

STATES OF JERSEY



STATUS OF CHANNEL ISLANDERS IN THE EUROPEAN UNION

**Presented to the States on 4th February 2008
by the Chief Minister**

STATES GREFFE

STATUS OF CHANNEL ISLANDERS IN THE EUROPEAN UNION

Summary

This report explains:

- why Channel Islanders^[1] do not have the right to free movement (that is, to take up employment or permanent residence) throughout the European Union (EU);
- the important historic rights of Channel Islanders in the United Kingdom which are protected by Protocol 3;
- the implications of any change to Jersey's Protocol 3 relationship with the EU;
- the options available to Channel Islanders seeking residence, employment or to study in the European Union.

The right to free movement throughout the EU is linked to EU citizenship. Most Jersey residents are entitled to EU citizenship because of some connection with the EU, for example:

- through a parent or grandparent who was born, adopted, registered or naturalised in the United Kingdom (UK);
- through a parent who holds the citizenship of another EU state;
- or acquired by ordinary residence in the UK for a continuous period of 5 years.

Channel Islanders, who do not have any such connection with the EU, do not have EU citizenship or the right to free movement throughout the EU. It is estimated that some 5,000 individuals may be affected by this provision and, although the number who have actually been disadvantaged as a result is probably much fewer, the issue remains a significant concern for many Channel Islanders.

The relationship between Jersey and the EU, and the status of Channel Islanders, is defined in Protocol 3, which is considered to best serve the Island's overall interests. Protocol 3 protects important historic rights of Channel Islanders to free movement throughout the UK.

A change in Jersey's relationship with the EU would be extremely difficult if not impossible to achieve. The outcome of any change would be likely to be much less advantageous for the Island as a whole.

However, there are options that may be available to non-EU citizens to enable them to take up residence, work or study in the European Union so that they are not significantly disadvantaged in comparison to other Island residents.

The report recommends –

- **at present there should be no change to Jersey's relationship with the EU as set out in Protocol 3 and accordingly it is not feasible to change the status of Channel Islanders in the European Union;**
- **Channel Islanders are encouraged to seek the experience and opportunities of living, working or studying in EU countries, and States departments will assist them as far as possible in doing so.**

1. Introduction

On 12th September 2006, the States adopted an amendment, proposed by Deputy Le Hérisser, to the States Business Plan 2007 (P.96/2006) as follows –

- *Report by the end of 2007 on the situation facing Jersey residents who do not have the automatic right to work and settle in European Union countries, with recommendations.”*

This report, prepared by the Chief Minister’s Department in conjunction with the Customs and Immigration and Law Officers Departments, is presented to the States in accordance with the above requirement.

In recent times there has been correspondence in the media, including letters pages of the Jersey Evening Post, from members of the public regarding the position of Channel Islanders in the EU. These letters indicate a level of concern about the issue and indicate a feeling that the arrangements are in some ways unfair or discriminatory against Channel Islanders.

For the individuals affected, the existing arrangements can be the cause of concern and distress. Appropriate advice and assistance is required to enable these non-EU Channel Islanders who are suitably qualified to gain residence or work permits in Europe.

This report aims to provide a full explanation of the policy position. It sets out the reasons why any proposals to attempt to change the status of Channel Islanders in the EU would be detrimental to Jersey’s overall interests and also outlines the options available to Channel Islanders seeking to live, work or study in the EU.

2. Definition of a Channel Islander

The Channel Islander status arose as part of the negotiated agreement on the United Kingdom’s Treaty of Accession to the European Communities. Jersey’s relationship with the EU is set out in Protocol No. 3. The rights enjoyed by Islanders in the UK were preserved by Protocol 3 and the Island became part of the Customs area of the EC, enjoying the same trade rights as Member States. The latter benefit was of vital importance to the Island’s agriculture industry.

Article 6 of the Protocol defined a “Channel Islander or Manxman” as a British citizen –

“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; ...”

