



# Newsletter

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If you would like to join CALC, use our [online registration form](#).



[Henry Peter Brougham, 1st Baron Brougham and Vaux, PC QC FRS \(1778 –1868\)](#)

Lawyer, Lord Chancellor, Statesman

## CALC President's Report—February 2019



President  
Commonwealth Association of Legislative Counsel



### 2019 CALC Conference – Livingstone, Zambia, 1 to 3 April 2018

We are working hard on the final arrangements for our conference in Zambia. It is difficult to believe that there are only five weeks to go before the conference begins.

The organisation of the conference has caused me a few sleepless nights as it was so difficult to secure the venue, given the CLA's preference for the same conference dates. It has taken up substantially more of my time as President than would have been expected, particularly since we have no commercial conference organiser to assist us.

Over 100 hundred delegates have already registered for the conference, with many more registrations being processed every day.

The final programme is available on the CALC website. A number of members have commented that the Conference programme is one of the best programmes ever.



[Tallan \(Talent-Driven Innovation\)](#) has kindly provided sponsorship for the conference, and CALC is very grateful for this support.

### Nominations for CALC Council positions – 12 March 2019 deadline

At the CALC General Meeting on 2nd April there will be an election for all of the positions on the CALC Council.

Nominations for the some of the positions have already been received. Nominations received, plus nominees' statements, can be viewed on CALC's website's [conferences page](#).

This is a great opportunity for you to contribute to CALC's important work—  
--in promoting cooperation in matters of professional interest among legislative drafters, and  
--in promoting the drafting of clear and effective legislation in the Commonwealth.

In particular, more nominees are required for the 2 non-executive Council member positions for most of the regions (Africa, Asia, Europe, the Americas, and Australasia and the Pacific).

Full CALC members who are thinking about standing for those positions, or other positions, for the 2019-21 Council, should finalise and send in their nominations as soon as practicable.

Please email your nominations to [Ross.Carter@pco.govt.nz](mailto:Ross.Carter@pco.govt.nz) by 2pm (Livingstone time) Tuesday 12 March 2019. (Livingstone time is Central Africa Time or 2 hours ahead of GMT/UTC. So, 2pm (Livingstone time – CAT or UTC+2) Tuesday 12 March 2019 is therefore 1am (Wellington time – NZDT or UTC+13) Wednesday 13 March 2019.)

## Commonwealth Secretariat activities



The Law Ministers and Attorneys General of Small Commonwealth Jurisdictions met in London on the 4th and 5th October 2018. I prepared a paper for the meeting and presented it on 5th October. The paper covered CALC's activities and how these might be supported by Ministers.

The paper focused on the global shortage of experienced legislative counsel, the importance of legislation being drafted properly to support the rule of law and the need to provide high quality training and development opportunities for legislative counsel. The paper provoked much debate amongst Ministers.

The Commonwealth Secretariat is keen to follow up on the points made at the meeting. To that end, Adrian Hogarth and I met with Secretariat staff in January to discuss how CALC could further support the Secretariat. The Secretariat hopes to send a questionnaire to member states to assess the ways in which the Secretariat, working with CALC, can help to address their concerns.

## Standing down as President

I will be standing down as President at the 2019 CALC Conference. When I stood for election as President two years ago, I would not have imagined that my time as President would have coincided with the period of constitutional turmoil caused by Brexit and the continuing absence of government in Northern Ireland. During my time as President I have been able to build on the work done by previous Presidents and Councils by cementing further links between CALC and associated organisations such as the Commonwealth Secretariat, the Institute of Advanced Legal

Studies, and others. I have greatly appreciated the work done by CALC Council members throughout my term as President and, in particular, by Ross Carter and John Mark Keyes. The Secretary and Treasurer carry a substantial burden and Ross and John Mark carry out their work with great enthusiasm. Although Madeleine MacKenzie stood down as Treasurer some years ago, she is still assisting CALC by ensuring access to our bank account in Scotland and we continue to be grateful to her. Peter Quiggin, our previous President, has also provided invaluable support and assistance throughout this period.



One of the things I had hoped would happen during my period of office was that CALC would hold a conference in Africa and at least one regional conference. CALC has managed to hold two regional conferences (one in Canberra and one in Jersey) and we are looking forward to our first African conference in many years.

We now have over 2,000 members, an increase of over 10% from the figure recorded at the Melbourne Conference in 2017. Our advertising revenues have increased, which provides a healthy financial cushion for the coming years.

