

## **Jersey & Guernsey Law Review – October 2013**

### **THE GENESIS OF PROTOCOL 3: THE CHANNEL ISLANDS AND THE EEC**

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*The relationship between the Channel Islands and the European Union, the successor to the European Economic Community, is governed by Protocol 3 to the Treaty of Accession of the United Kingdom. The origins of this Protocol are rarely considered in the literature, it largely being seen as a small adjunct to the wider British negotiations. Yet Islanders still remember a time when they were concerned they would have to join the Community and take on all the obligations of membership with the difficulties this would cause. This discussion looks at the negotiations between the Islands and the British Government and between the British and the Community to see how these difficulties were realised and addressed. It considers what the Islands wanted from the relationship and how close they got to what they asked for in Protocol 3. It is from this history that we can start to understand the Islands' present relationship with the Union.*

#### **Introduction**

1 The relationship between the Channel Islands and the European Union has always been a complicated one. It is governed by Protocol 3 to the Treaty of Accession of the United Kingdom which provides that the Islands are “in” the Union for some things and “out” for others. The Protocol has now been with us for forty years, but there has been very little examination of how it came about and whether the Islands got what they wanted. The purpose of this discussion is to look at the negotiations, meetings and debates<sup>1</sup> that took place publicly and behind closed doors between the Islands, the United Kingdom government (HMG) and the Six Member States of the European Economic Community (EEC) (at the time often simply called “the Six”) leading to Protocol 3.

#### **The United Kingdom's first application**

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<sup>1</sup> This article relies on the Jersey Archive (footnote abbreviation JA) and the UK National Archive (abbreviation NA) as well as some published material.

### *The early attempts*

2 In the late 1950s, when the United Kingdom was considering an association agreement with the Six there was perceived to be no need to discuss it with the Channel Islands at all as they could simply be excluded.<sup>2</sup> The United Kingdom wanted to create a European Free Trade Area with the EEC where tariffs would be eliminated but none of the further encumbrances would be required.<sup>3</sup> The Island authorities were first asked about the effect of such an arrangement in 1957<sup>4</sup> when all that was agreed was that the Insular authorities would be kept informed.<sup>5</sup> The proposal for a free trade agreement with the EEC changed<sup>6</sup> into a full-blown membership application in 1961.<sup>7</sup>

### *The original negotiating brief*

3 In contrast to the more developed negotiating brief for the successful negotiations, the original position of the Channel Islands was simple. The Islands would join on the same terms as the United Kingdom and there would be no need to have separate discussions about them at all (subject to the Islands agreeing to join and the Island authorities ratifying the agreement at the same time as the UK).<sup>8</sup> Initial

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<sup>2</sup> Note by Home Office for Cabinet Economic Steering Committee: 25 March 1957 (NA: HO 284/108).

<sup>3</sup> Minutes of Meeting: Channel Islands and European Trade Area: 28 June 1957 (NA: HO 284/108) (indeed, in the late 1950s, the UK's position was that the Commonwealth took preference to any EFTA and this was what derailed the project initially).

<sup>4</sup> Minutes of Meeting: Channel Islands and European Trade Area: 28 June 1957 (NA: HO 284/108)

<sup>5</sup> Minutes of Meeting: Channel Islands and European Trade Area: 28 June 1957 (NA: HO 284/108) (Agreement, point 1).

<sup>6</sup> Even at this early stage, it was clear that the Islands would lose some of their preferential advantages in the United Kingdom—whether they also joined the EEC or not. And if they declined to join they might lose membership of GATT (the forerunner of the WTO) and the right to unrestricted access in the United Kingdom: *A Summary of discussions with regard to the position of the Channel Islands in relation to the entry of the United Kingdom into the European Economic Area* (JA: B/D/A/E19/1, File 1), p 1; a point made again in the Note of Meeting Held on 19 April 1967 (JA: B/D/A/E19/1, File 1).

<sup>7</sup> See Harold Macmillan, HC Deb 2 August 1961, vol 645, col 1480 *et seq*; formal negotiations began on 10 October 1961 (see Minutes of Meeting: Home Office: 5 June 1962 (NA: HO 284/108), Item I).

<sup>8</sup> Negotiating Brief: 19 September 1961 (NA: HO 284/108), [4].

discussions with the Islands had shown that they believed they had no choice but to enter EEC on the same terms as the UK<sup>9</sup> and so the 1961 negotiating brief stated that “There are no peculiar problems to the Islands requiring separate discussion with the Six”.<sup>10</sup> This was not because HMG wanted to force membership but simply that there were seen to be no special issues (and an Island could be entirely excluded if it so chose).<sup>11</sup> The issue, however, moved off the agenda when at a press conference on 14 January 1963 President De Gaulle made it clear that, contrary to views of the other members of the EEC, negotiations with the United Kingdom for entry into the EEC should stop.<sup>12</sup>

### **The United Kingdom’s second application**

4 The UK’s second application to join the EEC started on 2 May 1967.<sup>13</sup> By this time the Islands were starting to think if, and how, they might opt out of the EEC and what the implications would be of doing so.<sup>14</sup>

### ***What the Islands wanted***

#### ***The pre-negotiation position***

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<sup>9</sup> Negotiating Brief: 19 September 1961 (NA: HO 284/108), [5]; this did indeed reflect the views of the Island’s representatives who took the view at this time that they would have to join on the same terms as the UK: Minutes of Meeting: Home Office: 5 June 1962 (NA: HO 284/108), Item V (RH Le Masurier, Bailiff designate of Jersey, Sir William Arnold, Bailiff of Guernsey and the Speaker of House of Keys all accepting full membership as unavoidable).

<sup>10</sup> Negotiating Brief: 19 September 1961 (NA: HO 284/108), [6].

<sup>11</sup> Minutes of Meeting: Home Office: 5 June 1962 (NA: HO 284/108), Item V (Sir Charles Cunningham, Permanent Secretary Home Office).

<sup>12</sup> This veto became clear at a press conference in Paris on 14 January 1963 in response to a question to “define explicitly France’s position towards Britain’s entry into the Common Market and the political evolution of Europe”; as to the British response see *Britain and Europe Briefing Notes* (Department of Economic Affairs, January 1967), p 5.

<sup>13</sup> Prime Minister (Harold Wilson), HC Deb 2 May 1967, cols 310–314.

<sup>14</sup> Letter: Arnold to Conseiller Charles Frossard (President of States Committee for EFTA and EEC, Guernsey): 2 December 1966 (JA: B/D/A/E19/1, File 1); it was by this stage clear that if, and when, the UK joined, the Islands wanted to be in a special position: Memo: *European Economic Community: The Channel Islands and the Isle of Man*, undated but clearly written after De Gaulle’s veto and before 1969 (HO 284/173).

5 It was obvious to the Islands, as much as to anyone else, that the Treaty of Rome was only the beginning;<sup>15</sup> the EEC was not going to be confined to trade and economic issues but would lead to political integration.<sup>16</sup> The Islands wanted to govern themselves and they did not want this to be affected by EEC membership.<sup>17</sup>

6 The Jersey Committee,<sup>18</sup> at a meeting on 3 August 1967, indicated to HMG that they were content for the CET (common external tariff) to be applied<sup>19</sup> (as the effect was believed to be negligible)<sup>20</sup> but that was all; harmonisation of taxation was completely unacceptable to them.<sup>21</sup> Nevertheless, the position of the Islands in August 1967 was emphatic: there were no advantages for them in joining the EEC.<sup>22</sup> Thus, on 25 October 1967, the States of Deliberation in Guernsey resolved—

“to request the Secretary of State to inform the States of the steps which Her Majesty’s Government would be prepared to take . . . to secure the exclusion of the Island from certain provisions of the Treaty of Rome, particularly those relating to taxation, agriculture and immigration, which the Island would find difficult, if not impossible, to implement without damage to the economy of the Island and consequentially to the well-being of its inhabitants.”

This was followed on the 14 November 1967 by an Act of the States of Jersey requesting, amongst other things, for the Bailiff—

“to inform Her Majesty’s Government that in the event of the UK entering the EEC, it is the wish of the Island that Jersey should

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<sup>15</sup> See *Billet d’Etat*, 25 October 1967, States of Deliberation, Guernsey, p 478.

<sup>16</sup> Note of Meeting: Home Office: 3 August 1967 (JA: B/D/A/E19/1, File 1), p 3 (Senator Ralph Vibert, Jersey).

<sup>17</sup> Note of Meeting: Home Office: 3 August 1967 (JA: B/D/A/E19/1, File 1), p 4 (Senator Vibert).

<sup>18</sup> The Committee had been formed by an Act of the States dated 9 October 1962.

<sup>19</sup> Note of Meeting: Home Office: 3 August 1967 (JA: B/D/A/E19/1, File 1), p 3 (Senator Cyril Le Marquand).

<sup>20</sup> Note of Meeting: Home Office: 3 August 1967 (JA: B/D/A/E19/1, File 1), p 3 (Dr Hugh Thurston, economist employed by the States of Jersey).

<sup>21</sup> Note of Meeting: Home Office: 3 August 1967 (JA: B/D/A/E19/1, File 1), p 3 (Senator Le Marquand).

<sup>22</sup> Note of Meeting: Home Office: 3 August 1967 (JA: B/D/A/E19/1, File 1), p 4 (Senator Wilfred Krichefski).

remain outside the European Economic Community, but that it should be included within the CET, or failing that, that the Island should retain its ancient rights to export its goods into the United Kingdom free of duty . . .”

