



Isle of Man
Government

Reiltys Ellan Vannin



Council of Ministers

UK referendum on EU membership Implications for
the Isle of Man

Fourth Interim Report

Cabinet Office
Oik Coonceil ny Shirveishee

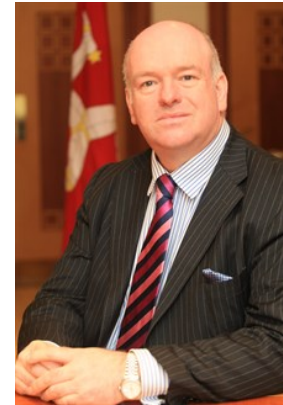
April 2017

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1 – Chief Minister’s foreword

In April 2016, the Council of Ministers published its first report setting out the potential implications for the Isle of Man, should the United Kingdom withdraw from the European Union.

Since then, much has changed. The UK has voted to leave the EU, and what has become known as “Brexit” has begun. The enabling legislation which the UK Supreme Court ruled was necessary has been passed by Parliament and the British Prime Minister Theresa May has now given formal notification to the ‘triggering’ of Article 50, which provides a mechanism by which a Member State leaves the EU.



But this is only the very beginning of the Brexit process. Although the Prime Minister has set out her vision of a new relationship for the UK with the EU, the remaining Member States must now discuss and agree their own negotiating stance. Draft negotiating guidelines circulated to Member States will be discussed and concluded. The announcement of the UK General Election in June will not detract from this. Neither party is likely to agree to any particular provision or make any concession unilaterally – the likelihood being that nothing is agreed, until everything is agreed. And this will include the status and involvement of the Isle of Man and the other Crown Dependencies in any trade deal between the UK and the EU.

But we are not simply waiting to see what will happen. We are actively engaged at an unprecedented level across a number of fronts at political and officer level, to set out what is important for the Island, and to ensure that those who are formulating the UK’s detailed negotiating position are aware of our concerns, and where, potentially, we may be affected by their decisions.

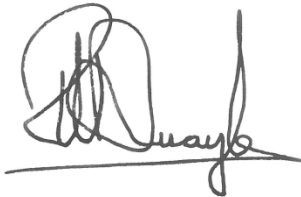
Our fourth interim report provides a further update on the work which is being undertaken in preparation for the UK’s withdrawal from the EU. It builds on the analysis we have undertaken. Our initial assessment was generally well founded; as we anticipated the UK is seeking a comprehensive Free Trade Agreement with the EU because remaining in the Single Market and the Customs Union ultimately proved to be incompatible with the UK’s wishes.

We will continue with the work strands we identified very early on: making the necessary preparations for withdrawal; engaging with partners in the UK and Crown Dependencies to ensure our interests are protected during the negotiations; identifying and dealing with the risks and opportunities which both flow from withdrawal and new relationships; and assessing the means by which we can participate in new Free Trade Agreements.

What is clear is that we are experiencing a level of engagement with the UK Government which we have never seen before. It is taking its responsibility to represent our interests seriously, but I am conscious that this is only the beginning. The hard choices may still lie ahead of us, and although our preparatory work has been thorough, we can only be certain as to how we can respond as more detail emerges.

But we are building the contacts, and highlighting and registering the issues of importance to the Island which will mean that we are able to respond to the changing environment over the coming months.

I am committed to keeping politicians, business and the public in the Isle of Man up to date on progress. I hope this, our fourth interim report, ensures that there is a broad understanding of the range of issues we are addressing.

A handwritten signature in black ink, appearing to read 'Howard Quayle', written over a horizontal line.

Hon Howard Quayle MHK
Chief Minister

2 – Executive Summary

The process of the UK's withdrawal from the European Union has now begun, with the transmission of the Prime Minister's letter to the President of the European Council.

Now the EU, and its remaining 27 Member States, in conjunction with the European Commission, must agree their own negotiating terms.

It is appearing more likely that there will be two phases to the negotiations; the initial stage will attempt to resolve some of the difficult issues relating to the rights of citizens, the UK's budgetary commitments, and the border issues in Ireland; and then subject to progress in these areas, there is potential for talks on the UK's new relationship with the EU – and any transitional arrangements – to be held in parallel to the withdrawal process.

The Isle of Man's relationship with the EU is through the UK, and when the UK leaves, this will fall away. There is now greater clarity on the UK's ambitions, and the Island will not be able to replicate its current relationship in the future, as the UK intends to leave the customs union.

Preparatory work in the Isle of Man continues across a number of fronts and includes –

- Dealing with the legislative impact of withdrawal
- Engaging with the UK at a political and official level to set out the Island's priorities, and to build relationships with key officials in the UK Government
- Identifying and conducting further research on potential opportunities and threats,
- And assessing the longer term technical and legal processes which will support the Island's position in relation to the World Trade Organisation, and the UK's new Free Trade Agreements

This report is a 'snapshot' of the current situation, and although there is some further clarity as to the likely direction of travel, there is no clear picture as to where the Isle of Man will sit at the end of the Brexit process.

Isle of Man Government policy is to preserve its constitutional, economic and social bonds with the UK, and to participate in the new trading relationship with the EU to the extent that it might continue to trade freely in goods. Any other areas covered by the UK's new relationship with the EU will be considered on their merits.

The opportunity to join the UK in seeking out new partners in global trade will also be pursued.

Negotiations will commence in the coming months, and although the Island will remain engaged with the UK during that process, detail as to the manner in which the Isle of Man may be covered by any new relationship may not emerge for some time.

In the meantime, the Council of Ministers will seek to ensure that it provides regular updates on the process, as it impacts on the Isle of Man, its people, and businesses.

3 – Introduction

The British Prime Minister has outlined the broad principles upon which the UK will aim to conduct its negotiations for withdrawal from the European Union, and construct a new relationship with it.

In a speech¹ on 17 January she set out the UK negotiating position, which was elaborated upon in the UK Government White Paper² published on 2 February.

Her letter to President Tusk³ formally notifying the UK's intention to withdraw from the EU under Article 50(2) of the Treaty on European Union also stated that the UK hopes to enjoy – as their closest friend and neighbour – a “deep and special partnership....with the European Union once we leave”.