*The Loophole* and the *CALC Newsletter* continue to publish high quality articles and information. There cannot be many professional journals which have such a long waiting list for publication!

### **And finally . . .**

It has been a privilege to serve CALC members for the past two years, and get to know many of you better, and I look forward to seeing as many of you as possible in Livingstone in April.



**Brenda King**

CALC President, February 2019



(with John Moloney and Dr Duncan Berry)



## CALC Conference — April 2019, Livingstone, Zambia



The 2019 CALC Conference will be held in Livingstone, Zambia, from 1 to 3 April 2019.

**Programme**—Click here for the [Conference programme](#) and [information paper](#).

**Registration**—To register, click [here](#).

**Accommodation**—Members should book accommodation directly with the [Avani Hotel](#). It is essential that you quote CALC when booking and ask the hotel to note this on the booking. Lynwin Reid, who is looking after our conference booking, will book rooms manually if booking requests are directed to him. Lynwin’s address is [lreid@minor.com](mailto:lreid@minor.com). Members are advised to book accommodation as soon as possible as rooms are booking up quickly.





# SAVE THE DATE

[www.commonwealthlawconference.org](http://www.commonwealthlawconference.org)

## Will you be attending CLC 2019?

The CLC 2019 is tailored to the interest of the following professionals:  
Judiciary, Constitutional Lawyers, Corporate Lawyers, Commercial Lawyers,  
Government Lawyers, Legal Drafters, Human Rights Lawyers,  
Legal Professionals, Practice and Chambers Managers,  
Academics, Law Students, Those with an interest in the legal aspects of the  
Commonwealth, Those who would gain by a broader understanding of  
current Commonwealth legal issue.

## Join us

at the Avani Hotel, Livingstone, Zambia  
in April 2019



Dear Delegate,

The Commonwealth Lawyers Association is delighted to be partnering with the Law Association of Zambia for the 21<sup>st</sup> Commonwealth Law Conference.

The Conference entitled "The Rule of Law in Retreat? Challenges for the Modern Commonwealth" is both current and relevant to all those who seek to uphold the rule of law, not just in the Commonwealth. In our shrinking world where resources are stretched, we must be resilient and find new ways to work together to meet continuously changing priorities.

The programme promises to present topics which will interest lawyers, judiciary, academics, and law students from all over the Commonwealth including sessions on challenges to the profession including the growth of Artificial Intelligence and Technology, Environment, and Alternative Dispute Resolution. We have also included contemporary legal topics such as Freedom of Expression.

For sponsors this is a unique opportunity to connect with an international audience senior lawyers and law firms who want to hear the latest news and see the latest products on the market.

Outside the conference sessions there will be time to take in the natural surroundings and enjoy the warm hospitality of our Zambian hosts, catch up with old friends for a coffee, or make new connections that will last long after the conference is over.

I strongly recommend that you register to attend the 21<sup>st</sup> Commonwealth Law Conference, set against the outstanding natural beauty of Victoria Falls it is a great place to enjoy with friends and family and I look forward to meeting you there!



R. SanthanaKrishnan  
CLA President

### **Sponsorship and Exhibition Opportunities**

The CLC 2019 provides a wide range of sponsorship and exhibition opportunities where delegates will be able to stay up to date with all the latest products and services during the conference refreshment breaks whilst providing sponsors and exhibitors the opportunity to showcase their brand, products and services to a wide range of delegates.

For more information about the conference, please visit:

[www.commonwealthlawconference.org](http://www.commonwealthlawconference.org)



# CALC Europe Region Conference in Jersey, 2018 — Delivering Brexit: Legislative Sprint or Marathon?

Conference report from **Lucy Marsh-Smith**, Principal Legislative Counsel for Jersey



The CALC Europe Region held its first ever conference on 20 and 21 September 2018 in Jersey. The title of the conference was “Delivering Brexit: Legislative Marathon or Sprint?”

## Introductory session

The conference was opened by CALC’s President **Brenda King**, First Legislative Counsel of Northern Ireland. **Lucy Marsh-Smith**, Principal Legislative Counsel for Jersey and one of the representatives for the Europe region of CALC, then welcomed everyone to the conference. Concerns, she said, which arose at the time of the planning of the conference that it might be taking place too late because Brexit would be resolved by the Autumn had proved unfounded. There was much still to be resolved as the parameters of Brexit were, even then, not finalised. Brexit was certainly proving to be a marathon, with a sprint finish.