7 These resolutions caused some concern at the Home Office,<sup>23</sup> and led to a promise of a response. Yet with President De Gaulle’s second veto of the application on 27 November 1967<sup>24</sup> no meaningful response to the resolutions was ever given or needed. When President Pompidou indicated that France would no longer block the UK’s application negotiations began afresh. By this time, even the Cabinet Office saw the advantages for the Island as slight—

“While we may take the view that it would be to the long-term advantage of the Islands to be associated with a prosperous United Kingdom within the E.E.C. rather than with a less prosperous United Kingdom standing on its own, there is otherwise nothing but disadvantage for the Islands in this country’s accession to the treaty of Rome, unless they can achieve some compromise relationship . . . it would remain true that incorporation into the Community would pose a greater threat to the way of life and the independence of the Islands than it would to those of the United Kingdom.”<sup>25</sup>

#### *The position during negotiations*

8 A view had developed by the time accession negotiations began again that Guernsey wanted to be in the EEC, but Jersey wanted out.<sup>26</sup> This was expressed by Senator Krichefski as Jersey wanted a special arrangement *with* the EEC whilst Guernsey wanted a special arrangement *within* the EEC.<sup>27</sup> More precisely, Jersey wanted to be inside the customs zone, but outside the common market (the same position they stated in 1967)<sup>28</sup> and by July 1970 Guernsey *unofficially*

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<sup>23</sup> Copy Letter: Home Office to Sir John Villiers, Lt. Gov. of Jersey: 21 December 1967 (JA: B/D/A/E19/1, File 2).

<sup>24</sup> For a brief retrospective see: [http://news.bbc.co.uk/onthisday/hi/dates/stories/november/27/newsid\\_4187000/4187714.stm](http://news.bbc.co.uk/onthisday/hi/dates/stories/november/27/newsid_4187000/4187714.stm).

<sup>25</sup> Cabinet Office, *The Channel Islands and the Isle of Man* (12 June 1970) (NA: FCO 30/597), [4].

<sup>26</sup> Note of Meeting: Joint Channel Islands Meeting relating to EEC 16 July 1970 (JA: B/D/A/E19/1, File 2), p 2 (Senator Vibert, Jersey).

<sup>27</sup> Note of Meeting: of Joint Channel Islands Meeting relating to EEC 16 July 1970 (JA: B/D/A/E19/1, File 2), p 3.

<sup>28</sup> Note of Meeting: of Joint Channel Islands Meeting relating to EEC 16 July 1970 (JA: B/D/A/E19/1, File 2) (Conseiller ED Collas).

wanted the same thing as Jersey, but had yet to confirm it officially.<sup>29</sup> Around this time, the Islands, realising the need to formulate their position, drew up the possible alternatives (and their desirability) which were as follows<sup>30</sup>—

1. Exclusion from the provisions of the Treaty of Rome, with free trade for all agricultural and industrial products with EEC countries.
2. Exclusion from the provisions of the Treaty of Rome, with free trade for all agricultural and industrial products with EEC countries and the Islands applying tariffs in relation to non-EEC goods.
3. Inclusion in EEC with the following concessions: (a) all tax laws to be determined within the Islands; (b) rebate on all VAT on imports into the Island from EEC countries; (c) exemption from free movement of persons and establishment; (d) exclusion from social policy; (e) control of milk.
4. Inclusion on the EEC on the same grounds as the UK.
5. Exclusion from provisions of Treaty of Rome, with free trade with UK, reduced tariffs with other EEC countries and with Islands applying Common External tariff to trade with non-EEC countries.
6. Exclusion from provisions of Treaty of Rome, with free trade agreement with the UK and application of Common External Tariff to other EEC countries.
7. Exclusion from Treaty of Rome without any special arrangements.

9 This list was modified for each of the Islands before submission to the Home Office. Jersey reduced it to two alternatives—alternative 1: exclusions from Treaty of Rome but free trade between Member States and the Islands; and alternative 2: the same but the application of the Common External Tariff.<sup>31</sup> Alderney presented the same two

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<sup>29</sup> The need for a common position was acknowledged by the Islands: Note of Joint Channel Islands Meeting relating to EEC: 16 July 1970 (JA: B/D/A/E19/1, File 2), p 2 (Mr L. Wells, Alderney representative; he also indicated that Alderney had the same view as Jersey).

<sup>30</sup> *Proposed Alternative Arrangements for the Channel Islands in Order of Choice* (LAG/JB 9/10/70) (JA: B/D/A/E19/1, File 2).

<sup>31</sup> *Arrangements Proposed in the alternative for Jersey* (JA: B/D/A/E19/1, File 2); in addition to the basic requests other suggestions were made by

alternatives, but with a third being exclusion from the EEC without any special arrangement.<sup>32</sup> Sark petitioned the Queen to be excluded from the EEC altogether<sup>33</sup> although it appeared to moderate its position over time.<sup>34</sup> Guernsey, always seen as the Island with the most to lose and with the most sentimental attachment to the UK,<sup>35</sup> still presented the same two alternatives as Jersey, but with the third alternative as well (in the EEC, but with concessions).<sup>36</sup> When pushed, it was indicated by Jersey that they would also accept the third alternative and of the five things in alternative three, the independence of taxation was of prime importance, a distant second, the housing law and thereafter agriculture and the social services (which could be discounted if need be).<sup>37</sup>

*The late issue*

10 Originally, the Islands did not want to be included in free movement of workers, largely due to concerns about the shortage of

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individuals. This led to a view in Whitehall that the Insular Committees were making unrealistic demands, in particular someone suggesting that Jersey did not want to be in the EEC, but they wanted tariff changes made by the whole EEC to suit the Islands (Minute: for Sir Con O'Neill (Head of British Negotiating Delegation to EEC) by Mr John Robinson (FCO) *Channel Islands and the Isle of Man*: 16 September 1971 (NA: FCO 30/884), [3(a)]).

<sup>32</sup> *Arrangements Proposed in the alternative for Alderney* (JA: B/D/A/E19/1, File 2); also see Minutes of Meeting: Representatives of Guernsey and Alderney: 22 January 1971 (HO 284/278).

<sup>33</sup> Letter; Sir Philip Allen (Permanent Secretary to the Home Office) to O'Neill: 7 May 1970 (NA: FCO 30/595), p 1; a subsequent Memorandum *Sark & the European Economic Community* (NA: FCO 30/598) adopted a less strict view.

<sup>34</sup> Minutes of Meeting: Representatives of Guernsey and Sark: 28 January 1971 (NA: HO 284/278).

<sup>35</sup> Cabinet Office Note *The Channel Islands and the Isle of Man*": 12 June 1970 (NA: FCO 30/597), [6(b)].

<sup>36</sup> Note of Meeting: 2 November 1970 (JA: B/D/A/E19/1, File 2), [1]; at the meeting it was explained that the list in proposal 3 was in order of importance: Meeting of 2 November 1970 (JA: B/D/A/E19/1, File 2), [3] (Senator Vibert); some representatives of Guernsey also appear to have requested HMG to achieve all the advantages of membership of the EEC, but opt out of all the disadvantages: Note of Meeting: Home Office: 26 July 1968 (NA: HO 284/171), p 3).

<sup>37</sup> Note of Meeting: 2 November 1970 (JA: B/D/A/E19/1, File 1), [6].

housing.<sup>38</sup> The trickiest issue, therefore, was whether the housing laws would be permissible. It was suggested at the time that they would be compatible with Treaty obligations provided there was no discrimination on the grounds of nationality<sup>39</sup> and so the law would be upheld by the Court of Justice;<sup>40</sup> and indeed this view appears to have been vindicated by the subsequent decisions of the Court of Justice in C-171 *Rocque*<sup>41</sup> and C-355/89 *Barr and Montrose*.<sup>42</sup>

11 However, the Islands realised, quite late, that if they were excluded from the free movement of workers, their own residents might not be able to get work in the United Kingdom. This late realisation is strange as HMG had long stressed that exclusion would, in law, put a Channel Islander behind an EEC national in terms of jobs in the UK.<sup>43</sup> Yet it was late in the day when Islanders realised they would become “second class” British citizens.<sup>44</sup> Indeed, it was only after the initial UK negotiation position (usually the “height” of the demands in an international negotiation) that free movement of labour was requested by the Islands.<sup>45</sup>

12 The British government realised that a new proposition at this late stage would damage the overall negotiations for the Islands.<sup>46</sup> So

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<sup>38</sup> Note of Meeting: Home Office: 3 August 1967 (JA: B/D/A/E19/1, File 1), p 8 (Mr N Cairncross, Home Office)

<sup>39</sup> Minutes of Meeting: Home Office: 3 August 1967 (JA: B/D/A/E19/1, File 1), [16]

<sup>40</sup> Note of Meeting: Home Office: 8 June 1970 (JA: B/D/A/E19/1, File 2), pp 3–4; Minutes of Meeting: Home Office: 8 June 1970 (JA: B/D/A/E19/1, File 2), [10] (Mr Burrows, Department of Employment and Productivity).

<sup>41</sup> [1998] ECR I-4636.

<sup>42</sup> [1991] ECR I-3479.

<sup>43</sup> Letter: Mr Kenneth Witney (Home Office) to Mr N Statham (European Integration Department, FCO): 20 September 1971 (NA: FCO 30/885).

<sup>44</sup> Letter: Witney to Statham: 20 September 1971 (NA: FCO 30/885).

<sup>45</sup> Letter: Robinson to Statham: 30 September 1971 (NA: FCO 30/885).