The key features of the UK position that impact on the Isle of Man are: -

a) Single market access

The Prime Minister was clear that the UK is leaving the single market, and will instead seek a deep and comprehensive free trade deal with the EU. Membership of the single market entails accepting free movement of people – following the referendum vote, this was clearly unacceptable – consequently, the UK will not remain a part of the single market.

b) Membership of the EU customs union

The Prime Minister stated that “full customs union membership prevents us from negotiating our own trade deals”. As a consequence, the UK will withdraw from the EU common external tariff and the common commercial policy and so will not be bound by EU customs union. The UK instead wants its own “customs agreement” – with the EU – enabling tariff-free or at least low-tariff trade. In her letter to President Tusk the Prime Minister points out that failure to secure such customs agreement would result in trade between them having to be on World Trade Organisation (WTO) terms and that this would weaken Europe and so it is an outcome they both must work hard to avoid.

c) Future of the UK

The Prime Minister confirmed that the Government would put the preservation of “our precious union” at the heart of everything it does. This would involve working closely with devolved administrations throughout the Brexit process, as the Prime Minister is keen to avoid the introduction of further barriers within the UK (as may happen if, as the Scottish

¹ <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>

² <https://www.gov.uk/government/publications/the-united-kingdoms-exit-from-and-new-partnership-with-the-european-union-white-paper/the-united-kingdoms-exit-from-and-new-partnership-with-the-european-union--2>

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604079/Prime_Ministers_letter_to_European_Council_President_Donald_Tusk.pdf

Government has suggested, Scotland might remain in the single market, when the rest of the UK has left it). The Prime Minister also emphasised that the Government will prioritise maintenance of the Common Travel Area with the Republic of Ireland and try to avoid the introduction of a hard border between Northern Ireland and the Republic of Ireland

The Prime Minister stated that no deal would be better than a bad deal and that the UK retained the freedom to alter its economic model – interpreted in some quarters as a threat to turn the UK into a low tax, light touch regulation economy – if faced with a punitive approach from the EU. This approach has drawn criticism from the House of Commons Exiting the European Union Committee which made numerous observations in their report of 4 April 2017⁴.

d) The withdrawal process

On 16 March the European Union (Notification of Withdrawal) Act received Royal Assent, paving the way for the Prime Minister to deliver to the Council of the European Union the UK's formal notification to leave the EU, and set in train the leaving process as set out in Article 50 of the Treaty on European Union.

This notification was given on 29 March 2017, and the process has therefore begun. The Council of the European Union must now discuss and agree its own negotiating position, which it is expected to be adopted by formal ratification at the end of April, ahead of the commencement of negotiations.

e) The Great Repeal Bill

The exact content of the UK's Great Repeal Bill is not yet known, although it is likely that it will be announced in the Queen's Speech, which will be delivered on June 19, after newly elected MPs have been sworn in. However, the White Paper published on 30 March 2017 sets out the main provisions of the bill and indicated it would provide for –

- The repeal of the European Communities Act 1973
- The transposition of EU law
- The proposed use of delegated powers

The UK's stated intention is that it will transpose all EU law – the *acquis communautaire* – into UK law, in order to provide certainty and continuity for British people and businesses immediately following Brexit.

It will also, undoubtedly, assist in the conduct of negotiations for a future relationship, and may help to smooth the transition process (if there is one) and potentially underpin enhanced market access in the future.

⁴ House of Commons Exiting the European Union Committee, *The Government's negotiating objectives: the White Paper Third Report of Session 2016–17*, HC 1125, <https://www.publications.parliament.uk/pa/cm201617/cmselect/cmexeu/1125/1125.pdf>

The White Paper also states that there will be new UK legislation introduced in parallel, for important areas where EU law – however modified – cannot support the new relationship, and this includes Customs, and Immigration, two areas of importance for the Island.

3.1 What does all this mean for the Isle of Man?

As has been explained in previous reports by the Council of Ministers, the Isle of Man's position is still largely dependent upon the UK's ultimate position, but even though there is still no certainty about where the Isle of Man will end up, there is a greater understanding of what may be involved.

The decision to leave the EU – and its single market and customs union – and the UK's explicit aim of then securing a Comprehensive UK/EU Free Trade Agreement (albeit a new, bespoke version) means that Protocol 3, the Isle of Man's current relationship with the EU, cannot continue, and cannot be entirely replicated.

The UK's intention to convert EU law which currently applies in the UK, into UK law enables some clarity about the implications for the Island and ensures that the right preparations are made. However there is still much to consider as outlined in this Report.

3.2 What does this Report do?

This Report provides an update on the Isle of Man's ongoing work in preparation for the UK's withdrawal from the EU.

As previously reported, this work falls under four broad headings, each of which is interlinked and contains numerous complex elements.

The four broad headings are –

- The legal implications of withdrawal
- Engagement and renegotiation
- Opportunities and risks
- Free Trade (Agreements) and/or the World Trade Organisation terms

Each of these areas is elaborated upon below. More detail is provided on the work undertaken to date and on the challenges which will follow.

The use of clearly defined and separate work strands is useful and indeed necessary for two key reasons –

- Firstly, because there is a need to define the different processes, and the separate (but interlinked) negotiations; withdrawal; negotiation of new UK/EU agreement; WTO membership; and Free Trade Agreements, and
- Secondly, to allow for Isle of Man Government Departments, Boards and Offices, and their officials to focus on smaller, more discrete areas. As acknowledged in the Institute

for Government Paper⁵, this is the biggest challenge ever faced by the UK Civil Service, and this is no different for the Isle of Man.

