

# History, constitution and status within the EEC

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The Channel Islands comprise two principal islands (Jersey and Guernsey), three smaller islands (Alderney, Herm and Sark), and a number of tiny islets. Jersey, with an area of 45 square miles and a population of about 75,000, is the largest of the group. Guernsey, with an area of 25 square miles, has a population of nearly 55,000, and Alderney, the next largest, is much smaller than either Jersey or Guernsey with just over 1,500 residents. Clearly, therefore, Jersey and Guernsey are the active business centres, and this booklet concentrates mainly on them.

Although it is not appropriate to give a detailed history of the Channel Islands, a brief summary of the development of the islands' constitutional position down the centuries may be of interest. In view of their close proximity to the French mainland it is not surprising to find that the Channel Islands originally formed part of the Duchy of Normandy. Thus, when William, Duke of Normandy, conquered England in 1066, England came under the same rule as the Channel Islands. The constitutional position then remained unaltered for about a century and a half, except that by a gradual process Normandy became part of the Kingdom of England, rather than vice versa. The joint kingdom was eventually divided in 1204 when King John of England was driven out of mainland Normandy by the French, and from that time the Channel Islands have been the only part of Normandy to remain loyal to the Crown of England.

This loyalty has proved most valuable to England on numerous occasions, particularly in view of the strategic position the islands have occupied in terms of naval warfare. As a result of this continued loyalty, successive English monarchs have given charters that bestow certain privileges upon the islands (including freedom from English taxation). These charters have given the islands a special constitutional status. As dependent territories of the English Crown they owe allegiance to the monarch, but they have no direct link with Parliament. Accordingly, the United Kingdom does not include the Channel Islands in its 635 constituencies: the islands are quite separate jurisdictions.

The islands are not only entirely separate from the UK in a governmental sense, they are also quite distinct from one another. In particular, they have quite different legal systems both from one another and from the UK. The traditional island law of both Jersey and Guernsey was developed from Norman law, and it is founded on different principles from those obtaining in the UK. Consequently, those who either wish

to reside or to carry on business in the islands need to be aware of the peculiarities of the local legislation.

United Kingdom legislation extends to the Channel Islands only where a bilateral treaty specially provides for this. The island legislatures enjoy complete autonomy in domestic and fiscal matters, and so over the years they have been able to develop very practical legal systems that are ideally suited to the special characteristics and requirements of island communities. The comparative simplicity and stability of legislation (which is due largely to the absence of party politics in any of the Channel Islands) is an attractive commercial feature.

The respective legislative assemblies are the 'States of Jersey', the 'States of Guernsey', the 'States of Alderney', and the 'Court of Chief Pleas' in Sark. The representatives of each of these assemblies (Senators, Deputies and Constables in Jersey, Conseillers and Deputies in Guernsey) are democratically elected, and they vote independently on any motion. Much of the detailed States business is carried out by specialist committees (eg the Housing Committee, the Tourism Committee, or the Finance and Economics Committee) which are drawn from the members of the assemblies. Each committee is under the chairmanship of a president (who is elected by the States) and answers to the States assembly. This normally meets once a week to debate and vote upon the issues raised.

Although, therefore, the Channel Islands are not governed by the UK Houses of Parliament, they do, as mentioned earlier, owe allegiance to the English Crown. The Queen is represented in the islands by the respective lieutenant-governors of Jersey and Guernsey, who sit in the States assemblies in a non-voting capacity. They provide the formal link between Her Majesty's Government and the island governments.

Jersey and Guernsey each also have a bailiff, who, like the lieutenant-governor, is appointed by the Crown. The bailiffs preside over both the States assemblies and the Royal Courts, and their jurisdiction extends throughout the relevant bailiwick. In Jersey, this covers merely the principal island and its nearby islets, whereas in Guernsey it includes all the other Channel Islands. The Royal Courts hear both criminal and civil cases that arise within their bailiwicks, and the right of appeal is first to the Channel Islands' court of appeal and then to the Privy Council.

The islands are therefore fully equipped to govern themselves, and they do so efficiently and successfully with a minimum of outside interference. For instance, they have formulated policies over the years which have maintained the islands' economic prosperity while at the same time recognising the problems posed by their lack of size and the need to preserve the environment. The housing and commercial restrictions (which are explained on pages 24 to 30) are examples of the measures that the island governments have adopted in their endeavour to maintain the right domestic balance.