<sup>46</sup> However, what worried Germany and the Dutch about free movement of workers and the UK was not white Islanders having free movement; rather it was the potential for a “large influx of coloured people” into their borders from the United Kingdom (quote from paper Mr T Fitzgerald, *Definition of a UK National*: 22 November 1971 (NA: FCO 30/888), [6]). This was because a large number of black Africans had moved to Britain and become citizens and the Germans and Dutch did not want them spreading throughout Europe. This racist position was something, thankfully, the British repudiated entirely. The view inside HMG was once a person (whatever colour) was a British



instead of proposing free movement of labour as such, HMG took a more subtle line and suggested that because the Islanders were British citizens there was no practical way of discriminating between the Islanders and mainlanders in the United Kingdom.<sup>47</sup> Thus, the proposal was framed in terms of non-discrimination on the grounds of nationality rather than free movement. So on 21 October 1971<sup>48</sup> the negotiating team was asked to seek free movement in the United Kingdom for Islanders, but not more widely.<sup>49</sup>

***The UK's view on the chances of obtaining these options***

13 Originally, it was believed that it would be difficult to obtain special concessions for the Islands alone.<sup>50</sup> Indeed, the Home Office had stated there to be “no prospect”<sup>51</sup> and “no chance”<sup>52</sup> in negotiating alternatives one and two and the British media shared the same view.<sup>53</sup> Nevertheless HMG agreed to pursue alternative two as a starting point<sup>54</sup> and as negotiations progressed the view changed and HMG believed that concessions were practicable; although it was not clear what ameliorations there would be if the Islands were excluded.<sup>55</sup> Nevertheless, it was made clear to the Islands that HMG could not

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citizen they were “one of us” whatever their previous status (Fitzgerald *Definition of a UK National*: 22 November 1971 (NA: FCO 30/888), [6].)

<sup>47</sup> Note: Robinson from Statham: 4 October 1971 (NA: FCO 30/885), [5].

<sup>48</sup> Response to Codel 836: 21 October 1971 (NA: FCO 30/886).

<sup>49</sup> Letter: Statham to Witney: 5 October 1971 (NA: FCO 30/885), [4].

<sup>50</sup> Note: *A Summary of discussions with regard to the position of the Channel Islands in relation to the entry of the United Kingdom into the European Economic Area* (JA: B/D/A/E19/1, File 1).

<sup>51</sup> Telephone call: Frank Ereaud, Deputy Bailiff and Norman Carrington (Home Office) 14 December 1970 (JA: B/D/A/E19/1, File 2).

<sup>52</sup> Note of meeting: 2 October 1970, p 3. (Geoffrey Rippon, Chancellor of Duchy of Lancaster). (JA: B/D/A/E19/1, File 2).

<sup>53</sup> “Jersey Would Like it Both Ways” *The Guardian* 2 February 1971.

<sup>54</sup> Note of Meeting: Joint Channel Islands Meeting relating to EEC (JA: B/D/A/E19/1, File 2); was also and grudgingly accepted that it was not beyond the realms of possibility that the EEC would accept the Islands getting all of the advantages with none of the disadvantages: Minutes of Meeting: 2 October 1970 (JA: B/D/A/E19/1, File 2), [8] (Rippon).

<sup>55</sup> Briefing for Minister for 2 October 1971 Meeting (NA: FCO 30/598), Annex E, [1].

give unilateral assurances on what the relationship would be as what, if anything, was granted would be a matter for the Six.<sup>56</sup>

### **Did the Islands have a choice?**

#### ***Early signs are good***

14 One of the prime concerns for the Islands from early on was whether they had a choice to be in or out of the EEC. In 1962 the Islands had been assured they could not be forced to join against their will (as it would probably be possible to negotiate a modification of art 227(4) so as to exclude the Islands if need be).<sup>57</sup> However, it was later made clear by the Home Office that, *absent modification* of the Treaty, if the UK joined the EEC, the Islands were coming in too.<sup>58</sup> Nevertheless, the message given by the Home Secretary on a visit to the Island was that the Islands would be free to choose in or out<sup>59</sup> as they were “independent”.<sup>60</sup> The Bailiff of Jersey was well aware, however, that the Channel Islands would have a choice if, and only if, they were given that choice by the UK.<sup>61</sup>

15 HMG always made it clear that if the Islands did stay out they would have to accept all the consequences. They would face the Common External Tariff and they would lose their present protected position on the UK market.<sup>62</sup> Essentially, this meant that Channel Island goods would be excluded from the UK and a large part of mainland Europe<sup>63</sup> which might mean the Islands were no longer economically viable.<sup>64</sup> Conversely, the possible scenarios should the

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<sup>56</sup> Minutes of Meeting: 2 October 1970 (JA: B/D/A/E19/1, File 2), [4] (Rippon); also see Note of Meeting: Home Office: 26 July 1968 (NA: HO 284/171), p 3.

<sup>57</sup> Minutes of Meeting: Home Office: 5 June 1962 (NA: HO 284/108), Item V (Cunningham).

<sup>58</sup> Note of Meeting: 19 April 1967 (JA: B/D/A/E19/1, File 1), [2] (Allen)

<sup>59</sup> Letter: Le Masurier, Bailiff of Jersey, to Villiers: 23 January 1967 (JA: B/D/A/E19/1, File 1), no further details of this “broadcast” were made. The Home Secretary visited on 28–30 October 1966 (see Note of Meeting: Home Office: 3 August 1967 (JA: B/D/A/E19/1, File 1), p 2).

<sup>60</sup> Note of Meeting: Home Office: 3 August 1967 (JA: B/D/A/E19/1, File 1), p 2 (Senator Vibert’s comments).

<sup>61</sup> Letter: Le Masurier to Villiers: 23 January 1967 (JA: B/D/A/E19/1, File 1).

<sup>62</sup> Note of Meeting: 19 April 1967 (JA: B/D/A/E19/1, File 1).

<sup>63</sup> See Letter: Allen to Villiers: 3 May 1967 (JA: B/D/A/E19/1, File 1).

<sup>64</sup> Note of Meeting: 19 April 1967 (JA: B/D/A/E19/1, File 1). This point was not made in the letter, but the other points were.

Islands join the EEC were set out in *The Times*:<sup>65</sup> the end of tariff protection for agricultural products; the harmonisation of taxes (so no longer preferential treatment in the Islands); and the end of low priced alcohol and cigarettes (which would in turn reduce the number of tourists).<sup>66</sup> Thus, it was clear that whether the Channel Islands went in or stayed out they might suffer from the UK's membership.

### ***The bad year***

16 In January 1967, the Home Office suggested, for the first time, that the Channel Islands might not actually have a choice as to whether to join the EEC.<sup>67</sup> This understandably caused concern, if not consternation, and so an opinion was sought from Alan Campbell, QC, with a summary of his conclusions being published in the *Jersey Evening Post*.<sup>68</sup> He believed that Jersey *should* have a choice. Nevertheless, the Home Office position was accepted by the Bailiff of Jersey as he believed the best the Islands could get would be for HMG to take into account the Islands' special circumstances.<sup>69</sup> Such circumstances would not be allowed to prejudice the main negotiations between the UK and the EEC.<sup>70</sup>

### ***Choice is back again***

17 In October 1970, when the issue actually became live, HMG stated once more that the Islands would have a choice; they would *not* be compelled to join the EEC (either individually or collectively).<sup>71</sup> This was, from HMG's perspective, a political reality even if it was not a

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<sup>65</sup> "Prosperity on Razor Edge" *The Times* 19 June 1967.

<sup>66</sup> A point made again: Minutes: Meeting 8 June 1970 (JF B/D/A/E19/1, File 2), [3].

<sup>67</sup> Letter: Robin North (Home Office) to Le Masurier: 27 January 1967 (JA: B/D/A/E19/1, File 1).

<sup>68</sup> "No Legislation without Representation" *Jersey Evening Post* 5 September 1967.

<sup>69</sup> Letter: Le Masurier to Vibert: 1 February 1967 (JA: B/D/A/E19/1, File 1).

<sup>70</sup> Letter: Le Masurier to Villiers: 1 February 1967 (JA: B/D/A/E19/1, File 1); Letter: Le Masurier to Arnold: 1 February 1967 (JA: B/D/A/E19/1, File 1) suggesting quite frankly that it would be General de Gaulle and not the UK who would find the Channel Islands' position most annoying during negotiations.

<sup>71</sup> Note: Home Office Meeting: 2 October 1970 (JA: B/D/A/E19/1, File 2); Briefing for Minister for Meeting on 2 October 1971 (NA: FCO 30/884), Appendix F, point 10.

constitutional necessity.<sup>72</sup> But this choice was not something HMG wanted publicly announced as it might affect the bargaining position during accession negotiations. Eventually the pressure mounted and a joint press release was issued once more reiterating that if the terms the UK negotiated were not what the Islands wanted then they would not have to join the EEC.<sup>73</sup> In any event, as the Cabinet Office acknowledged, if no concessions could be obtained and the Islands did not want to be members of the EEC then Westminster could attempt to legislate for the Islands, but this did not mean that the Islands would actually comply with the rules of the Treaty. They might simply ignore them.<sup>74</sup>

### **The alternative of independence**

18 The difficult question was what would happen if the Islands (or one of them) did not accede to the EEC. The natural alternative to membership was independence and such a possibility was considered by some Islanders as early as 1967;<sup>75</sup> although at that time the view of the Jersey Bailiff was that seeking independence would be “nonsense”<sup>76</sup> and in the same year the Permanent Secretary at the Home Office similarly said it would be “nonsensical”.<sup>77</sup> By 1971, however, the prospect was real enough for the *Jersey Evening Post* to carry a series of letters expressing concern about the prospect.<sup>78</sup> Indeed, when speaking to *The Guardian*, a Guernsey Senator suggested that it was a no-win situation “We can see no advantages for us at all in going in”, but the paper noted few could see advantages in staying out either.<sup>79</sup>

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<sup>72</sup> Note: For Crispin Tickell (Private Secretary to Rippon) by William Nield (Cabinet Office) *EEC: Channel Islands and the Isle of Man*: 29 September 1971, (NA: FCO 30/885), p 2.

<sup>73</sup> Press Release of 1 October 1971 (JA: B/D/A/E19/1, File 3).

<sup>74</sup> Cabinet Office *The Channel Islands and the Isle of Man*: 12 June 1970 (NA: FCO 30/597), [9].

<sup>75</sup> Letter: Villiers to Le Masurier: 18 January 1967 (JA: B/D/A/E19/1, File 1); it was raised at the Home Office in August of that year: Note of Meeting: Home Office: 3 August 1967 (JA: B/D/A/E19/1, File 1), p 14 (asking what would happen if the Crown was no longer responsible for the international affairs of Jersey).