3.3 How is the Isle of Man Government responding to the challenge of Brexit?

The Isle of Man Government has identified the key issues of importance to the Isle of Man arising from the UK's withdrawal from the EU. This Report sets out progress on these key issues which are as follows:-

1. Legal/technical legal implications of withdrawal
2. Engagement – Negotiations and new UK/EU relationship

- a. Political (UK and IoM)*
- b. Common Travel Area and Free Movement*
- c. Agriculture and Fisheries*
- d. Customs /Trade*
- e. Financial Services*
- f. International Trade and WTO*
- g. Transport*
- h. Communications*

3. Economic Opportunities and threats
4. Trade – Free Trade Agreements

The Isle of Man Government continues to provide politicians, business and the public with regular and comprehensive updates on its preparations for Brexit. The Isle of Man Government website⁶ entitled '*Brexit – what next for the Isle of Man*' contains all the Government's Brexit related publications, and also a series of Frequently Asked Questions.

⁵https://www.instituteforgovernment.org.uk/sites/default/files/publications/IFGJ5327_Report_Brexit_Civil_Service_080317_WEB.pdf

⁶<https://www.gov.im/about-the-government/departments/cabinet-office/brexit-what-next-for-the-isle-of-man/>

4 – The withdrawal process – legal implications

Irrespective of whether the UK and the EU agree a new trade relationship, whether there is a transitional arrangement or indeed whether the UK reverts to a WTO based trading relationship with the EU and the rest of the world, the fact remains, that now Article 50 has been triggered the UK will withdraw from the EU.

In turn, this means that the Isle of Man's existing relationship with the EU, which is set out in Protocol 3 to the UK's Treaty of Accession, will cease to apply.

Preparations are underway to deal with this, and this section of the report summarises ongoing and future work in respect of the legal aspects of the withdrawal process, and the work required in the Isle of Man.

4.1 – UK Proposals

The precise detail of the UK's Great Repeal Bill, which is due to be announced in the Queen's Speech, is not yet known. However, statements by the Prime Minister, the Minister for Exiting the European Union and other published material have informed the House of Commons Library paper entitled "Legislating for Brexit: The Great Repeal Bill"⁷. Together, these sources suggest that the main provisions of the Bill will be –

- The repeal of the European Communities Act 1972
- The transposition of EU law into UK law
- The proposed use of delegated powers

The Isle of Man's engagement with the UK's Bill team has begun, and a preliminary meeting was held in January 2017.

The emerging features of the current UK proposals are –

- The Great Repeal Bill will be announced in the Queen's Speech. It is hoped will have been debated and adopted before the end of 2017
- It is likely that it will contain the powers necessary to make the necessary amendments to UK law, and to convert EU instruments with direct effect into UK law
- The bulk of the work will lie with Government Departments in converting relevant EU law into UK law, making the necessary changes to it
- The intention is that the EU acquis (i.e. the body of EU law) will continue to have effect in the UK, the day after Brexit by means of UK law

This has been further elaborated in the UK Government White Paper entitled "Legislating for the UK's withdrawal from the European Union"⁸.

⁷ <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7793>

⁸ <https://www.gov.uk/government/publications/the-great-repeal-bill-white-paper>

4.2 Isle of Man Proposals

As a consequence of the UK's withdrawal from the EU a Bill will be required for the Isle of Man, which will also fulfil a similar, if somewhat limited, function on behalf of the Island.

The main provisions of an Isle of Man Bill will broadly need to cover the following areas –

- Repeal of the European Communities (Isle of Man) Act 1973
- A provision to allow for EU instruments which fall within the scope of Protocol 3 to be incorporated into Isle of Man law
- A provision for Orders and Regulations made under the 1973 Act to continue in force where appropriate (subject to any necessary modifications to accommodate changes in the Island's relationship with the EU)
- A power to continue to apply EU instruments – voluntarily, and subject to Tynwald approval
- A catch-all provision to allow for instruments which may be deemed to fall within the scope of Protocol 3, but are not included in the Schedule below, to be applied
- A list or schedule of Protocol 3 instruments, which will be deemed to have continued effect in Manx law – although how this is to be achieved will need to be given further consideration, and informed by the approach taken in the UK
- A Schedule setting out consequential amendments to IOM statutes

It is envisaged that although this will be an important and significant Bill, its main provisions are likely to be relatively short. The majority of the preparatory work is likely to centre upon the research and analysis required in relation to the consequential amendments to Isle of Man Primary Legislation, and the preparation of a list of so-called Protocol 3 instruments. Work has begun on the preparation of these lists or schedules, which may be lengthy, and progress is set out below.

Once the UK draft legislation is published, more concrete proposals for the Isle of Man Great Repeal Bill will be concluded, and submitted to the Council of Ministers for approval.

4.3 – Protocol 3 – list of EU Secondary legislation with direct effect in the Isle of Man

For many years the Office of the Government Secretary, and then the Chief Secretary's Office produced monthly lists which set out the instruments which were deemed to have direct effect in the Isle of Man under Protocol 3. These lists were produced from 1979 to 2013 and provide a valuable historic resource in terms of the identification of EU instruments which were considered may be applicable in the Island⁹.

Many of these instruments have subsequently been superseded or amended, and for that reason, a list is being compiled which includes all of the instruments which have then been

⁹ It should be noted that this process was carried out administratively rather than by legal officers but it was nevertheless a usefully starting point for the present consideration of what EU legislation is applicable to the Island under Protocol 3.

sorted in order that they might be edited down to give a (near) definitive list of those instruments which currently have direct effect under Protocol 3 – and therefore require conversion to Manx law.

An editing/sifting process has been undertaken so as to reduce the number of instruments which require more detailed legal analysis.

In doing so, all instruments have been labelled, so that the long-list can be edited down to a manageable state, and this process involves –

- Checking relevant sources to assess which instruments remain ‘in force’
- Applying ‘filters’ to sort and cross-reference instruments which are of a similar type, and therefore may be dealt with in a similar way (potentially by single, consolidated provisions). These include -
 - Protected Designation of Origin (PDOs) and Protected Geographical Indicators (PGIs)
 - Anti-Dumping measures
 - Updated amendments to the Combined Nomenclature (Customs Codes)
- Grouping and amalgamating amending legislation so that only the original instrument – as amended - is included on the final list/schedule
- Removing any Decisions which may have only limited geographical scope, or be time-limited (and have expired)

A final check – on what will be a much reduced number of instruments – will then be undertaken before each year’s instruments are included in a consolidated list.

