is the importance of the issue that more and more businesses have felt it necessary to speak out – and have done so since the "renegotiation" settlement was announced on February 20th. This trend will continue, and the views of the overwhelming majority of British business will become clear.

The view of most polling experts is that as the Referendum approaches most of the undecided will swing to the conservative status quo option and vote to remain – this is a typical pattern in referenda. But this referendum may not be typical. The Remain campaign faces a big problem. Normally, the elderly are the most conservative and most inclined to vote. At present the elderly are more inclined to vote for Brexit – perhaps wishing to return to what they think the status quo should be. The young are much more strongly in favour of remaining in the EU – but far less inclined to vote. It is also worth adding that a number of "experts" predicted that when the renegotiation was complete and the Prime Minister recommended that Britain should remain in the EU, this would be sufficient to persuade all but 40 or so Conservative MPs to support him and for there to be a big swing in the opinion polls towards remaining in the EU. This did not happen. The first few weeks of the campaign did not go according to plan.

It is wise to keep an eye on what the bookmakers are offering. Ladbrokes has indicated a steady 30% chance of Brexit for over a year – the figure uninfluenced by the campaign or the opinion polls, but this figure has recently moved to nearer 35%. The bookmakers generally are currently offering 2/5 on Remain and 7/4 on Leave, the figures having moved from 1/3 and 9/4 in just one week following the Budget.

THE VIEWS OF THE FINANCIAL SERVICES INDUSTRY

Jersey is reliant on the financial services industry and this industry is closely connected to the UK's industry. It is therefore instructive to note the views of the UK industry on the possibility of Brexit. The following quotes from the leading trade associations summarise the position –

- The Association of Foreign Banks: "believes that the UK's interests, with regard to financial services, are best served by continuing to be an inner member of Europe and by helping to develop its regulatory framework."

- Alternative Investment Management Association (AIMA), Jiri Krol, Deputy Chief Executive: "I would disagree with the fact that there is some kind of benefit to the hedge fund industry emanating from Brexit."

- Association of British Insurers, Huw Evans, Chief Executive: "The risk of a British exit from the European Union is causing major political uncertainty for the insurance industry."

- British Bankers' Association, Anthony Browne, Chief Executive: "Membership of the single market has served the British people well for decades. Now is the time for intelligent reform, sensitive legislation and closer engagement from the UK to ensure that we can continue to profit from the EU for many decades – if not centuries – to come.

- British Insurance Brokers' Association: "A British exit from the EU would be disadvantageous overall to the insurance broker sector" because "it would lead to uncertainty for businesses which would have an adverse impact on the insurance market, investment and customer groups and the existing system of insurance companies 'passporting' into the UK could cease, potentially leading to a reduction in choice for UK consumers."

- Investment Association, Guy Sears, Interim Chief Executive: "Leaving the EU would complicate doing business without significantly cutting compliance costs."

Of the major financial services firms HSBC, Barclays, Goldman Sachs, Morgan Stanley, JP Morgan, RSA, Aviva, Standard Life and Lloyds of London have all come out strongly in favour of Britain remaining in the EU as has the cross-sectoral trade body TheCityUK. The City of London Corporation (of which I am Policy Chairman) has adopted the following position –

"Taking into account the views of City stakeholders and businesses, the City of London Corporation supports the United Kingdom remaining a member of the European Union."

An opinion survey by TheCityUK of the senior leadership of financial services firms found that 84% wanted to remain in the EU, and the same proportion regarded EU membership as important for UK competitiveness.

There is no room for doubt. The overwhelming view in the financial services industry is that Britain needs to be in the EU. This is not surprising. London is the financial centre for Europe as well as for the UK. Britain sells a huge amount of financial services to the rest of the EU, benefitting from passporting provisions, which avoids the need to be authorised and regulated in each Member State. The views of two substantial businesses usefully illustrate the position.

The Lloyds Market is one of the great institutions of the City. The Chairman of Lloyds has written to the Lloyds market in the following terms: "The Council of Lloyds and the Franchise Board have carefully considered the question of EU membership in the context of the interests of the Lloyds market. We have unanimously concluded that the best outcome is for the UK to remain a member of the EU." He pointed to the passporting trading rights with 27 member states of the EU and the benefits from the trade agreements that the EU has with many other countries. He concluded: "membership of the EU will be a crucial element in London being able to retain and reinforce its pre-eminent status as the global hub for insurance and re-insurance."

