



**THE ROLE OF JERSEY
IN THE ECONOMIC COMMUNITY**

Speech made by
The Rt. Hon. Lord Rippon of Hexham Q.C.
to
The Jersey Branch of the
Institute of Directors

23rd February 1989

THE ROLE OF JERSEY IN THE ECONOMIC COMMUNITY

I think what I have to do as far as I am able this morning, is to reassure you that there is one treaty and one protocol that has not faded. I have of course vivid memories of the occasion when, in November 1971, as Chancellor of the Duchy of Lancaster, I addressed the Members of the States of Jersey and asked them to approve the terms of the United Kingdom entry into the European Community, so far as that affected Jersey and the other Channel Islands.

I recall Sir, that protocol prevented my answering any questions because it was a formal meeting of the States Legislature, so we arranged to have a Press Conference and I think it was Hardbencher in the Jersey Evening Post who reported that conference and he said that the journalists were cross-examined afterwards by Members of the States who said: "What did you ask him? - What did he say?", "He wants to know if there are any cheap cigars here".

This naturally aroused the deepest suspicions;

"What did he want to know that for?"

"He wanted to buy some before he left", and I shall do the same again today.

I remember I also said in reply to another question, that life would remain the same in Jersey, much better than in most other places and I trust Sir, that observation will remain true for many generations to come.

I gave as you have reminded, certain assurances at that time. I said, in particular, that there would be free trade in both directions between the Islands and the enlarged Community in both industrial and agricultural products and that the trading position with the United Kingdom was absolutely safeguarded. The only obligation was to apply the Community's external policies in relation to trade with third countries. In other words the Islands would be within the External Tariff but not otherwise be subject to the Laws and Regulations of the Community.

I also emphasised that the Island's fiscal autonomy would be guaranteed and that there would be no question of having to apply a value added tax or any part of Community policy on taxation.

I think I can say, Sir, that those undertakings have stood the test of time. The question now arises as to how far Jersey may be affected by the Single European Act and all the decisions that will be taken under it as we move forward to completion of the single market in services as well as goods by 1992.

If I may say that during the past year I have followed with great interest the lively debates about the possible implications for Jersey and of course, the other Islands, and although some people I know have expressed a degree of alarm that Jersey's present protection under the Protocol may somehow be called into question, I would like to seek today to offer some reassurances in that regard.

I know of course Sir, that the States of Jersey have appointed Doctor Richard Plender as their "1992" adviser. I know that he has made a report which has not yet been made public. I am sure that his report will relieve and indeed remove most anxieties. I must stress of course, as you well know, I have no official status and that any views that I may express, only represent my general understanding of the present state of affairs.

I have, however, had the opportunity of reading the papers which were presented Sir, to your "Euroforum 1992" last November by Dr. Plender and by Mr Roger Harris, and of course you will not expect me to match their detailed knowledge. I do, however, say with confidence that it is my belief that there will be no significant change in Jersey's present position or in the advantageous relationship that you already enjoy with the Community. Indeed, I, myself believe that Jersey stands to benefit even more in the years ahead than it has in the past.

In the extreme situation and I stress it would be an extreme situation of any move by the Commission to seek an alteration in the Islands' relationships with the Community, amendment of the Treaty of Accession would be necessary. That would require an absolute majority of the Member States, thus giving the United Kingdom the power of veto, and I, myself would add this, even if the United Kingdom did not wish to exercise this veto, I am sure it would never seek to change the position of the Islands without their concurrence, and indeed to do so would be contrary to the procedure which we adopted in 1971, when we emphasised the need to secure the approval of the States to what was proposed.

In any event, I am sure that today, just as in 1971, the particular circumstances of the Islands, their history, and their way of life are fully appreciated by the Community; at least by the Member States. Some individuals may find from time to time the desire for change but they cannot will that change of their own volition.

In 1971 we had some discussions about the effect of what was called the "Safeguard Clause", now this covered and was intended to cover, unforeseen difficulties which might arise after the negotiated arrangements had been in operation for some time.

We advised then, and I would regard this still to be the position, that any such ad hoc safeguard measures would apply only to those parts of the Treaty which are necessary to maintain the free trade regime and the non-discrimination clause. But I would say in particular here too, that non-discrimination means that Jersey must, as regards after-entry control in the immigration field and as regards housing legislation treat all Community nationals, including British citizens, in the same way. So this system of residence permits for example, can and must apply equally to all Community nationals, whether British or not.

But the position is different so far as entry itself is concerned. It remains perfectly proper for Community citizens generally to be subject to a form of control on admission, for example, leave to enter, but for British citizens to be free from any such control.

That is the only exception to the general rule and arises because of the special provisions in the Immigration Act 1971, relating to the common travel area.

We have a common travel area between the United Kingdom and the Channel Islands and that gives us this particular right of entry not available generally to the Community as a whole. I think I also ought to emphasise that the safeguard clause related only to technical operations, it had to be operated and has to be operated in so far as any relevance to today, reciprocally to the advantage of both sides. It did not, it does not and it cannot mean that the Commission could or can impose on the Island provisions of the Treaty which it does not want. In particular, there is no question of the Island's fiscal autonomy being eroded through the use of this safeguard clause.

I mean a current example is the Commission's draft proposals for a minimum 15% withholding tax on interest income held by Community citizens in Community countries other than their own.

Now when she announced this in January, Christianne Scrivener, the Commissioner responsible for taxation policy, was pressed, I noticed in the reports, on the status of the Channel Islands, she said there would be no need for Treaty changes and she felt it was a peripheral question.

But, of course, it is not a peripheral question for Jersey and the other islands. However in my view, the position is quite clear. Because of the provisions of the Protocol, the Islands will not be affected in any way at all.