Collaboration among Crown Dependencies

Protocol 3 sets out the relationship between the EU and the three Crown Dependencies, and so it stands to reason that the list of EU instruments which have direct effect in Jersey, Guernsey and the Isle of Man should be the same.

Officers in the Isle of Man are therefore collaborating with colleagues in the Channel Islands to produce a consolidated joint list of Protocol 3 legislation.

This is beneficial for a number of reasons. Not only does it reduce the overall workload for any one Island, and also prevents any duplication of effort, but it allows for legal officers to consider where instruments may be partly applicable, or where there may be some query.

Progress

Work is continuing in the Islands to produce a first draft of the list of applicable ‘Protocol 3’ instruments, which will then be subject to further discussion and refinement. The manner in which each Island tackles the task of ‘conversion’ to domestic law may differ from one jurisdiction to another, but it is helpful to begin from the same starting point.

The EU body of law; or ‘*acquis communautaire*’ comprises over 20,000 instruments which are currently in force. To have identified those instruments which fall within the scope of

Protocol 3 is a significant step forward in being able to put the Islands on a sound footing, prior to the date of final withdrawal from the EU.

This initial list is scheduled to be completed by May, ahead of the UK's Great Repeal Bill being announced. Lawyers from across the Crown Dependencies will then discuss and refine the list further. At this point the relevant Government Departments will be involved in testing each instrument's post-Brexit 'operability', and determining what amendments might be needed.

The number of instruments processed to date¹⁰ is set out below, gives an indication of the size of the project:

Number of years reviewed	30
Number of years of complete records	26 ¹¹
Total number of instruments	10,908
Total number in force	3,939

4.4 – Isle of Man primary legislation amendments

One of the aspects which will need to be captured by the Isle of Man's Great Repeal Bill are any consequential amendments to Isle of Man statute as the Island's European Communities Act is repealed, and Protocol 3 falls away.

An initial review of Isle of Man statute has been undertaken, and references to 'European Communities', 'European Union' and other terms have been identified. Departments have also been asked to identify where legislation within their remit may be affected.

A list of the areas impacted has been created, and 78 Acts have been highlighted – this includes the Isle of Man European Communities Act itself, plus 13 amendments to it. In essence, therefore, there are 64 other Acts where there is reference to EU obligations, an Institution, or to the Island's own European Communities Act.

Further work is being undertaken to identify exactly what these references are, and if and how they might be amended. The relevant Departments are also being identified, and they will be asked to determine whether they would deem there to be a need to retain, amend, or repeal these provisions, as a matter of policy.

Some references are of course more relevant than others – Isle of Man legislation as it relates to Customs and VAT customs matters is very closely inter-linked with EU rules and will require detailed consideration, which will be informed by not just the withdrawal process, but also by the new relationship between the UK and the EU. In other cases, where there may be references to an EU standard, a measure, or a document issued in the EU, and these provisions may be retained unaltered or only very slightly changed, if that is deemed to be suitable.

¹⁰ Completed 31 March 2017

¹¹ (as 1978, 1985, 1992 and 2013 are only partial)

4.5a – Isle of Man secondary legislation made under the Isle of Man European Communities Act

A list of secondary legislation made under the Island's European Communities Act has also been compiled centrally, in order to cross-check and validate the submissions made by Government Departments, Boards and Offices in response to a review undertaken in the autumn.

This has yielded 451 Orders and Regulations which were made under the Act, many of which are EU Sanctions Orders, to date (there will certainly be additional sanctions legislation and perhaps other applied EU legislation before the date of Brexit).

Work is also being undertaken to ascertain which of these are still in force, and amend or repeal other Orders. The results of this initial research has been consolidated, and a similar exercise has been undertaken to identify entries in order that they might be filtered and sorted, prior to being analysed in greater depth, and policy decisions taken on how they are to be dealt with.

4.5b – Other Isle of Man secondary legislation

In principle, it may be that other secondary legislation which implements EU standards or mirrors them can remain in force after the UK leaves the EU. The implication being, that if these are not made under the European Communities Act and rely on other Isle of Man statutes, then they may not be affected by the repeal of that Act and the loss of Protocol 3.

However, these instruments need to be collated and examined to ensure that this is the case, and a list of relevant secondary legislation has been created using information returned by Government Departments.

4.6 Conclusion

Of the different elements identified in the Brexit process addressing the legal implications of withdrawal must be the first priority, as the UK has decided to leave the European Union and within as little as two years. It may be the case that there is no new UK/EU relationship, and it could be that there is no UK/EU Free Trade Agreement, but the legal consequences of withdrawal will need to be dealt with in a very short time frame.

The Isle of Man Government has taken the approach that it must complete as much of the preparatory work, including legal research, as it can in advance of the publication of the UK Great Repeal Bill, so that the more difficult and time consuming policy issues can be considered in reasonable time.

Dealing with the legislative consequences may take considerable parliamentary time. Although it is suggested that the Great Repeal Bill (or an Isle of Man version) may be relatively brief, the additional changes to other legislation that will be necessary may be more substantial and require more consideration.

It must be borne in mind that Protocol 3 has been in existence for over forty years. Island law has developed within this context over that period, and many of the structures which

have been built on that foundation will now need to be dismantled relatively quickly. To identify any legal gaps or unintended consequences will require extensive analysis and discussion, and parliamentary debate.

5 – Engagement and negotiation

The Isle of Man Government is pursuing a broad programme of political engagement with the United Kingdom in respect of Brexit matters. Since the publication of the Third Interim Report, work in this area has continued – reflecting the UK Prime Minister’s Lancaster House speech setting out the UK Government’s 12 priorities, the passing of the *European Union (Notification of Withdrawal) Act 2017* and the UK’s formal triggering of Article 50 on 29 March 2017.

As we have approached the beginning of the negotiations between the UK and the EU, the Isle of Man Government has considered what it would hope to see in any future settlement between the UK and the EU, and, as stated in the Third Interim Report:

“...the Isle of Man Government has indicated that it would wish to retain the ability to trade freely in goods with the EU, and that it would also wish to maintain some ability for people to move freely between the Isle of Man and the EU¹²”.