Jersey's Attorney General **Robert McCrae QC** continued Jersey's welcome, speaking of the Island's special relationship with the UK. Since the connections with the English Crown began [in 1066] the Channel Islands had enjoyed a near-unique status, having never been subsumed into UK. Brexit presented an unprecedented challenge. Ensuring that the statute book continued to function in the event of a no-deal scenario was a high priority. There was ongoing dialogue with the UK over policy areas such as fisheries, customs, and intellectual property. In Jersey, despite its size, the workload was similar to that of a nation state. The effect of Protocol 3 to the UK's Treaty of Accession to the EU meant that Jersey was treated as if it were within the EU in some areas and as a third country in others. There were, consequently, different considerations for Jersey than for the UK in the Brexit scenario. The conference should be a

fascinating and creative time, strengthening cooperation and providing a platform for shared learning.

Former Bailiff and former Minister for External Relations **Sir Philip Bailhache** then gave the keynote address. It was a pleasure, he said, for Jersey to host this conference at a time of such constitutional importance. The arrangements between Jersey and the EU had worked well. It was Jersey's hope that they could be replicated in future, although it was recognised that for a number of reasons, some political, securing such arrangements would not be straightforward or swiftly accomplished. Brexit could lead to difficulties in the relationship between the Crown Dependencies and the United Kingdom. Jersey had, however, by passing appropriate legislation, put itself in a position to be able to incorporate, post Brexit, such principles of EU-derived law as were in its interests. He expressed a hope that the degree of autonomy in foreign affairs entrusted to Jersey and other territories would continue and concluded by assessing that Brexit would be more of a sprint than a marathon with Jersey's drafters being well up to the challenges that this would pose.



## Session 1

The first session looked at the legislation relating to Brexit from a British mainland perspective.



**David Cook CB**, Second Parliamentary Counsel at the Office of Parliamentary Counsel in London, spoke first, about the UK Brexit legislation, which he was responsible for drafting. He outlined the legislation so far, notably the European Union (Withdrawal) Act 2018.

A lot of secondary legislation was needed to make the statute book work - an estimated 800 SIs according to the former Secretary of State for Exiting the EU. Brexit was a far bigger task for the UK than for Jersey. In 2017 there were around 20,000 EU laws plus an extra 1,600 to take effect before the UK left the EU. The continuity principle required a huge amount of EU law to be continued. Of particular interest to drafters was the status of retained EU law and the extent to which it should be amendable by secondary legislation.

Turning to the Withdrawal Agreement Bill, this would establish an implementation period and save the European Communities Act 1972 until the end of 2020 (despite its repeal by the Withdrawal Act). The Bill raised a number of issues, particularly citizens' rights and other separation matters, as well as the financial settlement.

The drafting challenges were (1) the scale and complexity of the task (2) the huge volume of EU law and (3) its uncertainties, (4) the range of departmental and other stakeholders and

(5) the importance of scrutiny. Drafters needed to keep an open mind. It was important to stay open to demonstrable improvements and to do as good a job as possible, to remain focused on the main goal and try and achieve internal consistency. If the courts came into play, which was inevitable, they could then see the overall purpose behind the changes being made.

The next 2 speakers, from Scotland and Wales, focused on the lack of agreement between their countries' legislatures and Westminster on whether the UK could legislate for them in relation to Brexit or whether these matters fell within the matters devolved to the two legislatures.



**Willie Ferrie**, a parliamentary counsel from Scotland, gave a drafter's reflections on withdrawal legislation from a Scottish perspective. He was the drafter of the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill. This made similar provision to the Withdrawal Act. The Bill had not had assent as there was a Supreme Court hearing about the competence of the Scottish Parliament to legislate in this area. However the UK legislation was not acceptable to the Scottish Government under Sewel Convention, whereby Westminster does not normally legislate for Scotland on devolved matters without its consent.

The Scottish Bill had a number of similarities to the Westminster legislation. The provisions as to saving and

incorporation mirror it deliberately. However, there were some differences. The power to fix deficiencies was not the same, for example. There was power to amend the Bill to align with the UK Act but more changes were likely to be needed, for example, amendments made by the UK Withdrawal Agreement Bill.