J P Morgan has 20,000 staff in the European Union; 19,000 of these are in the United Kingdom, the majority in London, but substantial numbers in Bournemouth and Glasgow. To quote the Chief Executive, Jamie Dimon, "if we can't passport out of the UK, we would have to set up different operations in Europe." Some might say this is not a problem. And for JP Morgan it is something that would be done albeit at some cost. But what would be lost in London are the jobs, not just among bankers but also support staff not only within the company but also in suppliers large and small.

More recently two studies have attempted to calculate the effect Brexit would be on the UK's financial services industry.

A report for TheCityUK by the consultancy PwC (PwC, 2016) concluded that in the event of Brexit the gross value added of the financial services sector would be between 5.7% and 9.5% lower in 2020, in money terms a reduction of around £7-12 billion. This would translate into a reduction in employment of 70,000 – 100,000, although employment would gradually recover in the longer term. The impact would be greater in the financial services sector than in the economy generally, uncertainty being the major contributory factor.

The second study (Woodford, 2016) was commissioned by Woodford Investment Management from Capital Economics and has been used to support the case for Brexit. On financial services the report concluded: "Overall financial services have more to lose immediately after a European Union exit than most other sectors of the economy. Even in the best case scenario, in which passporting rights were preserved, the United Kingdom would still lose influence over the single market's rules. The City would probably be hurt in the short term but it would not spell disaster." The report commented that "without passporting rights, it is conceivable that exports of financial services to the European Union could fall by about half, or about £10 million".

THE IMPLICATIONS OF BREXIT

So what are the implications of a Brexit?

Assuming that the British electorate vote in favour of Brexit then the British government would duly give notice of its intention to leave the EU. Almost certainly that notice would be given shortly after the Referendum. There would then be a two-year period before Britain left during which time there would be a negotiation on the future relationship between Britain and the EU. This will be a challenging task. The two-year period can be extended, but only by unanimous agreement of the Member States. The default position, that is, assuming that there is no negotiated position (which admittedly is unlikely), would be that EU legislation would no longer apply to Britain and that Britain would no longer be party to any of the EU's trade or other international agreements and would be outside the common external tariff and the free movement of labour provisions.

Dealing first with legislation, that which is directly imposed by Brussels – regulations – would fall. However, some EU regulations are an essential part of the regulatory framework in the UK and it is probably that a significant number would be enacted into British law. Legislation which was applied through directives and which are implemented through UK law would remain until such time as the government chose to amend it. So in practice much legislation initiated at the EU level would remain. A good example is the much-publicised (although in practice insignificant) Working Time Directive, implemented in the UK by the Working Time Regulations. These would remain in force. The British government could seek to repeal or amend the regulations. However, the most significant provision is the entitlement to six weeks paid holiday a year (British gold plating of the Directive). It is questionable whether any government would seek to remove this. More generally, when new regulations are introduced there is often opposition from business because of the cost imposed. But attempts to remove regulation are often opposed by business because the costs of imposition will not be recovered and the regulations are in effect a barrier to entry. So in practice there would be no “bonfire of controls” and to the extent that there is it would be slow burning. This could well lead to disillusionment, those favouring Brexit perhaps expecting that there would be a huge reduction in regulation.

In respect of financial services there is no expectation that Brexit would lead to less onerous regulation. This is partly because those financial services businesses wishing to continue to trade with the EU would have to comply with EU requirements anyway, included being authorised and regulated in a member state, and partly because the most onerous rules are the subject of international agreement, the EU simply being the mechanism by which they are implemented rather than the initiator. More generally, the British government has continually made it clear that it seeks the toughest regulatory regime in the world, exemplified by FCA rules on conduct of business, which go well beyond what is required by EU provisions.

In respect of trade with the EU, goods and service would be subject to the common external tariff, but more importantly where a service is regulated, businesses in Britain could no longer be able to “passport” into the EU. For many services, particularly finance, this would create huge problems.