However, Article 6 then excludes certain people from this definition of a Channel Islander–

“... but such a person shall not for this purpose be regarded as a Channel Islander or Manxman if he, a parent or a grandparent was born, adopted, 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.”

3. Entitlement of certain people to EU citizenship

The term “EU citizenship” is used below to mean a person who may exercise full EU rights of free movement of persons and services. The majority of Jersey residents, even if born in the Channel Islands, are entitled to EU citizenship. The reasons for this are explained below.

It is clear, from Article 6 of Protocol 3, that any Jersey resident who is a British citizen who was born, adopted, naturalised or registered in the United Kingdom, enjoys EU citizenship.

Additionally, if a Jersey resident who is a British citizen has at any time been ordinarily resident in the UK for five years, he or she will enjoy EU citizenship. Ordinary residence is not defined in United Kingdom legislation, but its established meaning is that a person is residing in the UK (apart from temporary or occasional absences) voluntarily for settled purposes as part of the regular order of their life for the time being. A person can be ordinarily resident in more than one place at the same time.

The longer a person has lived in the UK, the stronger is the indication that they are ordinarily resident.

The above persons have EU citizenship and are not Channel Islanders as defined by Protocol 3.

Similarly, a person who has such a connection with another EU member state may be entitled to that other nationality and have the right to EU citizenship.

4. Status of Channel Islanders in the EU

Having set out the specific definition of a Channel Islander as above, Article 2 of Protocol 3 states–

“However, such persons [Channel Islanders or Manxmen] shall not benefit from community provisions relating to the free movement of persons and services.”

It is therefore incumbent on Her Majesty’s Government to endorse the British passport of an Islander (i.e. Channel Islander or Manxman) to show the holder has that status. Thus the passport of an Islander is endorsed with the words *“The holder is not entitled to benefit from EU provisions relating to employment or establishment”*.

While this endorsement will be made in the British passport of an Islander wherever issued, not surprisingly the majority of such endorsements are placed in passports issued in the island of origin, in this case Jersey. Acting under the powers of the Lieutenant Governor, the Passport Office in Jersey makes the Islander endorsement in locally issued British passports in order that the UK Government meets its obligation to the EU to identify persons who have the Islander status. It is not the States of Jersey carrying out this task and the States are not empowered to change the endorsement.

5. Number of individuals affected

On the basis of the number of passports issued bearing the ‘Islander’ endorsement it is estimated that there are about 20,000 Jersey Islanders.

Of that 20,000 a large number have EU rights through marriage to a non-Islander British citizen or to a citizen of another EU state, or by having dual nationality (i.e. also holding the nationality of another EU state). Therefore an estimate of 5,000 people actually affected is probably not far wrong, although no accurate data is available. Whilst it might be desirable to obtain an accurate figure for those potentially affected, it is considered this cannot be reliably achieved by public enquiries or small-scale surveys. It is therefore suggested that a question on the subject should be included in the next population census. However, those who are not present in the Island for the census would not be counted.

Of those who might be affected, it is probable that many have no desire to exercise any EU rights or are able to live and work in the EU through other legitimate immigration routes (for example, by obtaining a work permit). The number of people who have actually found themselves to be disadvantaged is estimated to be very few. However, for those affected, it is recognised that the issue may be a cause for concern or distress. There are likely to be benefits for these individuals, as well as for Jersey as a whole, if they are able to broaden their experience and gain opportunities through living, working or studying abroad.

Whilst it should be emphasised that the substantial majority of Jersey residents are entitled to benefit from full EU citizenship, even if they do not currently live in the EU, there is always likely to be a small number of Channel Islanders affected by the restriction who are not entitled to establishment in the EU. It is considered that these individuals should be offered advice and practical assistance, as described below, to ensure that as far as possible they are not significantly disadvantaged in comparison to other Jersey residents.