In light of the Prime Minister’s Lancaster House speech, in which it was outlined that the UK would be leaving the single market and customs union – it became apparent that the Isle of Man’s participation in the EU customs union will cease. This does not, however, alter the existing customs relationship between the Isle of Man and UK, as set out in the Customs and Excise Agreement 1979¹³; and free trade between the Island and the UK will continue.

Whilst the Isle of Man may have wished to preserve the relationship set out in Protocol 3, it is recognised that this will not be possible. The Isle of Man will therefore seek to be included within whatever arrangements the UK is able to negotiate with the EU to achieve *“the freest possible trade in goods ... between Britain and the EU’s member states”¹⁴*.

In the immediate aftermath of the referendum result, the Isle of Man Government moved quickly to establish dialogue and communicate its position. The Isle of Man Government’s submission to the UK Cabinet Office in August 2016¹⁵ highlighted the key issues that the Island deemed to be strategically important, and the sectors and areas on which that the Island sought early engagement. The top level strategic issues¹⁶ for the Isle of Man raised by the UK’s departure from the EU were:

- *Free movement of goods within the EU and the Customs Union*

¹² ‘Council of Ministers, UK referendum on EU membership Implications for the Isle of Man Third Interim Report’, Dec 2016, p.22, <https://www.gov.im/media/1354541/third-interim-report-on-the-uk-referendum-on-eu-membership.pdf>

¹³ Customs and Excise Agreement between the United Kingdom and the Isle of Man (1979) https://www.gov.im/media/80147/customs_agreement1979.pdf

¹⁴ <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>

¹⁵ *Isle of Man Government submission to the (UK) Cabinet Office, August 2016.*

¹⁶ *Ibid*, p.1

- *Nationality*
 - *Isle of Man – free movement of people within the EU*
 - *Common Travel Area*
 - *British citizenship*
- *On the Economic impact – the sectors of its economy with which the Isle of Man wished to have early engagement with the UK were: Financial Services, Manufacturing (j), and Agriculture & Fisheries.*

5.1 Overview of meetings

Engagement at political and official level has continued to be beneficial. This builds on the programme of regular dialogue between the United Kingdom and the Isle of Man; together with Jersey, Guernsey and, where appropriate, the devolved administrations in the margins of the British-Irish Council. An emphasis has been placed on establishing meaningful connections between those conducting the negotiations in the UK and counterparts in the Crown Dependencies.

This is important for two reasons. Firstly, that the Isle of Man is able to input into the UK negotiating position, and ensure that UK officials who will be conducting the talks are aware of areas of interest or importance for the Island; and secondly, that relationships are established with key UK officials, in advance of the beginning of the talks.

A brief overview of meetings since the publication of the Third Interim Report is provided below:-

- December 2016, meeting held with officials from the Department for Environment, Food and Rural Affairs (DEFRA) for discussions around Brexit and their respective areas.
- December 2016, the Chief Minister, Hon Howard Quayle MHK, provided oral evidence to an Inquiry into Brexit and the Crown Dependencies by the House of Lords EU Select Committee at Westminster. This was alongside the respective Chief Ministers of Jersey and Guernsey. The Committee's report was subsequently published on 23 March 2017¹⁷.
- January 2017, meeting concerning legislation and the UK Great Repeal Bill held with officials from the Department for Exiting the European Union (DExEU), Jersey and Guernsey.
- January 2017, at the invitation of the Chief Minister, the House of Commons Justice Committee visited the Island in conjunction with their *Inquiry into the Implications of*

¹⁷ House of Lords European Union Committee, 19th Report of Session 2016–17, 'Brexit: the Crown Dependencies', HL Paper 136, <https://www.publications.parliament.uk/pa/ld201617/ldselect/ldcom/136/136.pdf>

*Brexit for the Crown Dependencies*¹⁸. In addition to discussions with the Chief Minister, Chief Secretary and Council of Ministers, as well as Members of Tynwald, the visit included engagement with industry representatives across a number of sectors, including matters relating to agriculture, fisheries and manufacturing.

- January 2017, meeting held with officials from HM Revenue and Customs and HM Treasury to discuss the impact of UK withdrawal from the EU from the point of view of the Island's customs and excise arrangements.
- January 2017, the Chief Minister met with Robin Walker MP and Mark Garnier MP, Parliamentary Under-Secretaries of State at the Department for Exiting the European Union (DExEU) and Department for International Trade (DIT) respectively. Also present were the Chief Ministers of Jersey and Guernsey. This meeting continued the ongoing dialogue between the Crown Dependencies and Whitehall, from the outset, on the Brexit process.
- February 2017, meeting with officials from HM Treasury to discuss financial services issues and the World Trade Organisation (WTO) Unit at the Department for International Trade.
- March 2017, further meeting with officials from the Department for Environment, Food and Rural Affairs (DEFRA).
- April 2017, meeting held with officials from the Department for Transport.
- April 2017, meeting held with officials from the Department for Culture, Media and Sport.
- In addition, between December 2016 and March 2017, the position of the Isle of Man and the other Crown Dependencies has been raised in the Parliament at Westminster on a number of occasions, in each case making the point that the Isle of Man, Jersey and Guernsey must be considered by the UK Government in its negotiations with the EU. The MPs who have made these interventions have included Bob Neill (Con – Chair of the House of Commons Justice Select Committee), Andrew Rosindell (Con), Karl McCartney (Con), Joanna Cherry (SNP), Richard Arkless (SNP), Angus MacNeil (SNP), Patrick Grady (SNP) and Graham Jones (Lab).

¹⁸ *Justice Committee Implications of Brexit for the Crown Dependencies Inquiry*, <https://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2015/implications-of-brexit-for-the-crown-dependencies-16-17/>

5.2 Looking ahead – Next steps

The UK's substantive negotiations with the EU have not yet begun. Formal talks between London and Brussels are not expected for a period of several weeks, possibly months whilst, in the interim, the European Union seeks to formalise the positions of its Members.