The nature of the single market, particularly passporting provisions is not well understood. TheCityUK (2015), the promotional body for the UK’s financial services industry has explained it well –

> “Passporting is a major benefit of EU membership as it enables UK businesses to benefit from a range of passports allowing them to do business with or sell services to continental clients. It offers those businesses authorised in the UK, of whatever national origin, the ability to offer services remotely in the 27 other EU Member States and to some degree in the three European Economic Area (EEA) Member States1; and businesses from other Member States to offer services on the same terms in the UK. It has been crucial in maintaining the strength of London as the EU’s financial centre. These passports enable service providers which are authorised in one EU Member State to offer services in the rest of the EU without seeking separate authorisation from other Member States’ National Competent Authorities (NCAs). It also allows for a range of products, most notably Undertakings for Collective Investments in Transferable Securities (UCITS), which have been authorised by one NCA to be sold across the EU. This applies both to cross-border service provision without a physical presence in those

> Member States, via post, telephone or internet, and also to service provision through an established branch office in branch office in them.
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> …………………………….
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> If UK-based firms were to lose the benefit of the passporting regime, they would be unable to automatically supply services in the EU from the UK on a cross-border basis. UK-based firms would also lose protection against discrimination as the passports guarantee incoming firms will be able to do business on the same terms as local ones. There is no such protection for third country firms that are allowed to operate in a Member State's market. This means that UK-based firms (including subsidiaries of non-EU businesses which have set up offices in the UK to access the Single Market) would face regulatory and prudential barriers which can impact the viability of their businesses. Additionally, existing branches in other EU Member States may need to become locally established subsidiaries to continue to provide services (with the associated capital implications) or cease operations.
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> EU-based firms would also need to apply for separate UK authorisation to do business in the UK either remotely or through a UK office. This would lead to an increase in the cost of doing business for UK and EU-based businesses. It would affect the competitiveness of the UK's regulatory and tax regimes."

Brexit would also mean that Britain would no longer be party to any of the 50 trade agreements that the EU has negotiated – very significant for many businesses. The view has been expressed that the UK could "easily" negotiate equivalent trade agreements, unfettered by the need to accommodate the wishes of 27 other countries. However, no one who has any experience or knowledge of trade negotiations shares that view. Britain has not negotiated a trade agreement for over 50 years and common-sense alone suggests that a unit with 550 million people has far more bargaining power than one with 60 million people. It is also the case that trade agreements are each individually – and painstakingly – negotiated over a period of years. The recent EU Canada trade agreement for example, which does not apply to services, took seven years to negotiate and has not yet been implemented.

At the very least this combination of circumstances would result in huge uncertainty not only until the exit terms are agreed but also probably for some years thereafter. Inevitably this would have an effect on business decisions on investment. This would lead to a downturn in economic activity in the UK, which would feed through to Jersey.

There probably would be a deal on the exit terms – and some think this would be very favourable to Britain. But this is questionable. There are unrealistic expectations of what could be obtained – such as continuing to have access to the single market but not being subject to any of the rules, or having a say in any rules that are applied. This is plainly absurd as the single market is all about being subject to common rules. The most that be obtained is a version of the Norwegian option – access but little say in the rules and payment of a fee. This would probably be attainable for goods where Britain has a trade deficit with the rest of the EU. But it would not easily be obtainable for services where Britain has a huge trade surplus.

What about free movement of labour? UK nationals would have no right to live or work in EU member states – unless those states chose to give that right. Given that concerns about immigration are a major factor in the Brexit debate it has to be assumed that Britain would want to impose restrictions on the right of nationals of EU countries to live and work in Britain. On the assumption that there would be no "ethnic cleansing", that is requiring EU nationals to leave Britain, the short-term result could be an increase in immigration – as people move to Britain before controls are introduced and people who would otherwise have left do not do so. And presumably controls would be introduced, perhaps along the lines of work permits required of people from outside the EU. For many British businesses reliant on immigrant labour – particularly food processing and packing and hospitality – this would have major consequences. The reality is that EU immigration has become embedded in the UK economic structure and there would be no attempt to introduce immediately onerous controls given the obvious economic consequences. This would increase the disillusionment resulting from the failure to reduce substantially regulation.

There is likely to be a significant trade off here. The two non EU European countries with arrangements most like those that may be available to Britain in the event of Brexit, Switzerland and Norway, both have to accept free movement of labour in exchange for access to the single market. Britain would need to trade off the benefits of access to the single market against the political wish to end free movement of labour.

It is clear that at the very least a Brexit vote would lead to years of uncertainty for the UK – and by extension to Jersey.