**Dylan Hughes**, First Legislative Counsel (Y Prif Gwnsler Deddfwriaethol) for Wales, presented a drafter's reflection on the withdrawal legislation from a Welsh perspective. The European Union (Wales) Act was to be repealed as part of an agreement between Westminster and Cardiff over the terms of the Withdrawal Act. The awaited Supreme Court ruling would, however, affect the extent to which Wales too can use its devolved powers to legislate in this area.

Retained UK law within Wales was a devolved competence and Wales had to stay within devolved powers. The aim was to try to mesh or dovetail with the UK Bill. Regulations would make clear what amounted to EU-derived Welsh law, but in practice they were highly complex, especially

as they were dual language. Without the Regulations the UK Act would apply, providing some comfort. Wales was concerned only with purely Welsh legislation; the UK Government was working on the rest in consultation with Wales.

Empowering correcting legislation would give rise to various technical challenges, particularly where there were inconsistencies between the Welsh and English language texts of Welsh legislation. These difficulties included whether references to EU legislation were ambulatory and the status of non-retained directives or repealed EU instruments. However, there was an unforeseen benefit in that this exercise would enable the tidying up of areas of uncertainty. Prioritisation of work would, however, be necessary and difficult.

## Session 2



**Duane Allen**, a legislative drafter in the Isle of Man, spoke about statutory interpretation post Brexit. He pointed to the current supremacy of EU law and the difficulties that can arise in interpreting EU legislation because of the differences between European theories and principles of interpretation, on the one hand, and those emanating from the common law, on the other. These differences in approach were likely to be particularly stark, and to be a cause of difficulty, in relation to the interpretation of retained EU law after Brexit.

## Session 3

The second day of the conference considered Brexit from the point of view of the Crown Dependencies and Overseas Territories.

**Matthew Berry**, a senior legal adviser in the Law Officers' Department in Jersey, spoke on managing the legislative implications of Brexit from a Jersey perspective. Jersey had only a small team but the issues were less complicated. Outlining Jersey's relationship with the EU via Protocol 3 he observed that Jersey had chosen to align with the UK and the EU in various areas in which it was not bound by EU law, for example, the financial sector, employment law and consumer protection.



Jersey's European Union (Repeal and Amendment) (Jersey) Law 2018 was similar to the UK Withdrawal Act, repealing the Law giving direct application to EU law in Jersey. It also amended the EU Legislation (Implementation) (Jersey) Law 2014, which already enabled Regulations to implement EU Law domestically. It would be for the States Assembly to decide, using this power, the extent to which directly applicable EU law would be incorporated into Jersey's domestic law. New powers would enable the Assembly to make

Regulations to implement the UK withdrawal agreement (if any). There would be power to make corrections to ensure a smooth transition and to implement swift changes to domestic legislation needed as a result of Brexit, in some cases by Ministerial Order.

A major task had been identifying and analysing what needs adjusting in terms of domestic legislation, which required systematic prioritisation of amendments. Another challenge derived from the unexpected effects of Brexit such as the proposed extension of the Vienna Convention on Motor Traffic which enabled the issuing of international driving permits. Countries bound by the Convention had a duty to test the roadworthiness of vehicles, so Jersey had to set up a road testing regime quickly.

Key to Jersey's success had been the co-operation of Jersey politicians with each other and with officials in the largely non-party political system.

**Lovette Tannock**, an assistant parliamentary counsel in Bermuda, spoke about Bermuda's relationship with the EU in the context of insurance. Bermuda has a massive insurance market both for tax reasons but also because Bermudian companies had access to US and Canada insurance markets. Bermuda also had major insurance business with EU insurance companies. Brexit was not expected to affect Bermuda's insurance market as Bermuda had got Solvency II recognition with the EU and therefore remained open for (EU) business.



**John Wilson**, a consultant legislative drafter with wide experience of the Commonwealth but now based in the UK, entitled his talk "Common Law



for a Commonwealth”. He extolled the importance of the Commonwealth post-Brexit and reminded us, drawing on points made by Duane Allen the day before, that we share a common law tradition to which civil law principles were largely alien.

## Session 4



The conference then moved on with a session loosely connected with the problems associated with having land borders with the EU in terms of the implications for legislation. **Matthew Heydon**, Legislative Counsel from the Sovereign Base Areas Administration, Cyprus, (namely Akrotiri and Dhekelia), spoke first.