H.M. Government in the UK is, however, responsible for the islands' external or international affairs, and this responsibility raised interesting questions during the negotiation of the status of the islands in relation to the Common Market (EEC). Early on, it became clear to the islands that, under the terms of the Treaty of Rome, they would (as European territories whose external affairs were the responsibility of a prospective member state) automatically be embraced as associate members of the EEC as and when the UK itself was admitted.

This prospect was not at all attractive to the Channel Islands. Over the years they had achieved conditions of considerable economic prosperity (largely by virtue of their attractive tax structures and tax rates) and it now appeared that these would be threatened by the EEC fiscal harmonisation policy. Initially, it seemed that the harmonisation directives would be extended to the islands, or alternatively that the islands would be excluded altogether from the community. This would have meant that they would have been excluded from the only feasible market for their horticultural and agricultural produce. However, after long negotiations between the EEC, the UK Government, and the islands, agreement was reached on an amendment to the Treaty of Rome and on a protocol to the Treaty of Accession. These essentially exclude the islands from all aspects of the Treaty of Rome, other than those relating to free trade in agricultural and industrial products.

The islands have therefore now achieved a special status in relation to EEC countries, and there are many different situations in which considerable potential advantages may be obtained. However, this privileged position depends to a considerable extent upon the high degree of internal supervision that both Guernsey and Jersey maintain. The manner in which the island authorities monitor financial activities

ment Act of 1765 re vested sovereignty in the name of the British Crown.

It was not until the middle of the following century that Parliament in the United Kingdom and the Manx Parliament, Tynwald, passed acts simultaneously whereby the House of Keys, Tynwald's lower house, could be democratically elected. It was at this stage in Manx history that the process began whereby the Island loosened its ties with the British Crown.

Economically, the birth of the Island as a financial centre dates from 1961 when, under the auspices of the then Lieutenant Governor, Sir Ronald Garvey, Tynwald abolished surtax and took steps to encourage new industries and new residents. During the 1950s the population fell to its lowest (approx 48,000) for a century. Every winter some 1,200 men were unemployed and winter work schemes and travel to the UK sugar beet industry were necessary. In addition the young, the skilled and the tradesmen were leaving the Island. The policies then adopted by the Government have proved successful in that the population has now risen to over 60,000 and it is envisaged that this could increase to 75,000-80,000 by the mid-1990s. Unemployment has been greatly reduced through the expansion of businesses, both financial and industrial, and community and job opportunities for the young and the skilled have increased.

#### **Constitutional position**

The Isle of Man is a possession of the British Crown although it is not, as indicated by its geographical location, a part of the United Kingdom, having a large degree of autonomy. The Island legislates for its own internal matters through Tynwald, the Island's legislative assembly. During 1979 the Millenium of Tynwald was held to celebrate 1,000 years of unbroken parliamentary government.

The Tynwald is divided into two houses. The lower, the House of Keys, consists of 24 members democratically elected every five years while the upper house, the Legislative Council, has 11 members. The upper house consists of three ex-officio members: the Lieutenant Governor (who is the Queen's

Representative), the Lord Bishop, and the Island's Attorney General, plus eight members elected by the lower house.

Legislation passed by Tynwald is subject to Royal Assent. The defence and external affairs of the Island are, on request, looked after by the UK who receive an annual consideration for this.

The Island's independence has been commented upon several times by the UK Government who acknowledge it. In particular it was stated at the time of the entry of the UK into the EEC, that the Island (for whom special terms had been negotiated) could decide independently upon acceptance. In addition the UK Government would co-operate in achieving complete independent status if that was the wish of the Island community. Also in Parliament it has been stated that the UK government would never alter the constitutional position of the Channel Islands or the Isle of Man, nor legislate on domestic matters in the Islands especially with regard to taxation.

The Island has a special relationship with the EEC as set out in protocol 3 to the Treaty of Accession which relates to UK entry. Under this relationship, a large degree of autonomy is preserved by basically excluding the Island from all aspects of the Treaty of Rome but granting unimpeded access to the Common Market for exports of the Island.

There are no customs barriers between the Isle of Man and the UK under an arrangement whereby the customs duties, excise duties and VAT are pooled and divided upon an adjusted per capita basis. However, the administration of VAT in the Island is vested in the hands of Manx government officials.

#### **Administration - legal and taxation**

##### *Legal*

The Manx legal system, apart from the two Deemsters (judges) and the Attorney General, who are appointed by the Crown after consultation with the Island authorities from members of the Manx Bar, is governed by Manx law and is independent of the UK. Thus only Manx advocates can appear in court (unless by special consent) and no person can practise in the Island until they have qualified through the Manx bar.