THE EFFECTS OF BREXIT ON JERSEY

The effects of Brexit on Jersey can be divided into two broad categories – general, stemming from the UK position post Brexit, and specific, relating directly to Jersey. Given that Brexit would be damaging to the UK's financial services industry, and probably to the whole economy, any damage could feed through to Jersey, although the extent would probably be quite small. This point was made by the rating agency Standard and Poor's in February when it lowered its rating on Jersey to 'AA' From 'AA+' and combined this with a negative outlook. The specific comments on the EU are worth quoting –

> "The negative outlook reflects the downside risks facing Jersey's economy and external position should Britain choose to leave the EU. We believe that, if the U.K. leaves the EU, there will be a negative impact on the financial services sector in the U.K., with which Jersey's economy is closely linked. This could lead us to lower the ratings."

What about any specific effects on Jersey? First, the good news. For Jersey, the main downside of British entry into the EEC was that its agricultural produce would face stronger competition from continental producers as they would no longer be subject to a tariff. If, and perhaps a big if, Britain imposed a tariff on EU produce but not Jersey produce then Jersey would benefit.

But fisheries could be the bad news. Jersey exports most of its fish to France and by definition fishing rights must be subject to international agreement. I also understand that for perfectly sound reasons Jersey's and Guernsey's positions may not be fully aligned. While the fisheries industry is very important to those employed in it, it is a very small part of the island's economy and the consequences of failure to secure a favourable agreement would be limited.

For finance, Jersey is as well placed as it could be. Jersey is not part of the EU, the common external tariff is irrelevant and to the extent that companies in Jersey operate in the EU then they are doing so by virtue of bilateral arrangements not the passporting provisions that apply to companies based in the UK. At first sight there is no reason why this position should change if Brexit occurs. A key part of Jersey's finance business is gathering capital from around the world and channelling it into the UK and EU markets. Again, at first sight there is no reason why Brexit should alter this.

Jersey would be most significantly affected by whatever the UK chose to do on free movement of labour, as it is part of a "common travel area" with the UK and has to accept whatever the UK policy is. Restrictions on the rights of nationals from other EU member states to live and work in the UK could have a significant adverse effect of the island's hospitality and agriculture industries – both of which are heavily reliant on EU labour. However, the point has already been made that at least in the short term it would be difficult for the UK to introduce onerous restrictions on workers from the EU, given the heavy reliance of many industries on such workers.

JERSEY'S POSITIONING SHOULD BREXIT OCCUR

So what, if anything, should Jersey be doing about Brexit prior to the referendum? Jersey needs to have a clear wish list – but it must be a realistic wish list. And almost certainly it needs to go much wider than Jersey's relationship with the UK and cover the rather more important relationship with the UK. The wish list is probably –

- Strengthen Jersey's relationship with the UK, which is the basis of Jersey's prosperity. Some might see the EU issue as a trigger for Jersey to seek greater independence from the UK. This would be unwise as there is no evidence to suggest that any weakening of the relationship would benefit the island; indeed it could be quite damaging economically. Jersey needs to ensure the maintenance of free trade with the UK. At first sight this should be straightforward, partly because of historic charters. However, these apply only to goods not to services, and if the nature of the relationship is up for discussion nothing can be guaranteed.
- An agreement on fisheries and exports of fish, given that most exports from Jersey are to France. This could be a difficult area, not least

because Jersey and Guernsey may well have different views. The politicians will need to decide how much priority to give this factor.
- The maintenance – and preferably the extension – of existing bilateral agreements on finance. At one level this has nothing to do with the Brexit negotiations. However, such arrangements could be used as a bargaining counter in the UK/EU relationship, given the wish of some EU states to attack what they see as the damaging "Anglo Saxon" approach to finance.
- Maintenance of the common travel area with the UK. Jersey already imposes controls on who can live and work in the Island so this should not be a great problem.
- Possibly, inclusion in any trade agreement to be negotiated between the UK and the EU, but this would not be easy. Such an agreement will be hugely difficult and if Jersey and the other Crown dependencies are a complication for the UK then their interests are unlikely to be taken into account.

Jersey and the other Crown dependencies will not feature prominently in the Brexit negotiations, as for the UK there will be far more important issues to consider. Some have suggested that Jersey should seek to negotiate directly with the EU. This is a nonstarter. Jersey does not have the status to do so and in any event a negotiation between a community of 100,000 and one of 450 million would be one sided.

However, Jersey needs to be prepared to move quickly in the event of a Brexit vote, by carefully setting out its issues and ensuring that these are duly registered with the British authorities. It must also be prepared to be flexible and nimble. EU negotiations frequently comprise nothing happening for years and then everything happening in minutes. Jersey will get nowhere unless ministers have full authority to act without reference back to the States.