Matthew outlined the history of the Sovereign Base Areas (SBAs). The future was uncertain post-Brexit. He referred to various provisions and objectives having practical bearing on the legislation that applied or should apply within the SBAs, in particular a need to ensure that there were no customs barriers between the SBAs and the rest of Cyprus, as well as consistency between the laws applying in the SBAs and in the rest of Cyprus. The methods by which these objectives could be achieved was explained and it became clear that no perfect solution had, as yet, been found.

**David Kelly**, Advisory Counsel from the Office of the Attorney General in Ireland, then spoke about the impact of Brexit on the Common Travel Area (CTA). The CTA, inter alia, enabled a person who lawfully enters any jurisdiction in the British Isles or the Republic of Ireland to enter any other jurisdiction or the Republic without the need for any further checks.

David outlined the history by which the current relationship between the UK and the Republic of Ireland came about. He then explained that the combined effect of British and Irish Statutes in relation to the CTA was that the CTA was relevant not only to travel, as referred to above, but also to the rights of British nationals in the Republic of Ireland, and Irish nationals in the United Kingdom, in relation to matters including residence, working, voting, education and medical treatment. The Irish statute book would need to be updated to ensure that the CTA-related rights of British



nationals continued, as was contemplated by the Protocol on Ireland/Northern Ireland to the Draft Withdrawal Agreement, following the departure of the United Kingdom from the EU.

**Paul Peralta**, who headed the team of parliamentary counsel in Gibraltar, entitled his talk “Life at the fringe”: Brexit and Gibraltar”. He outlined Gibraltar’s history, notably as a British possession since 1704 but one that Spain continued to claim sovereignty over, including the closing of the frontier by Franco in 1969 resulting in supplies having to be sent from the UK by sea. Though the terms on which the UK joined the European Communities were designed to preserve Gibraltar’s status as a free port and carved out the customs union and other economic arrangements, Spain joined the EC in 1986 with its claim to sovereignty remaining. Joint sovereignty with Spain was overwhelmingly rejected by Gibraltarians in 2002. The 2016 vote for remaining in the EU was similarly overwhelming, with people being concerned that Brexit could compromise Gibraltar’s economic existence, with the risk too that without the UK’s membership Spain could intimidate them (Gibraltar) under the cover of the EU.



Paul discussed the problems with Gibraltar’s borders. Spain contended that the 1704 cession applied only to the port and not the surrounding waters, Spanish action leading to diplomatic activity and even the firing of a warning shot by the British against the Spanish navy. Meanwhile the airport was built on land not ceded in 1704 resulting in air links now being limited to the UK and Morocco and concern that Spain would make things difficult for passengers with visas if flights needed to be diverted, affecting not only expansion but the viability of certain routes. Moreover the 1,200 metre long land border was a litmus test for UK-Spain relations and could be used as a political tool, a return to the 2013 rigorous border checks and consequent long delays being feared post-Brexit.

The guidelines for the withdrawal negotiations included a provision – clause 24 – that “no agreement between the EU and the United Kingdom may apply to the territory of Gibraltar without the agreement between the Kingdom of Spain and the United Kingdom”. This clause pushed Gibraltar to the side lines and gave Spain a veto on how any agreement entered into by the UK and the EU would apply to Gibraltar. It confirmed Gibraltar’s place as being not at the heart of the process but at the fringe. On a positive note the UK has made public assurances to look after Gibraltar’s interests.

## Session 5

This session and the next examined specific areas of work affected by Brexit and the first topic to be considered was Financial Services, discussed in a joint presentation by two people from Jersey.



**Tom Wherry**, Lead Policy Adviser for Financial Services and Brexit, spoke about the possible consequences for Jersey's financial services policy and legislation resulting from Brexit. Tom explained the immense economic significance to Jersey of financial services – 54% of all economic output. He observed that legislation based on EU principles or concepts had been introduced in Jersey, although there was no legal requirement to do so, where doing so was perceived to be advantageous to Jersey. Jersey was a

conduit for foreign investment into the EU (excluding the UK) to a considerable extent, making the EU very important economically to Jersey. The current uncertainty as to the form Brexit would take was identified as the main cause of the difficulty in deciding how Jersey should respond to Brexit. In policy terms he felt it was important to make sure the statute book worked post-Brexit, avoiding both gold-plating and a bonfire in relation to the UK's "onshoring" of EU legislation.



