The Brexit referendum result of 23 June 2016 and the consequent negotiations of Brexit have the clear potential to compel Jersey to emerge as an independent state if fundamental rights of Jersey residents and are preserved in the Brexit negotiations.

Jersey, unlike Guernsey and the Isle of Man are not part of the UK but a self-governing jurisdiction with their own constitution legislature and laws. The Crown can legislate for Jersey by Act of Parliament or order some Council and a customary responsible for Jersey's foreign affairs including EU Treaties.

By Article 355(5)(c) Breach of the European Union and Protocol 3 to the UK's original Accession Agreement, the Crown Dependencies are part of the EU for the purposes of free movement of goods but not of services, people or capital. In Jersey, effect is given to these treaty arrangements by the European Communities (Jersey) Law 1973. Jersey therefore is neither a member state nor associate member of European Union. Under Protocol 3, Jersey is part of the Customs Territory of the Union meaning that there is free movement of industrial and agricultural goods can trade between Jersey and the EU. Jersey does not contribute to and does not receive anything from the funds of the European Union, Article 4 of Protocol 3 requires the Jersey authorities to supply the same treatment to all natural and legal persons of the Union. Effect is given to these treaty arrangements by Jersey legislation namely the European Communities (Jersey) Law 1973.

Jersey residents do not enjoy full EU citizenship rights although the vast majority of the population are British citizens by virtue of their parents or grandparents or past residents in the UK. They are therefore EU citizens with the right to move, settle and work freely within the EU. The majority of the population of Crown Dependencies were not entitled to participate in the EU referendum because although they were British citizens they had not been resident within the UK within the last 15 years. The residents of the Crown Dependencies became a disenfranchised cluster of the population in relation to the Brexit referendum vote that has considerable consequences for fundamental rights of Crown Dependencies for fundamental rights of Crown Dependency residents.

Article 50 of the TEU provides:

"1. Any member state may decide to withdraw from the Union in accordance with its own constitutional requirements.

2. *A member state which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that state, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218 (3) of the Treaty on the functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.*
3. *The treaty shall cease to apply to the state in question from the date of entry and to force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the member state concerned, unanimously decides to extent this period.*
4. *For the purposes of paragraph 2 and 3, the member of the European Council or of the Council*

representing the withdrawing member state shall not participate in the discussions of the European Council or Council or indecisions concerning it. A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the functioning of the European Union.

5. *If a state which is withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49."*

It is clear that Article 50 can only be initiated by the departing member state and a formal decision must be communicated to the EU to commence the withdrawal process. Once the process has begun by Article 30(3) the treaties will automatically cease to apply to the withdrawing member state after a period of two years or on such other date as maybe agreed. If no agreement is reached after 2 years, then the withdrawing state will cease to be part of the EU. On this basis, not only will EU Law cease to operate in the UK but also in the Crown Dependencies including Jersey.

The fundamental rights afforded to Jersey residents under Protocol 3 namely the right to move, settle and work and the single market will be shut down. This whole process has no requirement to engage Jersey residents in the referendum process or the Jersey Government in any consultation as part of the negotiation envisaged by Article 50.

It is likely that in the UK the constitutional requirement (Article 50(1)) is that Parliament alone can pull the Article 50 trigger on the basis of the fundamental constitutional principle of legality that only Parliament can modify or abrogate domestic rights. Article 50 inevitably leads to the modification or abrogation of existing statutory rights under UK EU Law and the proper interpretation of the European Communities Act 1972 and the European Union Act 2011 is that any amendment or withdrawal from an EU treaty can only be authorised by Parliament. Doctrines of legality and parliamentary serenity (??) requires that only primary legislation can abrogate or modify existing domestic rights. All the indications so far given by the UK Government are that the Article 50 trigger will be pulled by Parliament.

Jersey has its own constitutional requirements embodied in the State of Jersey Law 2005, Article 31(1) as follows:

"Where is it proposed –

- *That any provision of a draft Act of the Parliament of the United Kingdom should apply directly to Jersey; or*
- *That an order in Council should be made extending to Jersey-*
- *Any provision of an Act of the Parliament of the United Kingdom ….. "*

The Chief Minister shall lodge the proposal in order that the States may signify their views on it.