<sup>76</sup> Letter: Le Masurier to Villiers: 23 January 1967 (JA: B/D/A/E19/1, File 1); also see Letter: Le Masurier to Villiers: 3 February 1967 (JA: B/D/A/E19/1, File 1).

<sup>77</sup> Letter: Allen to O'Neill: 7 May 1970 (NA: FCO 30/595).

<sup>78</sup> *Jersey Evening Post*, 17 August 1971.

<sup>79</sup> “Jersey Would Like it Both Ways” *The Guardian* 2 February 1971.

19 It was much later that HMG confirmed for the Islands that independence was the alternative to membership and by this it meant “real and complete” independence<sup>80</sup> and not some slightly different halfway house. Therefore, if the Islands did not like the deal done for them by the UK they would have to accept that the only alternative was independence.<sup>81</sup> This was in part because there was disquiet in HMG at the idea of the Islands staying out of the EEC and the UK continuing to pay for their international and other obligations.<sup>82</sup> A difficult issue for HMG was what would happen if both the EEC *and* independence were rejected.<sup>83</sup> It appears in such a case the options were threefold: (a) go back to the Six and ask for something else; (b) force the Islanders to accept the terms; or (c) allow them to (alternatively make them) become independent.<sup>84</sup> The first option would delay accession and would be badly received in Westminster and so really was a non-starter.<sup>85</sup> This left the second two options and it appears no view was ever formed of which HMG would adopt had it ever arisen.

***What were the perceived effects of independence?***

20 The Home Office wanted to ensure that the Islands were fully informed of the possible consequences of rejecting EEC membership (and becoming independent).<sup>86</sup> This led to an “implications” paper being prepared which was specifically intended to show how unattractive independence would be.<sup>87</sup> The potential impact of the paper was such that it was held back from the Islands until after the vote on the UK’s membership of the EEC in the House of Commons

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<sup>80</sup> Draft Letter PUS (FCO) to Allen: undated (NA: FCO 30/598).

<sup>81</sup> Letter: Witney to Statham: 26 August 1971 (NA: FCO 30/884).

<sup>82</sup> Note of Ministerial Meeting: 25 October 1971 (NA: FCO 30/886).

<sup>83</sup> Letter: Witney to Statham: 26 August 1971 (NA: FCO 30/884).

<sup>84</sup> Minute: Robinson to O’Neill; 16 September 1971 (NA: FCO 30/884), [3(b)].

<sup>85</sup> Minute: Robinson to O’Neill; 16 September 1971 (NA: FCO 30/884), [3(b)].

<sup>86</sup> To this end Sir Philip Allen wrote around Whitehall asking departments to indicate the advantages and disadvantages of membership: Memo: Mr A. Pakenham (European Integration Department, FCO): 13 May 1970 (NA: FCO 30/595); this was said to be premature by the FCO: Letter: O’Neill to Allen: 11 May 1970 (NA: FCO 30/598).

<sup>87</sup> Note for Ministerial Meeting: 25 October 1971 (NA: FCO 30/886); it made it look particularly unappealing for Guernsey and the Isle of Man.

on 28 October 1971<sup>88</sup> so as to avoid difficult questions during the debate.

*The contents of the “implications” paper*

21 The implications paper suggested that on independence the Islands could apply to become part of the Commonwealth,<sup>89</sup> but the relationship with the Privy Council would end as would the need for Royal Assent to Insular laws. The office of Lt Governor would be terminated and the UK would instead arrange diplomatic representation with the Islands with any communications between the Islands and HMG going through the FCO.<sup>90</sup> The Islands would have to carry out their own international relations and could not use the UK on an agency basis.<sup>91</sup>

22 Trade and commerce with the UK would be on the basis of a third country and so the common external tariff and agricultural levies would be applied. Thus, the ancient charter rights would be affected.<sup>92</sup> Similarly, it was unclear whether double taxation agreements would still be applied and there would need to be some form of exchange control.<sup>93</sup> As to employment, the Islanders would be behind nationals of the EEC (including UK citizens) when seeking jobs in the UK although it was believed that it might be possible to retain the common travel area.<sup>94</sup> The Islands would also need to join international telecommunications and postal unions as they would no longer fall under the UK membership (and this would attract costs).<sup>95</sup> A final issue, raised sometime later, was the requirements of international air navigation requirements that would be placed on the Island.<sup>96</sup> The

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<sup>88</sup> Note for Ministerial Meeting: 25 October 1971 (NA: FCO 30/886).

<sup>89</sup> Memo: *Jersey EEC Negotiations* (JA: B/D/A/E19/1, File 3), [3] (similar memos were prepared for the other Islands).

<sup>90</sup> Memo: *Jersey EEC Negotiations* (JA: B/D/A/E19/1, File 3), [3]. It was discussed internally that there would not be a representative on each Island: see Memo: M Laider (FCO): *Channel Islands and the Isle of Man: Implications of Rejection of Negotiated Terms*: 4 October 1971 (NA: FCO 30/885).

<sup>91</sup> Memo: *Jersey EEC Negotiations* (JA: B/D/A/E19/1, File 3), [4].

<sup>92</sup> Memo: *Jersey EEC Negotiations* (JA: B/D/A/E19/1, File 3), [6].

<sup>93</sup> Memo: *Jersey EEC Negotiations* (JA: B/D/A/E19/1, File 3), [8].

<sup>94</sup> Memo: *Jersey EEC Negotiations* (JA: B/D/A/E19/1, File 3), [9].

<sup>95</sup> Memo: *Jersey EEC Negotiations* (JA: B/D/A/E19/1, File 3), [11–12].

<sup>96</sup> Letter: Witney to Le Masurier: 17 December 1971 (JA: B/D/A/E19/1, File 3); the Ministry of Defence, however, took the view that the defence

paper was of course intended to make the idea of independence as bleak as possible, but it does not appear that anything suggested was misleading or exaggerated.

*So was there a real choice?*

23 British ministers were advised by their officials that if the EEC did not accommodate the Islands the only alternative was for the Islands to become independent. However, there was a clear view in Whitehall that neither the Insular legislatures nor indeed the Islanders would see independence as preferable.<sup>97</sup> Indeed, HMG believed that a referendum on independence would fail in all the Islands (except maybe Sark).<sup>98</sup> The Island delegations were cynical enough to realise that it was HMG's view and so the opt-out they were being given was a way to avoid the UK appearing to batter the Islands with a big stick.<sup>99</sup>

24 Even without this big stick, the Guernsey Committee had resigned themselves to the fact they would have to follow whatever the UK wanted—such a result was “inescapable” in their view.<sup>100</sup> Indeed, even the more militant Jersey Committee initially understood that being involved in the EEC was inevitable, but they were willing to see what concessions it was possible to achieve.<sup>101</sup> Even when the militancy on the Islands increased and independence was more openly considered, all this did was raise grave concerns, evidenced by a letter from the Attorney General of Jersey to the Minister, Geoffrey Rippon, MP trying to calm the waters by, indicating that any—

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implications were insignificant if the Islands became independent: Letter: From Mr A. Drew (Ministry of Defence): 5 August 1970 (NA: FCO 30/598).

<sup>97</sup> Memo: For O'Neill by Robinson: “Membership of the European Communities Channel Islands and the Isle of Man”: 13 September 1971 (NA: FCO 30/884), [5].

<sup>98</sup> Memo: For O'Neill by Robinson: “Membership of the European Communities Channel Islands and the Isle of Man”: 16 September 1971 (NA: FCO 30/884) [3(b)].

<sup>99</sup> Note of Home Office Meeting 2 October 1970 (JA: B/D/A/E19/1, File 2), p 3.

<sup>100</sup> Minutes: EFTA and EEC Committee: 22 June 1967 (JA: B/D/A/E19/1, File 1), p 1.

<sup>101</sup> Minutes: EFTA and EEC Committee: 22 June 1967 (JA: B/D/A/E19/1, File 1), pp 1–2.

“immoderate loosening of the ties between the United Kingdom and the Islands will, in the long run, operate to [Jersey’s] disadvantage.”<sup>102</sup>

### **The issues**

25 In addition to the big question of “in or out” there were some discrete issues which caused the Islands particular concern.<sup>103</sup> These often fell within the larger question but the extent of the debates was significant and so they must be explored.

### **VAT**

26 One of the biggest concerns for the Islands appears to have been the creation of VAT or Added Value Tax as it was called at the time. The States of Deliberation were worried that such a tax would be inflationary and, furthermore, that the benefits would not flow to the Islands.<sup>104</sup> There were also concerns that it would damage the tourist trade, which was largely dependent on the fact that goods and services could be cheaper (as tax free).<sup>105</sup> The introduction of VAT, Dr Thurston (an economist) suggested, “could lead to the complete destruction of the Island’s [Jersey’s] economy”.<sup>106</sup> These special problems were clearly understood both in Whitehall and locally.<sup>107</sup>

27 At the time of the accession negotiations, the EEC’s aim was to have VAT harmonised across the EEC from 1980.<sup>108</sup> The UK tried to persuade the Islands that during this ten year delay the Islands could have a different level of VAT from the mainland and so there would

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<sup>102</sup> Letter: Peter Crill (Att. Gen. of Jersey) to Rippon: 25 October 1971 (NA: FCO 30/886).

<sup>103</sup> These were acknowledged by the Working Group on Europe: see Minutes of Meeting: Working Group on Europe (Document WGE (70)): 26 June 1970 (NA: FCO 30/598), [b].

<sup>104</sup> (Copy) Letter: Frossard (Att. Gen. of Guernsey) to Guernsey Bailiff: 15 March 1967 (JA: B/D/A/E19/1, File 1).

<sup>105</sup> Note of Meeting Held at Home Office on 3 August 1967 (JA: B/D/A/E19/1, File 1), p 5 (Dr Thurston); reiterated in Minutes of Meeting Held at Home Office on 8 June 1970 (JA: B/D/A/E19/1, File 2), [5].