**Karen Stephen-Dalton**, a legislative drafter, reviewed Jersey's relationship with the UK and with Europe. Jersey was treated as third country for EU law purposes in the context of financial services. Jersey's financial services industry gained access to EU markets by means of EU legislation providing for third country access. Access was granted after an assessment of whether the Island had regulatory (and other) standards in place that were considered equivalent to the corresponding EU legislation, and

Jersey had voluntarily enacted legislation implementing the international standards on which EU financial services legislation were based. Jersey law, in a number of financial services areas, had been drafted in such a way as to maximise the likelihood of their being



regarded, and they had been regarded, as equivalent. The legislation would need to be amended if it were still to be regarded as equivalent after Brexit. Making the required amendments was already underway and was sprinting towards the planned finish line.

Then it was the turn of both Jersey and Guernsey drafters to consider Brexit in the context of international sanctions. **Kate Rabey**, a Crown Advocate from Guernsey, spoke about Guernsey's approach to the International Sanctions Regime after Brexit,

summarising it as implementation not initiation. She explained the origins of sanctions in the United Nations charter of 1945. She then spoke about developments since 1980, when the EU's policy of making sanctions began, its subsequent intensification and the fact that Guernsey had established its own legislative framework to impose sanctions, albeit that the Bailiwick largely only implemented sanctions



originating elsewhere. Following Brexit, Guernsey's sanctions regime as reflected in legislation, would enable it to implement UN, EU and UK sanctions Bailiwick-wide by means of Regulations and to give effect to UN measures on a temporary basis pending implementation by the EU. The draft Sanctions (Bailiwick of Guernsey) Law 2018 would enable modifications of sanctions measures to ensure compliance with international standards and extension of information-gathering powers to cover assessment of risk and listings recommendations to the UN. Once the Act was in force a political decision would be taken about which type of sanctions measure to implement, but Guernsey would be unlikely to implement UN sanctions directly unless the UN introduced a challenge mechanism. EU measures would continue to be implemented for the foreseeable future.



**Matthew Waddington**, the Jersey legislative drafter leading on Brexit matters, gave the Jersey perspective on Brexit and Sanctions legislation. The history and current position in Jersey was very similar to Guernsey. Since the European Communities Legislation (Implementation) (Jersey) Law 1996 there has been a power to implement sanctions by Regulations made by the States Assembly and this Law was amended in 2000 to allow for implementation by Ministerial Order, which was much quicker. In 2012 a

quarter of all Jersey Orders made related to EU sanctions, though since 2014 the workload had lessened due to the European Union Legislation (Implementation) (Jersey) Law 2014

allowing for ambulatory references to be made to the annexes to EU Regulations, saving a lot of updating. Also applying to Jersey were a number of Orders in Council under the United Nations Act 1946.

Under the European Union (Repeal and Amendment) (Jersey) Law 2018 the power to implement sanctions by Order would be replaced by a return to implementation by Regulations, thus limiting the controversy surrounding Henry VIII powers. However the draft Sanctions and Asset-Freezing (Jersey) Law would reproduce the power to implement EU sanctions by Order and add an equivalent power to implement UK sanctions by Order. The new Law would bring all existing asset-freezing legislation into one Law and there would be some further decluttering of the statute book as a result of these provisions moving.

## Session 6

The second session on specific areas affected by Brexit discussed aspects relating to agriculture, trade and customs legislation.

**Dr Robert Black** from the Natural Resources Institute, University of Greenwich, spoke about the UK's plant biosecurity legislation after Brexit. Drawing



on several official UK sources he explained that the departure of the UK from the EU would raise a number of difficulties in relation to food safety and the life and health of plants and animals. Problems might arise from possible uncertainty as to the applicable law, as much of the UK's law in relation to biosecurity was, or derived from, EU law. In particular, most of EU plant health legislation - which largely appears in EU directives that have been implemented in the UK by statutory instrument - was in a wide sense related to the Single Market. Leaving the Single Market would affect plant health controls in particular, along with related matters like invasive species and the use of pesticides. After Brexit plant health borders would retract back to original national borders. Practical difficulties might also arise as bodies that operate in the field of biosecurity might no longer be available in the UK. Robert also pointed to other post-Brexit issues that would have to be considered, including constitutional issues arising from the special biosecurity status of Northern Ireland, the current non-compliance of legislation in the UK with the International Plant Protection Convention 1997, the fact that UK certification of plant importers might be required, how to deal with the volume of legislation relating to invasive species that would

be required to be enforced at the national level and issues related to the licensing of pesticides, which licensing is currently carried out at the EU level.