6. Channel Islanders’ options for residence, employment or study in EU countries

Although Channel Islanders do not have an *automatic* right of free movement or establishment within the European Union, this does not mean that they cannot take up residence, work or study there.

Apart from those Channel Islanders who already have EU citizenship through marriage, dual nationality or a period of ordinary residence, many may also be able to apply for residence or work permits, or to apply for admission to a European university or college.

Temporary admission to an EU country, for example up to 3 months, is generally possible without any significant formalities. Where necessary, advice and assistance with travel visa requirements should be available through the relevant country's embassy or consulate offices in the UK.

Living and working in the EU

Although specific requirements vary from country to country, most EU members allow non-EU nationals who are suitably qualified to apply for a visa, work permit or registration to remain for a longer period providing, for example, they can establish that they have accommodation, a family member is already resident, that they have suitable qualifications for employment, evidence of independent means or a pension, evidence of health insurance, etc. States departments should be prepared to assist any Channel Islander in furnishing the appropriate documentary evidence where possible.

After an appropriate period of ordinary residence in an EU state, not including periods solely for the purpose of study, it may be possible for a Channel Islander to apply for citizenship of the EU state they have resided in and thus acquire EU citizenship. (However it should be noted that any British passport issued to them will still contain the Islander endorsement as they will not have obtained their EU citizenship through a UK connection.)

Studying in the EU

Channel Islanders are also encouraged to consider study abroad. Many EU universities or colleges have a number of places reserved for non-EU students. Applications for admission may be made through the relevant country's embassy or consulate, or with the assistance of organisations that specialise in applications to overseas universities. A valid passport and study visa or residence permit, and possibly tax registration, are required. The documentation normally required includes evidence of secondary education or evidence of university entrance qualification. A language proficiency test may be required, although some English-speaking EU universities provide also tuition for the national language. Information and advice for Jersey students on collating the relevant documents and admission requirements can be provided by the Careers Service at the Education, Sport and Culture Department.

7. Entitlements of Channel Islanders in the UK

With regard to Channel Islanders, as defined above, Article 2 of the Protocol also states–

“The rights enjoyed by Channel Islanders or Manxmen in the United Kingdom shall not be affected by the act of accession.”

In other words, Channel Islanders continue to enjoy the rights of free movement and establishment within the United Kingdom that they have historically enjoyed. This enables Channel Islanders to freely travel to and from the United Kingdom without hindrance and to study, take up employment or reside in the UK without constraints, even though Channel Islanders are not UK residents.

8. Changing the status of Channel Islanders in the EU

It is evident that the particular status of Channel Islanders in the EU originates from and is defined in Protocol 3. The key question arises, therefore, whether it is possible to change Protocol 3.

Any change to Protocol 3 would require an amendment to the law of the European Union. In theory, this could be achieved by –

- (a) revision of the Treaty of Rome as part of the current changes to introduce a consolidated new Treaty of the European Union; or
- (b) a further Treaty between the UK and the EU to amend the Treaty of Rome.

The United Kingdom has responsibility for Jersey's international representation, which normally includes the negotiation of any international treaties. It is understood the UK government would not wish to re-open negotiation on any substantive elements of the new EU Treaty. It is most unlikely that the UK government would be willing to change its stance, especially at this stage, to seek a revision of Protocol 3 or be prepared to allocate any consideration to the issue. Efforts to put Protocol 3 on the UK agenda for negotiation with the EU are almost

certain to be fruitless and changes are simply unachievable in the foreseeable future.

Furthermore, any change to the fundamental Treaties of the EU requires the unanimous agreement of all 27 member states. This would involve the complex decision processes of the Commission, the Council of the European Union and the European Parliament, and would be scrutinised by the European Court. It is quite likely that at any stage a number of revisions and amendments would be proposed to address the interests of other member states. EU Members or the European Commission might wish to seek concessions from the UK government either in relation to the United Kingdom's interests, or specifically in relation to the Crown Dependencies, which might be highly disadvantageous. In particular, the EU or the UK might wish to seek particular concessions with regard to harmonisation of taxation regimes.