<sup>106</sup> Note of Meeting: Home Office: 3 August 1967 (JA: B/D/A/E19/1, File 1), p 5.

<sup>107</sup> Statement to the States: 26 April 1967 (JA: B/D/A/E19/1, File 1).

<sup>108</sup> Notes of Meeting held on 8 June 1970 (JA: B/D/A/E19/1, File 2), p 3; in fact, the rate of VAT was only harmonised in the Sixth VAT Directive (92/77/EEC) with a minimum rate being set (so it is still only partially harmonised).



be time for their economies to adjust.<sup>109</sup> However, harmonisation in ten years was no more acceptable to the Islands than should it occur 40 years in the future.<sup>110</sup>

#### *Charter rights*

28 The Insular authorities were very concerned about the abolition or restriction of the Charter rights, which (still) give free movement of goods between the Islands and the UK as well as fiscal and legislative freedom. The legal position was clear. The law officers in both Guernsey and Jersey stated that the Charter rights could be abolished by a simple Act of Parliament; the rights providing no more than “an emotional” argument.<sup>111</sup> Indeed, it was acknowledged that if the Channel Islands stayed out of the EEC altogether, they would not only lose their Charter rights, but goods leaving the Islands would be subject to duty when they entered the UK.<sup>112</sup>

#### *Horticulture*

29 A particular concern for Guernsey was horticulture, as at least a third of the Island’s inhabitants were employed in the industry and it was a very significant source of exports. In 1970, tomatoes accounted for about 70% of agricultural output in Guernsey and virtually all the Island’s fruit and vegetable exports.<sup>113</sup> If the UK joined the EEC then it was believed that imports from elsewhere in the EEC would lead to a permanent and severe recession in the local horticulture industry. However, membership of the Community was but one of the many pressures on tomato growers whose problems had been acknowledged since the early 1960s.<sup>114</sup>

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<sup>109</sup> Minutes of Meeting: 8 June 1970 (JA: B/D/A/E19/1, File 2), [3]; this presented issues as to how the tax raised, if they went in, would be provided to the Islands and suggestions of a common purse (as with the Isle of Man) was mooted: Notes of Meeting: 8 June 1970 (JA: B/D/A/E19/1, File 2), p 5.

<sup>110</sup> Note of Meeting: Home Office: 3 August 1967 (JA: B/D/A/E19/1, File 1), p 3.

<sup>111</sup> Minutes of Meeting: EFTA and EEC Committee: 22 June 1967 (JA: B/D/A/E19/1, File 1), p 2.

<sup>112</sup> Note of Meeting: Home Office: 8 June 1970 (JA: B/D/A/E19/1, File 2), p 3; Minutes of Meeting: Home Office: 8 June 1970 (JA: B/D/A/E19/1, File 2), [7].

<sup>113</sup> *Arrangements for Guernsey: Annex in Support*: 26 October 1970 (NA: HO 284/278).

<sup>114</sup> *Billet d’Etat*, 25 October 1967, 478.

### *Milk*

30 The status of the Islands' milk trade loomed over all the discussions. Essentially, the concern was that the local market would be flooded by French milk and so local producers would be put out of business.<sup>115</sup> At the time the cost of milk was 43% higher in Jersey than in the EEC (due to higher costs of production).<sup>116</sup> In addition to pricing implications there were also concerns about the purity of the Jersey cow breed.<sup>117</sup> It is therefore hardly surprising that the Islands pushed hard for an exemption from the various EU laws which applied to milk.<sup>118</sup> Notwithstanding an attempt to support this with detailed evidence from the milk industry,<sup>119</sup> it was not something HMG ever proposed during the negotiations with the Six. HMG believed attempting to get such a concession for milk might damage the prospects of the Island getting free movement of goods generally.<sup>120</sup> When the diplomatic position was agreed (in November 1971), the safeguards clause was used by HMG as the best potential answer to the issue.<sup>121</sup> The issue remained unresolved even after the UK joined the Community. However, since that time it has become possible to exclude cattle on health grounds under Regulation (EEC) No 1174/86 and, more recently, the Islands have successfully persuaded the Commission that the liquid milk restrictions were permissible to support the unique genetic importance of the Jersey breed.<sup>122</sup>

### *Fisheries*

31 The EEC fisheries policy was for free access to the fishing grounds within each other Member State's fishery limits; albeit a temporary

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<sup>115</sup> Note of Meeting: Home Office: 3 August 1967 (JA: B/D/A/E19/1, File 1), p 12 (Senator Vibert); again the point made in Minutes of Meeting: Home Office 8 June 1970 (JA: B/D/A/E19/1, File 2), [8].

<sup>116</sup> Minutes of Meeting: Home Office: 3 August 1967 (JA: B/D/A/E19/1, File 1), [27]

<sup>117</sup> Minutes of Meeting: Home Office: 3 August 1967 (JA: B/D/A/E19/1, File 1), [25]

<sup>118</sup> Minutes of Meeting: Home Office: 8 June 1970 (JA: B/D/A/E19/1, File 2), [8].

<sup>119</sup> "The Milk Industry in Jersey" (JA: B/D/A/E19/1, File 2).

<sup>120</sup> Letter: Carrington to Mason: 21 October 1971 (NA: FCO 30/886).

<sup>121</sup> See Letter: FCO to Carrington: 12 November 1971 (NA: FCO 30/887); this was also referred to in Briefing for Rippon by Laider (for his visit to the Islands): 17 November 1971 (NA: FCO 30/887).

<sup>122</sup> See Answer to Written Question (Tabled on States Assembly, 17 January 2012) (1240/5(6654)).

derogation was proposed for the first five years following accession.<sup>123</sup> The Channel Islands largely wanted the existing fishing rights maintained and no application of the common fisheries policy.<sup>124</sup> On the other hand, it was believed that the Six would require the Islands to adopt the common external tariff for fish and common fisheries policy on fishery limits.<sup>125</sup> HMG thought it to be unimportant whether the internal aspects of the common fisheries policy were adopted and that there was no good reason why the fishery limits of the Islands should not be part of those of the United Kingdom.<sup>126</sup> The eventual position as to the extent to which the fisheries policy applied was ambiguous. However, leading present day commentators suggest that the Islands are not part of that policy as respects limits.<sup>127</sup>

### **The negotiations**

#### *UK negotiating brief*

32 It was clear that the United Kingdom had to try and obtain special terms for the Islands. However, initially, it was difficult to know what might be obtained as there were no territories with which the Channel Islands could be compared.<sup>128</sup> Essentially, it was also not clear whether the Six would treat the issue as a matter of principle or accept the Islands were *de minimis*.<sup>129</sup> Yet the more the Islands moved their cost

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<sup>123</sup> Letter: Carrington to Ereat: 17 July 1970 (JA: B/D/A/E19/1, File 2).

<sup>124</sup> MAFF Memo: *The Channel Islands and the Isle of Man and the Common Fisheries Policy of the EEC*: 15 October 1971 (NA: FCO 30/887), [8].

<sup>125</sup> MAFF Memo: *The Channel Islands and the Isle of Man and the Common Fisheries Policy of the EEC*: 15 October 1971 (NA: FCO 30/887), [10].

<sup>126</sup> MAFF Memo: *The Channel Islands and the Isle of Man and the Common Fisheries Policy of the EEC*: 15 October 1971 (NA: FCO 30/887), [15 and 16].

<sup>127</sup> Robin Churchill and Daniel Owen, *The EC Common Fisheries Policy* (Oxford 2010), pp 57–60; in 1972 HMG believed that the marketing part of the fisheries policy did apply, but not the access provisions: Letter: Kenneth Christofas (Cabinet Office) to Carrington: 13 October 1972 (NA: HO 284/289).

<sup>128</sup> Briefing for Ministers, *The EEC: Implications for the Channel Islands and the Isle of Man* (Document AEO (70)): 15 July 1970 (NA: FCO 30/598), [28].

<sup>129</sup> Briefing for Ministers, *The EEC: Implications for the Channel Islands and the Isle of Man* (Document AEO (70)): 15 July 1970 (NA: FCO 30/598), [28].

structure towards the Six the better the chance of concessions.<sup>130</sup> The UK's negotiating brief for the Channel Islands was eventually based on a few key principles: first, concessions should be sought for the Islands; and, secondly, if the EEC raised the issue first they should be put off so that the issue could be raised at the appropriate stage; finally, it was to be made clear to the Islands that they would be free to determine whether or not the negotiated terms were acceptable to them or not.<sup>131</sup> The concessions sought reflected those requested by the Islands and the brief repeats the points made by them up to that point. Later in the negotiations the Islands were asked for, and provided, their reserve position.<sup>132</sup>

### *Timing*

33 When the accession negotiations between the UK and the Six began in 1970, the basic negotiating tactic was delay<sup>133</sup> whenever the issue of the Channel Islands was raised by the EEC.<sup>134</sup> It was hoped this delay might provide a precedent either in relation to Sweden or the associated status of Malta. Further, it was thought that if the main UK negotiating issues were resolved satisfactorily then it would be easier to get a favourable result for the Channel Islands.<sup>135</sup>

34 Unfortunately, on 19 May 1971, before the Channel Islands had been discussed with the Six,<sup>136</sup> an FCO spokesperson on Channel News suggested that "It's up to us—the UK negotiators—to decide the best way of solving the Channel Island problem—and we're definitely

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<sup>130</sup> Briefing for Ministers, *The EEC: Implications for the Channel Islands and the Isle of Man* (Document AEO (70)): 15 July 1970 (NA: FCO 30/598), [29].

<sup>131</sup> Negotiating Brief: Channel Islands and Isle of Man: 29 December 1970 (WGE(70) (NA: HO 30/599).

<sup>132</sup> Memo: Laider: 1 November 1971 (NA: FCO 30/887).