European Council President Donald Tusk has issued draft "negotiating guidelines" in response to the UK's triggering of Article 50, and an extraordinary summit is expected to follow this on the 29 April, where the leaders of the 27 remaining EU countries will convene to approve and discuss the guidelines in more detail. Following the summit, the European Commission is then expected to respond with its first formal reaction to the beginning of the Brexit process by issuing a "Recommendation to Open Negotiations"¹⁹. Thereafter, the General Affairs Council²⁰ (a meeting of European Affairs Ministers) will meet to consider their "Negotiating Directives" in the follow up period.

At the conclusion of this process, the European Commission's chief Brexit negotiator, Michel Barnier, will then be mandated to start negotiations and formal negotiations with the UK can begin to move forward.

5.3 The negotiation process

Although not settled, the indications are that whilst the UK will wish to conduct talks on its new relationship with the EU in parallel with those on withdrawal, the EU's preference is at the very least, that certain elements of the withdrawal arrangements must be concluded prior to those other discussions beginning.

The EU's draft position²¹ – and also the resolution of the European Parliament will form part of the process. The European Parliament has indicated its interests include issues related to citizens' rights, and the settlement of the UK's continuing obligations including its contribution to the EU budget, which it considers must be resolved before other discussions can be held. The European Parliament²² will also vote on and approve the final deal.

With this in mind, it is possible that a new relationship may not begin to be discussed until after the summer or into autumn of 2017.

¹⁹ 'What's next after Britain pulls Brexit trigger?', Agence France-Presse, March 15 2017, reproduced at: <http://news.abs-cbn.com/overseas/03/14/17/whats-next-after-britain-pulls-brexite-trigger>

²⁰ The General Affairs Council is mainly made up of the European affairs ministers from all EU member states. <http://www.consilium.europa.eu/en/council-eu/configurations/gac/>

²¹ http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/31_03_17_eu_draft_guidelines.pdf

²² <http://www.europarl.europa.eu/news/en/news-room/20170329IPR69054/red-lines-on-brexite-negotiationssides/getDoc.do?type=TA&reference=P8-TA-2017-0102&language=EN&ring=P8-RC-2017-0237>

Isle of Man involvement

As with the UK's Devolved Administrations, the Crown Dependencies will not have a seat at the negotiating table as part of the UK delegation. The purpose of the work-streams established to allow for engagement between the Crown Dependencies and various UK Government Departments has been to promote and support an understanding amongst the relevant Departments, and more broadly, across the Department for Exiting the EU, of the issues which will be of importance to the Islands, as the UK develops its own negotiating position. This means that the Isle of Man's views will be incorporated into an overall UK negotiating brief, and that if and when particular issues arise during talks, then contacts are in place to ensure that communication is effective and that we can respond quickly when necessary.

5.4 Local engagement – Members of Tynwald, Business and the Manx public

The Isle of Man Government has sought to fully engage Members of Tynwald, local business and the Manx public throughout the process and will continue to do so.

The Chief Minister has provided International Briefings for Members, which have afforded an opportunity for questions and answers and a productive exchange of views. Members were also invited to meet with the visiting House of Commons Justice Committee (January 2017) for their *Inquiry into the implications of Brexit for the Crown Dependencies*; and with Mark Field, Cities of London and Westminster MP, for a discussion on Brexit and other political matters (March 2017). An Information Note regarding a summary of Brexit work was provided to Honourable Members (February 2017) and further updates will be issued in the months ahead.

The views and input of business continue to be valued. Building on long standing public-private cooperation, the EUAG will seek to further engage and establish dialogue with local businesses, in various sectors, whose contribution to strategic policy consideration will be sought. The Isle of Man Chamber of Commerce (IOMCC) has presented to the EUAG, and the Head of the Isle of Man Government Brussels Office delivered a Brexit presentation to an IOM Business Lunch seminar (January 2017). Other members of the EUAG have delivered Brexit related topics at a variety of CPD²³ events hosted by industry over the past few months. During their visit, Members of the House of Commons Justice Committee met with local business representatives, together with fisheries and agriculture representatives. Following the visit, Isle of Man Creameries Limited provided a formal written submission to the Committee's Inquiry.

Members of the public have been kept informed by the regular publication on the Isle of Man Government website²⁴ of Brexit related correspondence, submissions to UK

²³ Continuing professional development

²⁴ 'External Relations', Isle of Man Government, <https://www.gov.im/about-the-government/departments/cabinet-office/external-relations/>

Parliamentary Committees, press releases and updates. Additionally; a webpage entitled '*Brexit – What Next for the Isle of Man?*²⁵', has been established with a question and answer section. Brexit related enquiries received via the Isle of Man Government email enquiries inbox have also been provided with individual responses.

The Chief Minister has also tabled a motion for the May 2017 sitting of Tynwald, in order that Members of Tynwald can debate the issues.

6 – Risks and Opportunities

The Isle of Man Government is identifying and analysing opportunities and risks associated with the UK's withdrawal process. Now the direction of travel is becoming clearer, this area is being progressed alongside partners (through long established communications channels) in the private sector.

This work will be progressed further during the course of the next six months, as more detail begins to emerge.

6.1 Risks

A broad brush exercise across Government has already been undertaken, and most significant concerns centre on the potential for the introduction of tariffs on goods, on the potential need to address additional requirements in respect of customs barriers (e.g. rules of origin) and other non-tariff barriers to trade, and more broadly, on the loss of the UK within the EU as a supporter of the Crown Dependencies, and as a counterweight to some more interventionist (and, in the future, potentially protectionist) EU Member States.

6.2 Opportunities

As has been set out previously, the main opportunities for the Island lie in the extent to which the Isle of Man can participate alongside the UK in new trading arrangements with third countries and, indeed, examining the relationship with the UK and assess opportunities to increase mutual competitiveness against the rest of the world. The focus at this stage is ensuring that the Isle of Man is positioned effectively in order to follow the UK on this path, should it choose to do so.

As the UK concludes trading agreements with EU (and non EU countries), there will be opportunities to include the Isle of Man in such agreements not least because we are already in Customs Union with the United Kingdom. As the free movement of goods within the Customs Union area is required, it is inconceivable that the Isle of Man will not form part of these arrangements. However, the nature of the individual agreements may not always be in the best interests of the Manx economy so we must seek the ability to exercise optionality. That said, we will seek opportunities to expand the Isle of Man's target markets overseas.