Advocate **Victoria Bell**, a legal adviser in Jersey's Law Officers' Department, spoke about Jersey's trade and customs union. She explained Jersey's constitutional relationship with the UK and the Royal Charters that precluded the imposition of import duties on goods arriving in the UK from Jersey, then Jersey's current relationship with the EU, which enabled it to export agricultural products to the EU. Victoria explained that this would change at Brexit and it would be necessary for Jersey to find new solutions. Consideration was being given to seeking the extension to Jersey of the UK's membership of the World Trade Organisation. The possibility of a new customs arrangement with the UK was also being considered and a legislative regime was being established that would enable any detailed regulations to be made expeditiously once the details of the

desired economic arrangement have been agreed. If the Crown Dependencies were to participate in any future economic partnership between the UK and the EU, a proportionate and tailored approach would need to be taken that reflected their different starting point. Any new solution would have to take account of the needs and interests of the Islands and their existing unique relationship with both the UK and the EU, as well as upholding the current constitutional position.





## Special session



**Matthew Bell**, Head of Legal Services at The National Archives, was the last speaker, on the publishing and consolidation of EU Instruments: meeting the legal information challenge of EU Exit. Matthew explained that the Legislation Team at The National Archives (TNA):

1. Maintained and operated the [legislation.gov.uk](http://legislation.gov.uk) website, which was the official public source of UK legislation and had 20 million hits each day. There were about 110,000 documents on the website but this was about to double with Brexit.
2. Supported legislative drafters by providing the Statutory Instrument template, registering new SIs and publishing all new UK legislation.

3. Produced revised legislation, updating all primary legislation from across the UK and capturing amendment information from all secondary legislation.

He explained the importance of ensuring that up-to-date legislation of all kinds continued to be available after Brexit. Having outlined the huge volume of legislation his office dealt with, Matthew referred to the provision in Sch 5, paragraph 1 to the European Union (Withdrawal) Act 2018, which required the Queen’s Printer to make arrangements for the publication of each relevant instrument that had been published before exit day by an “EU entity”, defined to cover EU regulations, decisions and tertiary legislation. In addition TNA needed to make a number of changes to its systems, processes, models and tools to enable it to fulfil its current obligations in respect of UK legislation, for example the UK SIs that were being drafted to modify EU Regulations.

Exit from the EU would mean a large body of EU legislation being converted into a new form of UK legislation that needed to be published and maintained as an official and freely available source of law, post-Exit. It was important to note that TNA did not assert that this body was retained law, only “relevant” EU law. TNA would need to make additional changes to its systems, processes, models and tools to support it to fulfil its new obligations in respect of EU legislation. The objectives for TNA were to:

1. Support departments in their preparation and policy making, including legislating pre and post-exit;
2. Fulfil the Queen’s Printer’s new duties under the Withdrawal Act; and

3. Aid legal certainty post-exit with up to date content on the website for service users and data re-users.

TNA's approach involved:

- Identifying, extracting and analysing EU data;
- Converting the data into formats that could be published on legislation.gov.uk;
- Changing the format of the website;
- Uploading content;
- Changing the publishing system, the editorial system and resourcing editorial work;
- Creating a new web archive collection.



In preparing the material for publishing on legislation.gov.uk TNA were capturing, analysing and converting the XML data that EUR-Lex holds. One of the challenges was deciding what to publish, as it was not easy to identify the various categories of EU documents because their classification was inconsistent. In addition, EU legislation was not drafted as consistently as UK legislation. However, there were real benefits in, rather than simply publishing EU

legislation as it was in PDF format, converting it into a style and format akin to UK legislation and with improved navigation and a table of contents. Consideration had been given also to how the anticipated amendments to the new body of legislation would be drafted. User research would be key to how TNA ultimately should present the new body of legislation on the website in a way that could help users understand what they were viewing on the site and what their expectations were as to the content.

## Closing remarks



**Lucy Marsh-Smith** closed the conference with thanks to the Pomme D'Or Hotel, the CALC organising committee, colleagues in Jersey's Legislative Drafting Office and the States Greffe and the conference sponsors, Xcential. She thanked the speakers for their high quality presentations and the delegates for coming. The next CALC Europe Region conference was planned to take place in Wales in 2020.