<sup>133</sup> It held what it called a "watching brief" before that time: Letter: North to Le Masurier: 5 January 1967 (JA: B/D/A/E19/1, File 1); it was suggested in June 1970 that it might not be reached until October 1971: Note of Meeting: 10 June 1970 (JA: B/D/A/E19/1, File 3), [8(6)] (although it turned out it was earlier than that).

<sup>134</sup> Letter: Robinson to Mr G Bell (HM Treasury): 9 November 1970 (NA: FCO 30/599); Codel 21: 9 November 1970 (NA: FCO 30/599).

<sup>135</sup> Telephone call: Ereaut to Carrington: 23 March 1971 (JA: B/D/A/E19/1, File 2).

<sup>136</sup> Letter Carrington to Le Masurier: 5 April 1971 (JA: B/D/A/E19/1, File 3) confirming no mention to that date.

not committed to doing it by the method specified by the Islands”.<sup>137</sup> This statement was met with understandable and widespread concern. It looked as if the position of the Islands was never to be raised at all. However, very soon after that broadcast, it was clarified by the Home Office that the statement of the official had been misleading and what he had meant (apparently) was that timing of when to raise the issue during negotiations was a matter for the United Kingdom.<sup>138</sup>

*The Islands’ role in the negotiations*

35 In 1967, before negotiations began, the Islands made a modest proposal for a single point of contact in Whitehall. However, this suggestion was thought to be unworkable as nobody in government was thought to be knowledgeable enough across the whole field.<sup>139</sup> When negotiations actually got under way the Islanders wanted more and, in particular, they asked for a representative in Brussels so that they could (at least to some degree) be involved on the ground as it were.<sup>140</sup> HMG was unwilling to agree to this as it wished to maintain the constitutional position that the UK entered into the Islands international agreements.<sup>141</sup> Later it was decided internally that a representative in Brussels would be conceded if it was pushed for again,<sup>142</sup> it never was.

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<sup>137</sup> Note of Broadcast 19 May 1971 (JA: B/D/A/E19/1, File 3); there is a transcript in NA: FCO 30/882. Internally, the FCO press office sent a frustrated memo explaining what he thought he had said: Memo: Mr R. Beetham (News Department, FCO): 21 May 1971 (NA: FCO 30/882).

<sup>138</sup> Note of meeting 10 June 1971 (JA: B/D/A/E19/1, File 3, [8]).

<sup>139</sup> (Copy) Letter: Guppy to Arnold: 20 February 1967 (forward Letter: Le Masurier: 21 February 1967 (JA: B/D/A/E19/1, File 1)).

<sup>140</sup> Minutes of Meeting: 10 June 1971 (JA: B/D/A/E19/1, File 3), [8(2)]; New Zealand had a representative in Luxembourg so there was a precedent: Note to Tickell: Nield *EEC: Channel Islands and the Isle of Man*: 29 September 1971 (NA: FCO 30/885).

<sup>141</sup> Note to Tickell: Nield *EEC: Channel Islands and the Isle of Man*: 29 September 1971 (NA: FCO 30/885).

<sup>142</sup> Letter: Nield to Allen: 28 September 1971 (NA: FCO 30/884).

### *First contact*

36 The negotiations with the Six began in earnest with the UK presenting: *A Note on the position of the Channel Islands and the Isle of Man*. This note went through a series of drafts very quickly and was provided to the members of the EEC on 28 June 1971.<sup>143</sup> Its drafting was not without controversy. It was never shown to the Islanders despite repeated requests; and concerns were raised that it might not properly represent the Islanders' position.<sup>144</sup> Indeed, the *Guernsey Evening Press* went as far as to call it a "Secret Paper".<sup>145</sup>

37 The Note itself covered the physical situation of the Islands; their dependence on the trade and tourist relationship with the UK.<sup>146</sup> The facts were emphasised that the Islands were largely agricultural economies (at the time) and so they would suffer from a substantial increase in food prices and severe competition with particular cases being made in relation to milk<sup>147</sup> and tomatoes.<sup>148</sup> Further, it was stated that the Islands would obtain little or no benefit from the opening up of the market for industrial goods.<sup>149</sup> The importance of the tax regime was also emphasised, suggesting that without the present favourable regime the Islands' economies would not survive.<sup>150</sup> Additional concerns were raised about an influx of EEC nationals taking the very

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<sup>143</sup> A copy of the final minute is at (NA: FCO 30/889).

<sup>144</sup> See Letter: Edward Potter (States Greffier) to Le Masurier: 27 May 1971 (JA: B/D/A/E19/1, File 3); Letter: Potter to Le Masurier: 26 April 1971 (JA: B/D/A/E19/1, File 3); Letter: Le Masurier to Carrington: 28 April 1971 (JA: B/D/A/E19/1, File 3); Letter: Carrington to Le Masurier: 14 May 1971 (JA: B/D/A/E19/1, File 3).

<sup>145</sup> "Secret Paper on EEC is Described" *Guernsey Evening Press* 30 June 1971; the Isle of Man press was more moderate calling it the "Factual Paper" *Isle of Man Weekly Times* 24 June 1971; it was being withheld on the basis it was a cabinet paper: see Letter: Carrington to Le Masurier: 5 April 1971 (JA: B/D/A/E19/1, File 2).

<sup>146</sup> Note, *The Position of the Channel Islands and the Isle of Man*: 28 June 1971 (NA: FCO 30/889), [8].

<sup>147</sup> Note, *The Position of the Channel Islands and the Isle of Man*: 28 June 1971 (NA: FCO 30/889), [19].

<sup>148</sup> Note, *The Position of the Channel Islands and the Isle of Man*: 28 June 1971 (NA: FCO 30/889), [20].

<sup>149</sup> Note, *The Position of the Channel Islands and the Isle of Man*: 28 June 1971 (NA: FCO 30/889), [12].

<sup>150</sup> Note, *The Position of the Channel Islands and the Isle of Man*: 28 June 1971 (NA: FCO 30/889), [18].

small number of local jobs,<sup>151</sup> particularly as subsequent unemployment benefits would be more than the small economies might be able to bear.<sup>152</sup>

38 Importantly, the constitutional issues were stated to include: (a) the fact that the UK Government does not normally undertake international obligations for the Islands without their consent;<sup>153</sup> (b) the fact that if the Islands were in the EEC, despite their domestic autonomy, they would have to implement EEC law without having a direct voice in any forum;<sup>154</sup> (c) the volume of legislation required for the EEC was more than could be expected of such small jurisdictions;<sup>155</sup> (d) the impact on the Charter rights and the fact they are a cornerstone of the Islands' relationships with the UK.<sup>156</sup>

39 After receiving the note, it was still not apparent to the EEC Commission what, in substance, the UK wanted for the Islands and so the UK was pushed to give a clear indication of the concessions it wanted.<sup>157</sup>

### **The two aspects of the negotiations**

40 There were two distinct elements to the negotiations. The first was over the legal form of the relationship and the second was over the concessions that could be made. The issues were largely addressed in that order.

### ***The legal form***

41 One of the difficulties for the United Kingdom and the Islands was how to address the basic proposition in the Treaty of Rome at art 227(4) of the EEC Treaty (now FEU Treaty, art 355):

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<sup>151</sup> Note, *The Position of the Channel Islands and the Isle of Man*: 28 June 1971 (NA: FCO 30/889), [23].

<sup>152</sup> Note, *The Position of the Channel Islands and the Isle of Man*: 28 June 1971 (NA: FCO 30/889), [24].

<sup>153</sup> Note, *The Position of the Channel Islands and the Isle of Man*: 28 June 1971 (NA: FCO 30/889), [4].

<sup>154</sup> Note, *The Position of the Channel Islands and the Isle of Man*: 28 June 1971 (NA: FCO 30/889), [6].

<sup>155</sup> Note, *The Position of the Channel Islands and the Isle of Man*: 28 June 1971 (NA: FCO 30/889), [6].

<sup>156</sup> Note, *The Position of the Channel Islands and the Isle of Man*: 28 June 1971 (NA: FCO 30/889), [7].

<sup>157</sup> See David Hannay (FCO): Minute: *Channel Islands and The Isle of Man*: 14 July 1971 (NA: FCO 30/883).

“The Provisions of Treaty shall apply to European territories for whose external relations a Member State is responsible.”

The provision had been included due to a perceived problem regarding Trieste, which after World War II was<sup>158</sup> a “Free Zone” governed by the Allied Army.<sup>159</sup> However, Trieste became an Italian protectorate in 1954 and the problem the provision was designed to address had actually disappeared by the time the Treaty was signed.<sup>160</sup> Nevertheless, the British Government did not want this provision to apply to the Islands and so initially attempts were made to see if any parallels could be drawn between the Channel Islands and other arrangements between the EEC and other small European jurisdictions.<sup>161</sup> Soon, however, it was clear that other small jurisdictions, such as Monaco<sup>162</sup> or San Marino,<sup>163</sup> were not comparable, as they were essentially sovereign states.

#### *The basic position*

42 From the very beginning art 227(4) was an issue.<sup>164</sup> On the express terms of the provision, the Channel Islands are European territories and the UK was, and is, responsible for their external relations. Thus, when the UK joined the EEC, the Channel Islands would be included too. This view was confirmed by the Islands’ own legal advice from Professor Le Cheminant<sup>165</sup> and Foreign Office lawyers believed that a

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<sup>158</sup> There were two zones and so references here are to “Zone A” (Zone B was under Yugoslav control).

<sup>159</sup> Trieste was created under Annex VI of the Treaty of Peace with Italy signed on 10 February 1947 (Cmnd 7481).

<sup>160</sup> Sir Ian Sinclair (Legal Department, FCO): Legal Advice: 25 June 1971 (NA: FCO 30/883).

<sup>161</sup> Letter: Arnold to Frossard: 2 December 1966 (JA: B/D/A/E19/1, File 1).

<sup>162</sup> Letter: Mr A. Snellgrove (FCO) from Mr Holmes (British Embassy in Paris): 19 September 1966 (JA: B/D/A/E19/1, File 1).

