

UPDATE

Guernsey Brexit update

Update prepared by John Rochester (Partner) and Alasdair McKenzie (Associate)

Brexit continues to dominate our headlines. With the date on which the UK is set to leave the EU fast approaching, the last few weeks have seen the rejection of UK Prime Minister Theresa May's initial Brexit Deal, the government's subsequent survival of a vote of no-confidence and a battle in Parliament over amendments resulting in, at the time of writing, Theresa May being set to return to Brussels to reopen negotiations.

The Background in Guernsey

On 6 June 2018, the States approved the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018 (the **Brexit Law**). The Brexit Law preserves into domestic Guernsey law the directly applicable European legislation which had effect in the Bailiwick immediately before exit day (the **Preserved EU Law**). New legislation is now proposed which will enable the States to disapply or amend the effect of Preserved EU Law.

Making Amends

The Brexit Law ensures that the Preserved EU Law continues to apply in Guernsey notwithstanding Brexit, and empowers Guernsey to amend and repeal Preserved EU Law where necessary as a result of the repeal of the European Communities Law, 1973 or otherwise in consequence of Brexit.

To address these rather limited powers of amendment, draft legislation was put before the States on 24 October last year - the European Union (Amendment of Legislation) (Bailiwick of Guernsey) Law, 2018 (the **Amendment Law**), which will afford Guernsey the ability to disapply or amend the effect of Preserved EU Law for broader policy reasons. We expect the Amendment Law to be sanctioned by the Privy Council in the next few months.

A Breakdown

The Amendment Law, as put before the States on 24 October, is split into two main operative sections.

Section 1 gives the States a general power to make Ordinances disapplying or amending the effect of any Preserved EU Law.

Section 2 provides examples of specific matters for which Ordinances under section 1 may make provision. The examples are not exhaustive and include customs and trade, financial services, transport, energy, agriculture, horticulture and fisheries.

Comment

The coming into force of the Amendment Law will mark an important step in the Brexit journey for Guernsey. Together with the Brexit Law, it will allow the States to retain the benefit of any EU law currently applicable in Guernsey whilst at the same time giving back to the States complete legislative control and an ability to reverse any changes made to Guernsey domestic law as a result of EU legislation and which it deems are unsuitable for the jurisdiction. This will be an interesting area to watch.

For more on this topic, keep an eye on our website, as partner **Gordon Dawes** will be publishing a comprehensive overview and history of the Guernsey Brexit journey.

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