Jersey would also need to be plugged into the Brexit negotiations, in both London and Brussels, so it can quickly spot and react to issues relevant to it. Over the last few years Jersey has established offices in London and Brussels – the latter being a joint office with Guernsey – and more generally has greatly strengthened its links with Whitehall, Westminster and Brussels. This has been expensive, but well worth the price. Besides ensuring that the Government is Jersey is now better informed about UK and EU developments they have built up valuable contacts. Diplomacy is as much about relationships as it is about substance. Jersey's success in any Brexit relationship will depend to a large extent on the work that has already been done over the last few views in establishing relationships and providing solid, evidence-backed arguments that will support what Jersey would be trying to achieve. There is every indication that the necessary work is being done. The study on the value of Jersey to the UK economy (Capital Economics, 2013) is a good example of the sort of evidence that it persuasive.

Jersey politicians need to be united on their handling of a Brexit. There is no room for grandstanding in the hope of a few more column inches, nor for unrealistic demands for favourable treatment, as these would get in the way of achieving the right result.

And Jersey must work on the basis that it will be in the same boat as Guernsey and the Isle of Man. The three territories will be dealt with as one by the UK and by the EU. The "not invented here syndrome" must be avoided and the islands should not try to score points against each other. As with the relationship with the UK, Jersey, Guernsey and the Isle of Man need to build up their relationships in advance of the real negotiations, although this is not helped by possible changes in the Guernsey Policy Council following its elections.

CONCLUSIONS

In 1972 Jersey's great hope was that Britain's negotiations to enter the EEC would fail, as entry had only downsides for the Island. In the event the negotiations were successful and the downsides were minimized. On Brexit the hope for Jersey must be that the British electorate vote to Remain in the EU, because otherwise the damage to the UK economy, and more particularly the financial services industry, would at the least cause substantial uncertainty. However, because Jersey is not in the EU, and if it is assumed that the centuries-old relationship between Jersey and the UK would be maintained, then the effect of Brexit on Jersey would be little more than the consequences of the effect on the UK. But these could be substantial, and there are specific issues relating to immigration and fisheries that would need to be addressed. The issue should be a top priority for ministers – in preparation mode until June 23rd and if necessary in enhanced action mode subsequently.

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APPENDIX PROTOCOL 3 TO THE TREATY OF ACCESSION

Article 1
1. The Community rules on customs matters and quantitative restrictions, in particular those of the Act of Accession, shall apply to the Channel Islands and the Isle of Man under the same conditions as they apply to the United Kingdom. In particular, customs duties and charges having equivalent effect between those territories and the Community, as originally constituted and between those territories and the new Member States, shall be progressively reduced in accordance with the timetable laid down in Articles 32 and 36 of the Act of Accession. The Common Customs Tariff and the ECSC unified tariff shall be progressively applied in accordance with the timetable laid down in Articles 39 and 59 of the Act of Accession, and account being taken of Articles 109, 110 and 119 of that Act.

2. In respect of agricultural products and products processed therefrom which are the subject of a special trade regime, the levies and other import measures laid down in Community rules and applicable by the United Kingdom shall be applied to third countries.

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

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

Article 2
The rights enjoyed by Channel Islanders or Manxmen in the United Kingdom shall not be affected by the Act of Accession. However, such persons shall not benefit from the Community provisions relating to the free movement of persons and services

Article 3
The provision of the Euratom Treaty applicable to persons or undertakings within the meaning of Article 196 of that Treaty shall apply to those persons or undertakings when they are established in the aforementioned territories.

Article 4
The authorities of these territories shall apply the same treatment to all natural and legal persons of the Community.

Article 5
If, during the application of the arrangements defined in this Protocol, difficulties appear on either side in relations between the Community and these territories, the Commission shall without delay propose to the Council such safeguard measures as it believes necessary, specifying their terms and conditions of application.

The Council shall act by qualified majority within one month.

Article 6
In this protocol, Channel Islander or Manxman shall mean any citizen of the United Kingdom and Colonies who holds that citizenship by virtue of the fact that he, a parent or grandparent was born, adopted, naturalised or registered in the Island in question; but such a person shall not for this purpose be regarded as a Channel Islander or Manxman if he, a parent or grandparent was born, adopted, or naturalised or registered in the United Kingdom. Nor shall he be so regarded if he has at any time been ordinarily resident in the United Kingdom for five years.

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