<sup>163</sup> Letter: Mr A. Snellgrove from Mr Hamley (British Embassy in Rome): 23 September 1966 (JA: B/D/A/E19/1, File 1).

<sup>164</sup> *A Summary of discussions with regard to the position of the Channel Islands in relation to the entry of the United Kingdom into the European Economic Area* (JA: B/D/A/E19/1, File 1), pp 1–2.

<sup>165</sup> See *Report on the Common Market and the Channel Islands* (Walford Merchant Bank, 16 December 1966), Extract of Letter p 6 (JA: B/D/A/E19/1, File 1); a letter from Dr Hugh Thurston also extracted in this report gives a slightly more ambiguous conclusions.



declaration (or reservation) to exclude the Islands would be entirely ineffective.<sup>166</sup>

*The Allen Letter*

43 In a meeting on 19 April 1967, Sir Philip Allen (Permanent Secretary to the Home Office) stated that under art 227(4) the Channel Islands would be included and the EEC would not allow modification of this article so as to provide for separate arrangements with the Islands. He believed the only modification which might be possible would be to exclude the Islands altogether.<sup>167</sup> This meeting was followed up by a letter from Sir Philip suggesting the chances of art 227(4) being modified were “remote”.<sup>168</sup>

44 Unsurprisingly, this letter caused consternation<sup>169</sup> in the Islands.<sup>170</sup> The Jersey EEC Committee took the view that it was tantamount to saying that the position of the Channel Islands was non-negotiable even before negotiations had begun.<sup>171</sup> This led to a request from Jersey for the “remote” comment to be removed from the letter before publication. This request was rejected on two grounds. First, Foreign Office advice on the chances of modification was said to unequivocal; secondly, the terms of art 227(4) were clear and so saying it might be readily modified, particularly when the EEC members have made it clear they would not welcome derogations from the Treaty, would be misleading.<sup>172</sup> Accordingly, the Allen letter was published by the States without modification.<sup>173</sup>

*The UK's original proposal: Associate membership*

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<sup>166</sup> Sinclair: Legal Advice: 11 March 1970 (NA: FCO 30/595).

<sup>167</sup> Note of Meeting: 19 April 1967 (JA: B/D/A/E19/1, File 1).

<sup>168</sup> Letter: Allen to Villiers: 3 May 1967 (JA: B/D/A/E19/1, File 1); reiterated Note of Meeting: Home Office: 26 July 1968 (NA: HO 284/171).

<sup>169</sup> “A furore”: see Note of Meeting: Home Office: 3 August 1967 (JA: B/D/A/E19/1, File 1), p 2.

<sup>170</sup> Senator Vibert later described the reaction to this letter as hovering “between the words ‘indignant’ and ‘outraged’”. The best that the Home Office, our protector, could do was to view the possibility of our securing any modification as ‘remote’ . . .”. *Memoirs of a Jerseyman*, La Haule Books, Jersey, 1991, at pp 136–137.

<sup>171</sup> Letter: Le Masurier to North: 5 May 1967 (JA: B/D/A/E19/1, File 1).

<sup>172</sup> Letter: Le Masurier to North: 5 May 1967 (JA: B/D/A/E19/1, File 1).

<sup>173</sup> Published 19 May 1967; see Letter: Villiers to La Masurier 19 May 1967 (JA: B/D/A/E19/1, File 1); also see Letter: Allen to O'Neill: 7 May 1970 (NA: FCO 30/595).

45 The EEC Treaty provided at art 236 (now repealed and replaced with TFEU, art 217) for Associate Membership of the Community. The original position of the Island authorities and of HMG was that associate membership was not appropriate for the Islands.<sup>174</sup> In the 1967 meeting, Sir Philip Allen expressed the view that such agreements were designed for countries outside Europe and for developing European countries (so the Channel Islands simply did not qualify).<sup>175</sup> Indeed, it had been publicly announced in a report to the States of Deliberation that an association agreement was not a viable option.<sup>176</sup>

46 Nevertheless, the opening gambit for the British government was to try and negotiate such an agreement between the EEC and the Channel Islands.<sup>177</sup> The Island delegations were told this in the week beginning 14 June 1971<sup>178</sup> and it was put to “the Six” on 16 June 1971;<sup>179</sup> it was even set out as the UK’s position in the White Paper *United Kingdom and the European Communities*.<sup>180</sup>

47 However, the UK knew before the meeting with the Six in July 1971 that the proposal for an association would be rejected<sup>181</sup> as its own legal advice had long been that an association agreement was not appropriate.<sup>182</sup> Thus, when the Six rejected the proposal it was not surprising; neither were the reasons. The Six stated that the Islands were not independent states or third countries and so art 236 does not apply.<sup>183</sup> Importantly, from the EEC’s perspective, the issue was not one of objecting to the policy itself but of its legal basis.<sup>184</sup>

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<sup>174</sup> *A Summary of discussions with regard to the position of the Channel Islands in relation to the entry of the United Kingdom into the European Economic Area* (JA: B/D/A/E19/1, File 1), p 7.

<sup>175</sup> Note of Meeting: 19 April 1967 (JA: B/D/A/E19/1, File 1).

<sup>176</sup> *Billet d’Etat*, 25 October 1967, p 481.

<sup>177</sup> Memo: For O’Neil and Tickell by Statham: 9 June 1971 (NA: FCO 30/882), [1].

<sup>178</sup> *Statement on EEC Negotiations*, Made to States of Jersey 29 June 1971 (RC 15).

<sup>179</sup> See Letter: Carrington to Le Masurier: 17 June 1971 (JA: B/D/A/E19/1).

<sup>180</sup> *The United Kingdom and the European Communities* (July 1971) Cmnd 4715, [123–124].

<sup>181</sup> Telephone call: Carrington to Ereaut: 27 July 1971 (JA: B/D/A/E19/1, File 3); confirmed by Letter: Carrington to Ereaut: 27 July 1971 (JA: B/D/A/E19/1, File 3).

<sup>182</sup> Sinclair: Legal Advice: 17 June 1971 (FCO 30/882).

<sup>183</sup> Letter: Carrington to Ereaut: 29 July 1971 (JA: B/D/A/E19/1, File 3).

<sup>184</sup> Note of Meeting: 1 October 1971 (JA: B/D/A/E19/1, File 3), [4].

48 There were, however, other issues with association agreements which were never fully considered. The UK would have to contract with itself (a) as a member of the EEC; and (b) as the international face of the Islands.<sup>185</sup> Such an agreement also required the consent of the Assembly (the forerunner of the European Parliament) and so it would never have been agreed before the accession of the UK to the EEC.<sup>186</sup> There were, therefore, many reasons why such an agreement was undesirable.

49 In any event, it is likely that the real reason an association agreement was proposed was not that HMG believed it to be acceptable, but rather that it showed the EEC what the UK wanted for the Islands.<sup>187</sup>

*The second proposal amending art 227 and a Protocol*

50 On 28 July 1971, it was made clear that art 238 was not an appropriate vehicle, but the EEC delegation would consider derogations from the full application of the treaty to the Islands.<sup>188</sup> This decision was badly received by the Islanders<sup>189</sup> and the Commission became worried about the tone of the press coverage as it suggested that *any* association had been rejected. The Commission went out of their way to make it clear that they were willing to consider special arrangements, but not under art 238. So worried were the Commission that they indicated that the general rule of application of the whole treaty to the Channel Islands could be “qualified out of all recognition”.<sup>190</sup> Accordingly, the EEC were happy to proceed on the basis of art 227(2) which allowed partial application of the Treaty of Rome.<sup>191</sup>

51 This led to the idea of a Protocol dealing with the Islands. This idea had been considered at a very early stage. The Law Officers of the

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<sup>185</sup> Sinclair: Legal Advice: 17 June 1971 (FCO 30/882).

<sup>186</sup> Sinclair: Legal Advice: 17 June 1971 (FCO 30/882).

<sup>187</sup> Briefing for Minister for Meeting of 2 October 1971 (Appendix F), point 2 (NA: FCO 30/885)

<sup>188</sup> Telex 762 of 28 July 1971 (NA: FCO 30/882); this was reported in “The Six Willing to Consider Special Arrangements” *Jersey Evening Post* 30 July 1971.

<sup>189</sup> Letter: Witney to Statham: 26 August 1971 (NA: FCO 30/884).

<sup>190</sup> Minute: Hannay: *Channel Islands and Isle of Man*: 2 August 1971 (NA: FCO 30/883).

<sup>191</sup> Telephone call: Carrington to Ereat: 27 July 1971 (JA: B/D/A/E19/1, File 3); confirmed by Letter: Carrington to Ereat dated 27 July 1971 (JA: B/D/A/E19/1, File 3).

Islands had suggested it internally as early as 1967,<sup>192</sup> but it appears the origin of what became Protocol 3 came much later from an FCO lawyer.<sup>193</sup> Thus, it was this second approach which was presented and accepted by the Six.

#### *Petition panic*

52 Nevertheless, whilst this was being resolved the Committee of the Council for the Affairs of Guernsey and Jersey produced a report on 8 November 1971, which was in turn presented with as a petition by the “inhabitants of Guernsey” to the Privy Council on 12 November 1971.<sup>194</sup> The petitioners were concerned that should the United Kingdom’s accede to the EEC it would automatically abrogate the charter rights and the Channel Islands’ traditional constitutional position. The Privy Council simply acknowledged the report and made it clear that concessions were being sought for the Channel Islands. Indeed, by the time it reached the Privy Council the petition was more or less moribund.