**LEGISLATIVE DRAFTING OFFICE**

*Turning policies into Jersey law*



**Editor's note: Jersey Conference papers available now via CALC website**

The Jersey Conference papers are available at [calc.ngo](http://calc.ngo).

Log in and go to the Members' area [Conference papers page](#).



# CALC Europe Region Conference in Jersey

Editor: Many thanks to John Wilson and Brenda King for emailing many of the following photographs









Jersey War Tunnels offers a unique opportunity to explore the underground tunnel complex of Höhlengangsanlage 8 (Ho8) which was constructed by forced and slave workers during the German Occupation of Jersey.

By its very nature, the tunnel complex contains certain hazards. Whilst every effort is taken to ensure the safety of our visitors, we politely ask that attention is paid to all signs and notices, low doorways and uneven surfaces. For your comfort, please ensure that appropriate clothing is worn to reflect the lowered temperatures (10-15C).

Children under the age of 16 must be accompanied at all times.





**Alex Gordon**  
@cribbagepegging

Follow

Legislative drafting conference, delegates from all over the British Isles and the Commonwealth.



**Alex Gordon**  
@cribbagepegging

Follow

The crucible of legislative democracy in Jersey.



8:38 AM - 20 Sep 2018



**THE LAW DRAFTER'S SONG**  
**(with apologies to W. S. Gilbert)**

*Rising early in the morning, we ensure  
before we go  
That we sharpen up our pencils for our  
work at QGO. (1)  
Then we start without delay  
On the duties of the day.*

*First we polish off some sections  
Of a Bill about elections,  
With Explanatory Memo to be sent.  
Then if business isn't pressing,  
We may take a Chinese lesson,  
Or localise an Act of Parliament. (2)  
Then we probably review the list of books  
For keeping other colleagues off the hooks; (3)  
Or receive with ceremonial and state  
An interesting Peking delegate. (4)  
After that we might take off a  
Little time to have a coffee  
(Notwithstanding that we're busy  
And despite the AG's ban.) (5)  
Write a memo literary  
For some Branch's Secretary  
(They are shaky in their spelling  
So we help them if we can.) (6)  
Next we help in the translation  
Of a piece of legislation,  
Then we mug up on our Roget  
And our Concise OED.  
Spend an hour in placing commas -  
Though they'll soon be taken from us - (7)  
Or we draft a legal notice  
For the Governor in C. (8)*

**Chorus**

*Oh, the other lawyers sing  
Of the boredom of drafting,  
Yet the duties are  
delightful  
And the privileges free.  
But the privilege and  
pleasure  
That we treasure beyond  
measure,  
Is to draft a legal notice  
For the Governor in C.*



After luncheon, which is in some  
Cases just a little 'dim sum',  
If we've nothing in particular to do,  
We may draft a proclamation,  
Or amend a regulation,  
Then we possibly repeal a clause or two.  
Then we help a fellow drafter on their path,  
With a sentence or perhaps whole paragraph.  
Or we put on a smart jacket (not a hat),  
For a meeting at the Secretariat.  
You may think it not surprising  
If we find our tempers rising -  
Rushing hither, rushing thither, up and  
down and to and fro;  
While Committee members ponder  
On our drafting, and we wonder  
If we'll have to do it over, or if they  
will let it go.  
Then the Chairman of the meeting  
Makes a comment, which is fleeting,  
But it's definitely praise  
About the drafting that's begun.  
With a pleasure that's ecstatic  
We retire to our attic  
With the gratifying feeling  
That our duty has been done.



**Chorus**

Oh - the other lawyers shirk  
All the tedium of our work,  
But of pleasures there are many  
And of worries there are none.  
And the culminating pleasure  
That we treasure beyond measure  
Is the gratifying feeling that out duty has been done

**[Notes**

1. Queensway Government Offices, Hong Kong, where the Law Drafting Division is situated.
2. The 'localisation' of British laws which previously applied to Hong Kong was a major task in the years before 1997.
3. I was LDD rep. on the Chambers Library Committee for several years.
4. The LDD was often involved in briefings for mainland Chinese lawyers before 1997.
5. An 'in' joke about avoiding the use of 'notwithstanding' as part of a move towards plain English; also about a ban on long coffee breaks.
6. Government departments were called 'Branches' before 1997; now called 'Bureaus'. No change otherwise.
7. Probably by the ever-assiduous Law Clerks in LDD.
8. Governor-in-Council, for those born after 1997.]

(John F Wilson, Hong Kong, Sept. 1989)

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