As to the Single European Act itself, with its stated aim of establishing by 1992 the internal market in the Community, this of course was given effect in United Kingdom Law with the entry into force of the European Communities (Amendment) Act, 1986, and nothing in the Single European Act, including its provisions on the internal market, changes Jersey's status in relation to the Community. Of course, it has been necessary for Jersey to adopt its own legislation to give effect to the Single European Act in so far as it applies to Jersey and this was done in the European Communities (Amendment No. 2) (Jersey) Law 1987.

Many of the Act's provisions concern general and procedural matters which apply irrespective of subject-matter. They apply to Jersey as they affect particular acts involving trade in goods or the few other special fields which are covered by virtue of the terms of the Protocol. Articles 13 to 19 of the Act lay down special provisions for the proposed establishment of the internal market, which is defined in Article 13 as including free movement of goods as well as other matters. It follows that actions under the provisions of these Articles apply to Jersey, in as far as they concern goods. For other purposes they do not; that in my view is quite clear.

Similarly Article 17 (tax approximation) does not apply since the Community rates and rules on VAT do not apply in the Islands. But the other Article 16 applies as it concerns customs dues.

So in essence it seems to be that, the position is this, as the Islands are not part of the Community, the Single Market should not lead to any change in their relationship with it. Their relationship with the individual Member States, except of course, the U.K., will be the same as that of any other "foreign" or third country.

Of course, that is not to say, that there will not be any impact upon Jersey of changes taking place within the Community just as after 1972 your producers faced increased competition in their natural market, which is the U.K. Now in the same sense, "1992" will have an impact on the Islands directly in so far as they relate to the free movement of goods and services, and indirectly as they impact on the markets in which Island producers of goods and services wish to trade.

So when the last of the Community's partitioning walls are down, the economic opportunities which may develop for member status are likely to include those which will not be available to those outside.

For example, the terms of the UCITS directive makes it unlikely that a unit trust authorised in Jersey would be freely marketed throughout the Community in the same way as it will be within the community because the directive applies to UCITS situated within the territories of the member states.

Of course there might be bilateral agreement or arrangements in order to avoid that situation being particularly disastrous in any way I don't think it will, but that an example of how something will happen within the Community will be an impact upon Jersey but on balance, I believe myself that as in 1972, the Islands will gain from their special status. The safeguards built into the Protocol from which the Islands derived that special status should continue to serve you well.

You will remain free to observe your own rules in the financial services sectors. You can have your own low tax rates and you can have the advantage of the absence of certain forms of tax all of which have contributed to Jersey's economic success.

In introducing the withholding tax proposal in January, Commissioner Scrivener, said there was no question of challenging bank secrecy laws.

The fact remains, I would suggest that the Community's commitment to the transparency of the capital market will involve rules about disclosure and those could be a serious long-term threat, for example, to Luxembourg, which some think a likely beneficiary of any business which might be deflected away from the Islands, but those rules will not apply to the Islands and guaranteed confidentiality may well prove to be the ultimate strength of the Jersey position. So it seems highly likely that Jersey will remain a financial centre for investors' funds after the completion of the internal market. People have confidence in Jersey, in its stability and some of these other Offshore havens don't have quite the same respectability that I would suggest attaches to Jersey, about which there is rightly a great deal of International confidence.

Clearly the impact of "1992" is going to have to be carefully monitored. I am sure that it is going to be done not only by the States but also by their advisors but also by the Home Office and your many friends in both Houses of Parliament who stand ready to defend your interests if ever that should prove necessary.

You referred Sir, to my Chairmanship of Britannia Arrow Holdings and indeed it has been a particular pleasure to me that I have been able to maintain my contacts with Jersey as Chairman of Britannia Arrow, and of its associated Company here and I am glad that the operation of the Financial Services Act – except that we all suffer from the bureaucratic complexities it has created – and

the necessary adaptations have been made to deal with the consequences of that legislation on Jersey.

I only hope that Jersey won't become as bureaucratic as we have in the U.K. and indeed one of our anxieties now about the impact of "1992" in the Financial Services field, which was expressed last year by Nicholas Goodison, is that we are so much more over-regulated now than other Members of the Economic Community. We may find ourselves facing some unforeseen consequences.

I might add that, in my opinion, anything that materially affects the status or interests of Jersey or the other islands, can in my view be fairly claimed to be a "very important national interest" and one which we identified at the time we entered the Community.

And in the debates which took place in the House of Lords on the Single European Community it was emphasised that in the last resort the Luxembourg agreement or disagreement is not affected.

When we joined the Community we also negotiated special arrangements for Gibraltar but the position of the Channel Islands remains historically unique. I noticed at one stage of the debate which was taking place was an anxiety that for Spain or Portugal was to join the Community, then Portugal for example could set up an Offshore island like Madeira on the same basis as Jersey. I have never believed that the slightest possibility of that. It was as if the U.K. attempted to create an offshore centre in the Isle of Wight.

Finally, Mr Chairman, I would like to assure you that we in the U.K. all treasure the special relationship which the Islands have with the U.K., a relationship which I remember, I didn't know he would be here this Luncheon but I remember, I kept the article that Mr Colin Powell, a then Special Adviser to the States of Jersey in 1972. He described the relationship then as a "relationship involving a combination of geographic location, domestic autonomy and Crown dependence without parallel".

I think that sums it up better than anything I have said in all the rest of my speech.

As he pointed out in the article, as part of the Duchy of Normandy, the Islands were partly responsible for the Norman Conquest in 1066 and they have remained linked to the British Crown ever since. We do not intend, Sir, that that link should be broken or weakened, now or in the future.