A proposal to change Protocol 3 would also be a fundamental policy shift for Jersey. It must be remembered that the decision to approve Protocol 3 was a decision of the States and that full consultation took place at the time. In the drafting of the new EU Treaty, the primary objective of the Crown Dependencies has been to ensure our existing relationship under Protocol 3 was preserved unchanged. Furthermore, the possibility of any change would affect all 3 Crown Dependencies. The other Crown Dependencies might not consider the benefits sufficient.

The existing text of Protocol 3 has, over the last 30 years, led to certain EU case law which has interpreted the status of the Crown Dependencies in relation to the EU. This has served to protect the Islands to some extent from EU competence encroaching on a number of domestic matters. The concern is that, in making any substantive change to Protocol 3, the protection it affords will be lost as the established body of legal interpretation may no longer be seen as valid.

9. Conclusion

It should be remembered that Jersey has chosen not to be a member of the EU, and except for the provisions of Protocol 3 relating to trade etc., the Island is not part of the EU. Only residents who have some connection, such as their place of birth or parents/grandparents born in an EU member state or if they are married to an EU citizen, can benefit from EU Citizenship. It is therefore difficult to justify a claim that Channel Islanders who do not have such a connection should have a right to the benefits of EU citizenship.

Channel Islanders continue to benefit from a number of important entitlements that are set out in Protocol 3 of the UK Treaty of Accession or in the Immigration Act 1971. These include the right to establishment in the United Kingdom, and an entitlement to travel freely throughout the common travel area. In addition, Channel Islanders continue to benefit from British citizenship under UK nationality legislation.

A small number of Channel Islanders are not able to benefit from EU citizenship, which is recognised to be a cause for concern or distress for those affected. However, this must be balanced against the negotiated agreement on the relationship between the Island and the EU, set out in Protocol 3, which preserves Islanders' entitlements in the UK and benefits the overwhelming majority of Jersey residents.

However, Channel Islanders are still able to apply for visas, permits or registration to reside, work or study in EU countries. It is considered that Channel Islanders should be encouraged to pursue such experience and opportunities, and advice and assistance will be provided by States departments to ensure that they are not significantly disadvantaged in this respect compared with other Jersey residents.

Under Protocol 3, Jersey has on balance a beneficial relationship with the EU overall which enables the Island to trade freely in goods and to attract skilled workers from the EU member states. These are vital requirements to sustain the Island's economy.

Protocol 3 has served the Island's interests well for over 30 years, and there are significant risks associated with interference with the established legal framework. In practice, there would be no realistic possibility of obtaining a change to Protocol 3 in the foreseeable future.

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It is therefore recommended that –

- at present it would not be beneficial overall to change Jersey's relationship with the EU as set out in Protocol 3, and accordingly it is not feasible to change the status of Channel Islanders in the European Union;
- Channel Islanders are encouraged to seek the experience and opportunities of living, working or studying in EU countries, and States departments will assist them as far as possible in doing so.

Public information and advice is available as follows:

British passports:

Immigration and Nationality Department
Maritime House, La Route du Port Elizabeth, St. Helier, Jersey JE1 1JD
Tel. 448000

Studying in the European Union:

Careers service
Education, Sport and Culture Department, Highlands, St. Saviour, Jersey JE4 8QJ
Tel. 449440

Employment in the European Union:

Contact the relevant EU country's embassy in the UK
See http://ec.europa.eu/unitedkingdom/information/eu_embassies/index_en.htm

General enquiries:

States of Jersey Customer Service Centre
Cyril Le Marquand House, St. Helier, Jersey JE4 8QT
Tel. 445500

^[1] Throughout this report the term 'Channel Islanders' is used very specifically to mean British citizens defined as such by Protocol 3 of the UK Treaty of Accession to the European Community.