²⁵ '*Brexit – What next for the Isle of Man?*', Isle of Man Government Cabinet Office, <https://www.gov.im/about-the-government/departments/cabinet-office/brexit-what-next-for-the-isle-of-man/>

One of the benefits but also a challenge under the current agreement with the UK is the constraints of the current VAT sharing agreement. At times, the UK's interpretation of VAT application under EU directives has differed from that of other European countries which, in turn, has affected our ability to compete. As part of the necessary revisions required to Customs Union legislation and on the back of a more responsive VAT sharing arrangement concluded with the UK last year, there may be opportunities to introduce more flexibility on individual sector rates and application to areas of trade. Obvious areas include insurance, online gambling, yachting and aircraft.

We will work with industry to put forward opportunities to the UK cognisant that any agreement needs to be commercially attractive to both parties.

6.3 Next steps

As the Brexit process proceeds and greater clarity emerges, the Isle of Man Government will engage with contacts across various sectors of industry to determine where they see these risks and opportunities developing.

In terms of political engagement, as outlined an early debate in Tynwald will be held in May to enable Members to raise their own concerns, and set out where they see the potential opportunities.

7 – The World Trade Organisation (WTO) and Free Trade Agreements

7.1 Introduction

A joint report published by the CBI and Clifford Chance (February 2017) entitled “*The future of trade for the UK: A guide for Businesses*”²⁶, stated that –

Trade is an area of EU exclusive competence, meaning that the UK’s current trading relationships both inside and outside of the EU are largely managed through its membership of the EU. The outlook for the UK’s negotiation of new trading relationships upon exit from the EU will largely depend upon the future model of UK-EU trade arrangements.

By extension, and as has been observed in previous reports produced by the Council of Ministers on the impact of the UK’s withdrawal from the EU on the Isle of Man, “the future model of UK-EU trade arrangements” will similarly dictate what options might be available to the Isle of Man.

At this stage, to try to unpick and set out exactly what might happen – both to the UK and the Isle of Man – in what is a complex and interconnected set of scenarios is very difficult, if not impossible.

It is envisaged that the UK’s future relationships will be determined by five different sets of negotiations, each of which is inter-linked –

- Article 50 withdrawal agreement with the EU (see section 4 above);
- UK – EU long term trade agreement;
- The UK’s position within the World Trade Organisation;
- The UK’s Free Trade Agreements with third countries; and
- Any temporary or transitional agreement (with the EU)

Of these elements, they can perhaps be categorised as ‘certain’ to happen (in so far as anything can be said to be certain), some ‘likely’, and some, ‘possible’.

The UK’s withdrawal from the EU (either with or without an agreement) is a certainty as the UK must now leave the EU, and work is being progressed to prepare Isle of Man Government for this, as set out in Section 4.

It is possible that there may not be a UK-EU long term agreement, and indeed, there may not be a temporary or transitional arrangement. This area is being monitored, and the Island has engaged with the UK across a wide range of policy areas, as is set out in section 5. Progression of the talks between the UK and the EU will inform this area.

What is also a certainty is that the UK must regularise its position in relation to the World Trade Organisation (WTO). It must lodge its “schedule of commitments”²⁷ – and assess and prepare how it might negotiate new and perhaps renegotiate old Free Trade Agreements, not just with the EU, but also with third countries and how such agreements may affect the UK’s trade terms with other WTO members under for example the WTO’s most favoured nations (MFN) rules.

²⁶ <https://www.cliffordchance.com/microsites/brexit-hub/thought-leadership/the-future-of-trade-for-the-uk.html>

²⁷ Each WTO member has a “schedule” of commitments for each of the main WTO agreements — including agriculture, industrial goods and services — setting out the terms on which it trades.

The Isle of Man Government is, therefore, prioritising preparations for withdrawal, and for WTO and Free Trade Agreement negotiations, and this is set out in this section.

7.2 World Trade Organisation

The WTO was established in 1995 and has 164 members. The Isle of Man is not an independent sovereign state, and cannot become a Member of the WTO in its own right. The United Kingdom's ratification of the Marrakesh Agreement, establishing the WTO, was extended to the Isle of Man with effect from 3 March 1997. The Island is therefore included within the UK's membership of the WTO. The UK will remain a full and independent Member of the WTO in its own right, once it has left the EU, and therefore the extension to the Isle of Man will continue.

Should the UK's EU negotiations prove inconclusive, and the UK reverts to WTO membership, then the Island is well-positioned. WTO rules and principles underpin all trading relationships between its members, including the 'Most Favoured Nation' principle.

There has been a great deal of debate over the potential shape of a UK/EU trade deal, with the scenario where no deal is agreed being described as 'falling back' or 'reverting' to WTO rules. This is being portrayed, by some, as a poor result for the UK; there is no doubt that trade tariffs would increase, between the UK and the EU, because there are currently no tariffs between them at all.

In addition, it has been suggested that the UK and the EU could strike a quick and easy trade deal which might allow for, for example, tariff free trade in the automotive industry.

But these suggestions overlook certain complications in that WTO rules will govern any kind of trade in the future between the UK and the EU, and between the UK and the rest of the world.

The most favoured nation principle means that WTO members must treat all other members equally, unless they have a Free Trade Agreement, or are in customs union with a particular country.

This means that post-Brexit; the UK must establish a series of schedules, which determine its tariff levels which will apply equally to all other WTO Members, on a non-discriminatory basis. The UK Government has determined that it will seek to replicate those schedules currently in place as an EU member state. In other words, to replicate EU tariffs in relation to all non-EU countries.

It cannot reduce these tariff rates for a particular country (as a whole), or for a particular sector with a particular country, without negotiating a Free Trade Agreement which covers 'substantially all' sectors.

What is clear, therefore, is that no matter what the outcome of its negotiations with the EU, the UK must prepare a set of schedules to be lodged with the WTO which sets out its tariffs with all other WTO members, and that in the event where there is no UK/EU free trade agreement, these schedules will also cover the EU.