#### **The basic deal**

53 Once it was accepted that derogations for the Channel Islands were acceptable it fell to the United Kingdom to put forward its proposals. This was done on 28 July 1971 where a request was made that the Islands should be able to export industrial and agricultural goods free of custom duties to the UK and other members of the EEC and no other provisions should apply. The EEC believed that this was not explicit enough and required the UK to expand on its basic proposal.<sup>195</sup> This was done and, as mentioned earlier, non-discrimination was added to the negotiations in October 1971. In official correspondence with the Islands, the Home Office stated that it was not sure how its offers would be received.<sup>196</sup> However, in contrast to the view of HMG before negotiations began, it was now apparent that the derogation might get a favourable response and there was a good chance of getting a satisfactory solution to the issues.<sup>197</sup> Indeed, the Islands’ own informal communications with the French suggested that the Six might

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<sup>192</sup> Minutes of Meeting of EFTA and EEC Committee on 22 June 1967 (JA: B/D/A/E19/1, File 1), p 3.

<sup>193</sup> Legal Advice: Sinclair: 17 June 1971 (NA: FCO 30/883).

<sup>194</sup> A copy of the order is in JA: B/D/A/E19/1, File 3.

<sup>195</sup> Memorandum of conversation with Boselli (Legal Adviser to the Commission): Hannay: 21 September 1971 (NA: FCO 30/994).

<sup>196</sup> Letter: Witney to Le Masurier: 12 August 1971 (JA: B/D/A/E19/1, File 3).

<sup>197</sup> Note of Meeting: 1 October 1971, [4] (JA: B/D/A/E19/1, File 3).

accept the Islands staying within the common external tariff but outside the EEC.<sup>198</sup>

54 Ultimately, the Six's response to these proposals was delayed at the UK's request. This was, once more, to avoid awkward questions leading up to the House of Commons vote on 28 October 1971,<sup>199</sup> enabling any criticisms that might be made during the October debate to be stymied.<sup>200</sup> Further, to quell disquiet on the Islands themselves, the Minister, still Geoffrey Rippon, MP, agreed to visit and discuss issues with those involved.<sup>201</sup> Eventually, on 8 November the EEC agreed to the position that was to become Protocol 3 with the basic policy being<sup>202</sup>—

“(1) Trade Arrangements

- (a) *Industrial products*: application of the CCT by these territories and free movement between those territories and the enlarged Community;
  - (b) *Agricultural products*: application of the external arrangement of the Community valid for these product *vis-à-vis* third countries, as well as all of measures applied within the Community which are indispensable for free trade in these products;
- (2) The provision of the EEC treaty would be made to apply, within the framework of Article 227, to these territories to the extent necessary for the introduction and smooth operation of these trade agreements;
- (3) There would also be provision for:
- (a) *A non-discrimination clause*: the right which persons from these territories have acquired in the United Kingdom will not be affected, but the authorities of these territories would

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<sup>198</sup> Minutes of Meeting: 2 October 1970 (JA: B/D/A/E19/1, File 1), [7] (Senator Vibert).

<sup>199</sup> Letter: Carrington to Mason: 19 October 1971 (NA: FCO 30/886).

<sup>200</sup> Memo: For O'Neil by Robinson, *Membership of the European Communities Channel Islands and the Isle of Man*: 13 September 1971 (NA: FCO 30/884), [7].

<sup>201</sup> Memo: For O'Neil by Robinson, *Membership of the European Communities Channel Islands and the Isle of Man*: 13 September 1971 (NA: FCO 30/884).

<sup>202</sup> This was sent with Letter: Allen to Sir John Davis (Lt Governor, Jersey) 11 November 1971 (JA: B/D/A/E19/1, File 3).

have to apply identical provisions to all natural and legal persons of the enlarged Community.

- (b) *A safeguard clause* [text not included, but it was to be used should difficulties arise].”

55 The Islands’ representatives warmly welcomed the deal and the Channel Islands and sent a telegram thanking HMG for its efforts on their behalf.<sup>203</sup> But this basic diplomatic solution left many issues unresolved,<sup>204</sup> in particular in relation to agriculture. Did the fisheries policy apply? Where did the money go from these levies? Did the competition rules apply?<sup>205</sup> The United Kingdom also managed to modify the position a little so that full free movement would apply to those Channel Islanders born or with long residence in the United Kingdom.<sup>206</sup> However, some issues remained ambiguous.<sup>207</sup>

### The text

56 Each of the Channel Islands readily accepted the terms<sup>208</sup> and this was passed on to the Six.<sup>209</sup> This basic proposal led to Protocol 3 and<sup>210</sup> art 227(5) (now FEU art 335(5)(c))—

“5. Notwithstanding the preceding paragraphs:

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<sup>203</sup> Telegram to Home Secretary: 10 November 1971 (NA: FCO 30/887).

<sup>204</sup> Legal Advice: Mr P Allott (Legal Advisers, FCO): 6 December 1971 (NA: FCO 30/888).

<sup>205</sup> See Letter: Witney to Le Masurier: 12 November 1971 (JA: B/D/A/E19/1, File 3); it is still not clear see Colin Powell, “Applicability of European Union Competition Regulations in Jersey” (1997) 1 *Jersey Law Rev* 48 and *Jersey Produce Marketing Organisation Ltd v States of Jersey* 2005 JLR 513.

<sup>206</sup> The possibility of this was mooted by Carrington on 25 November 1971 (see Memo of that date ((JA: B/D/A/E19/1, File 3)); and Letter: Carrington to Davis: 26 November 1971 (JA: B/D/A/E19/1, File 3).

<sup>207</sup> See Codel 960: 9 November 1971: O’Neill (NA: FCO 30/887); a paper was prepared by the Home Office detailing what the arrangement would actually mean although some issues were still unclear: Memo: Witney *The Channel Islands, the Isle of Man and the EEC Implications of the Proposed Arrangements under Article 227* (NA: FCO 30/889).

<sup>208</sup> The votes were unanimous in Guernsey and Alderney and carried 51:1 in Jersey and 27:2 in Sark; also States of Jersey, Proposition of 15 December 1971 adopted; this follows a Report on the Negotiations (23 November 1971). See also Vibert, *Memoirs of a Jerseyman*, La Haule Books, Jersey, 1991, 144

<sup>209</sup> Telegram 271: 17 December 1971 (FCO 30/889).

<sup>210</sup> A draft of an earlier version of the Protocol is available in NA: FCO 30/889 (date stamped 22 December 1971).

...

- (c) This Treaty shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community.”

This meant that the Islands had got the modification they wanted with Protocol 3 giving effect to the diplomatic agreement. Article 1(1) of the Protocol (giving effect to para 1(a) of the diplomatic agreement) applies customs matters to the Islands. It is clear that “customs matters” is broader than duties,<sup>211</sup> although it is unclear why this drafting was adopted. But the application of the customs tariff was what Jersey had wanted back in 1967 and what they (and the other Islands) formally asked for in 1970. Article 1(2), which requires the application of the agricultural levies of the CAP, was not what the Islands wanted but it had long been accepted as a necessary adjunct of free movement of goods. The scope of art 1(2) was eventually formalised by Regulation (EC) No. 706/73.

57 Article 2 of the Protocol ensures that the rights of Islanders in the United Kingdom are not affected, but disapplies the general rules of free movement of labour; once more giving the Islanders what they asked for—no more and no less. Article 3 of the Protocol relates to the Euratom treaty and was never really the subject of discussions as there was no atomic energy generated in the Islands. The non-discrimination clause, in art 4 of the Protocol, was not something requested by the Island authorities but it was also never resisted. Article 5 of the Protocol provides the so called safeguard clause to enable modifications to be made by either side if there were problems. And art 6, the definition of Channel Islander and Manxman, ensured that most Islanders were (and remain) able to enjoy most of the benefits of free movement of labour. It is clear, therefore, that the Channel Islands essentially got what they wanted and gave away little in return.

### **Implementation**

58 It had originally been the United Kingdom’s intention to try and delay any discussions about the interpretation of Protocol 3 until after

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<sup>211</sup> R Plender “The Protocol, the Bailiwick and the Jersey Cow” in R Plender (ed), *Legal History and Comparative Law: Essays in Honour of Albert Kiralfy* (London 1990), pp 203–204; it can be noted that the earlier draft of the Protocol only referred to duties and charges: see FCO 30/889.

accession so that it would have an equal voice.<sup>212</sup> But the EEC Commission wanted some clarity and so further negotiations began on the implementation of Protocol 3.<sup>213</sup> But by now the scope of the Protocol was a matter of law and not of politics.

59 The more pressing issue was how the Protocol would be given effect in the Islands. It was clear that the Islanders would not be happy with an Act of Parliament being passed which applied the EEC Treaty to the Islands either directly or by Order in Council.<sup>214</sup> The Home Office took the view that the implementation of obligations would be a mixture of “Imperial” legislation and insular legislation.<sup>215</sup> The Islands were firm—they wanted to pass their own legislation.

60 In the end, the European Communities Act 1972 did not extend to the Islands. It only provided that legislation passed in the Channel Islands was not to be treated as void by reason of its inconsistency or repugnancy with an Act of Parliament.<sup>216</sup> The States of Jersey passed the European Communities (Jersey) Law 1973 giving effect to the Treaty, and the States of Deliberation passed the European Communities (Bailiwick of Guernsey) Law 1973 to do the same. The law was in place and like the rest of the British Isles it was time for the Channel Islands to find out the real effects of what had been agreed.

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<sup>212</sup> Submission on the Islands and the EEC: 19 October 1972 (NA: HO 284/289), [2].

<sup>213</sup> Speaking Note for UK Delegation (NA: HO 284/289).

<sup>214</sup> Note of Meeting: Home Office: 8 June 1970 (JA: B/D/A/E19/1, File 2) pg 4 (Ereaut).

<sup>215</sup> Minutes of Meeting: Home Office: 8 June 1970 (JA: B/D/A/E19/1, File 1), [16]; it was made clear that if the Islands did not legislate then Westminster would (see Memo: Witney, *The Channel Islands, the Isle of Man and the EEC Implications of the Proposed Arrangements under Article 227* (NA: FCO 30/889)). Although it was also accepted that if this occurred the Islands may simply ignore the legislation (Letter: Mason to Carrington: 2 November 1971 (NA: FCO 30/887)).

<sup>216</sup> European Communities Act 1972, s 2(6).