Rules of origin²⁸ and non-tariff barriers

When goods cross borders absent of any free trade agreement, they are potentially subject to tariffs and other customs duties; there may also be a requirement to provide certified proof of where the goods were made, and indeed, where the components which make up a finished product came from.

In addition, there may be further requirements to meet additional tests or product standards, such as emissions tests for cars, certification that the product is free from disease/pests or certain hazardous chemicals, and also packaging or labelling. These non-tariff barriers can be used to make it more difficult to access a particular market, and if the UK intends to sell goods (in particular, but also services) to the EU, then EU non-tariff rules are likely to need to be complied with, and it is the harmonisation of these additional rules which characterises the EU single market (see Council of Ministers' Third Interim report, for further detail on the process of economic integration).

The Isle of Man and the WTO

As set out above, the UK's membership of the WTO extends to cover the Isle of Man. It is expected that the Schedules which are currently being established by the UK will also cover the Isle of Man, and work is currently ongoing to establish the exact legal mechanism as to how this can be given effect in Isle of Man law. As has been mentioned in section 4, it is likely that as well as converting existing EU provisions into UK law, the UK will need to bring forward new legislation to create its own customs regime separate to the EU, and the Isle of Man will follow suit.

7.3 Free Trade Agreements

WTO rules allow for countries which enter into a Free Trade Agreement to agree to abolish tariffs on substantially all sectors, and it is the UK's stated aim to negotiate a deep and comprehensive Free Trade Agreement with the EU. Following its exit from the EU, the UK will also seek to establish Free Trade Agreements with a number of other countries.

Modern Free Trade Agreements generally include more than an undertaking to abolish tariffs in respect of goods, although this is their primary purpose. The UK has stated that it would wish to negotiate a broader or deeper and bespoke agreement with the EU. The EU, for its part, has underlined the need to avoid environmental, social, or fiscal dumping, which points towards their wish to see provisions covering the environment, workers' rights, and potentially some form of provisions relating tax incentives, state aid or industry subsidy/support.

The areas covered by a potential UK/EU Free Trade Agreement are yet to emerge, but this will be the subject of further research and discussion and, as more detail emerges, the Isle of Man will need to be conscious of which elements it might seek to participate in, and how this might be achieved.

²⁸ https://www.wto.org/english/tratop_e/roi_e/roi_info_e.htm

How are international agreements extended to cover the Isle of Man?

During the normal course of events, when the UK signs an international treaty, convention or agreement it will consult with the Crown Dependencies (CD's) to determine whether any of them would wish to be included within the scope of the treaty. These can be either multilateral or bilateral agreements.

There is often a provision within the agreement in which the territorial extent of the agreement (for both parties) is set out, as is often the case with bilateral agreements. Or, the UK's instrument of ratification may indicate the territories for which it is ratifying the instrument (as is often the case with multilateral conventions).

A guidance note issued by the UK Ministry of Justice explains the process. However, it should be noted a new FTA with EU and others might not fall within the scope of 'business as usual'. As the UK has not negotiated a trade agreement since it joined the EU.

However, the likelihood is that the general principles will hold, in that the UK will ask the CDs whether they wish to be included these agreements, whether there may be any reservations or exceptions required, and also, crucially, to provide a transposition table, whereby the Isle of Man Government must demonstrate that it can meet the requirements of the agreement, item by item, elaborating any underpinning legislation, policies and procedures.

This may be straightforward in some areas and less so in others.

The 1979 Customs and Excise Agreement means that to the extent that any UK Free Trade Agreement relates to goods it "must" include the Island as being within the single UK/IOM customs, excise and VAT territory, but that may require further discussion/clarification and, in particular, 'how' that might happen.

In addition, and as discussed above, the Free Trade Agreement between the UK and the EU (and other third countries) will include other provisions, which relate to areas other than trade in goods, and the Isle of Man may choose not to participate in these areas, or accept these restrictions, and it may not have the ability to accept them. For example, having a trade in services strand of a Free Trade Agreement apply to the Island might require compliance with an unacceptable amount of additional regulation.

Again, this is an area where greater detail will emerge, and indeed where further research is required, and also, where the scope of the negotiations will give an indication as to how the Isle of Man may be included within the scope of future Free Trade Agreements.

Investment promotion and protection/Bilateral Investment Treaties (IPPAs & BITs)

Until the Lisbon Treaty came into force on 1 December 2009, the competence to negotiate bilateral investment treaties (BITs) – sometimes also known as investment promotion and protection agreements (IPPAs) – rested with the individual EU Member States rather than the EU itself. As such, except for more recent EU Free Trade Agreements, (for example, the

EU-Canada Comprehensive Economic and Trade Agreement or CETA) investment protection provisions²⁹ were not included.

The UK has entered into a significant number of these BITs/IPPAs (more than 100) over the years and some of these have been extended to the Island. If the UK had remained an EU Member State it would not have been able to enter into any more of these agreements. However, when the UK leaves the EU in 2019 it will regain the ability to do so – or investment promotion and protection provisions may be included within the FTAs that the UK intends to negotiate. It is possible that the extension to the Island of more of the UK's existing BITs, or any new UK BITs, may be sought³⁰, or that the Island might be included within the scope of investment protection provisions in future UK FTAs.

8 – Conclusions and next steps

The key issues identified under the headings set out in section 3 above will continue to be taken forward by the Isle of Man Government. The Council of Ministers will continue to produce reports throughout the withdrawal and negotiation process, in order to keep Members of Tynwald, local businesses and the public up to date on the work being undertaken to prepare the Isle of Man for the UK's withdrawal from the EU.

There is to be a debate in Tynwald in May, which will give the opportunity for Members of Tynwald to give their views.

²⁹ The dispute settlement procedures of agreements such as CETA (EU-Canada Comprehensive Economic and Trade Agreement) have been seen as quite controversial.

³⁰ This requires the agreement of the UK's counterparties and involves a diplomatic Exchange of Notes.



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Cabinet Office
Government Office
Bucks Road
Douglas
IM1 3PN

<https://www.gov.im/about-the-government/departments/cabinet-office/brexit-what-next-for-the-isle-of-man/>