



Scrutiny Office

Corporate Services Scrutiny Panel Quarterly Hearing

THURSDAY 2nd NOVEMBER 2017

Panel:

Deputy John Alexander Nicholas Le Fondré of St. Lawrence

Deputy Simon Muir Brée of St. Clement

Senator Sarah Craig Ferguson

Witnesses:

Senator Sir Philip Martin Bailhache – Minister for External Relations

Kate Nutt - Head of Service, External Relations

Tom Le Feuvre - Head of International Agreements, External Relations

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[15:34]

Deputy J.A.N. Le Fondré of St. Lawrence:

Good afternoon, welcome, everybody to the quarterly hearing with the Minister for External Relations. Just for the avoidance of doubt we have two hearings today, this one, which is about an hour and another immediately afterwards. We will have a 5-minute pause from one

to the other and hope to keep reasonably to time. Effectively, we will close this first one – we will shut all the systems down and everybody can go out. Then we will bring everybody back in to restart it. That just keeps it clean in terms of recording and all that sort of stuff. Minister, you have the notice on your left, which I am sure you are fully aware of but we always draw your attention to it. People in the public seating should keep mobile devices off and do not record and, for the purpose of the tapes we will start going round. So, Deputy John Le Fondré, Chairman of the Corporate Services Scrutiny Panel.

Deputy S.M. Brée of St. Clement:

Deputy Simon Brée, Vice-Chairman of the Corporate Services Scrutiny Panel.

Senator S.C. Ferguson:

Senator Sarah Ferguson, member of the panel.

Minister for External Relations:

Philip Bailhache, Minister of External Relations.

Head of Service, External Relations:

Kate Nutt, Head of Service, External Relations.

Head of International Agreements, External Relations:

Tom Le Feuvre, Head of International Agreements, External Relations.

Deputy J.A.N. Le Fondré:

Welcome, everybody, to the hearing. Just for the avoidance of doubt, we have a set of questions that we want to go through. Minister, as I am sure you are aware, if we think we have had the answer and we need to move on, we will give you an indication. Normally, if a hand goes up, we probably need to start, otherwise we can all get drawn into very fascinating areas sometimes. To kick off, Minister, you recently signed a ministerial decision in conjunction with the Law Officer's Department which sets out the law drafting instructions for repealing Jersey laws that relate to our relationship with the European Union. The attached report states that the intention is to lodge the law on 26th January and to debate the law on 6th March 2018. Do you feel that timetable is realistic and achievable, bearing in mind we have the elections in May 2018?

Minister for External Relations:

I hope so, Chairman, and I hope that we will have the co-operation of your panel in achieving those objectives because I am very keen that the States should have the opportunity to debate this law before the general election because there is a lot of work to be done once the law has been enacted, particularly in terms of the regulations that will follow thereafter. I appreciate that the time is tight, but we would certainly hope to engage with the scrutiny panel very shortly and would be happy to give an informal briefing so that the panel is able to scrutinise the draft legislation as soon as it emerges from the law drafting office.

Deputy J.A.N. Le Fondré:

As you are aware, there are various briefings arranged over the next 4 to 5 weeks. In the report you acknowledge that the timetable is very challenging, so, what contingencies have you made for any delay during the process that means Royal Assent cannot be achieved in April/May 2018?

Minister for External Relations:

I have not made provision for any contingencies. If it cannot be done, it cannot be done. We will then have to cope with that. However, with goodwill on both sides, it is achievable. It is a much more straightforward law than one might imagine. As a result of the way in which the law is going to be structured, many of the controversial elements that one has seen in the U.K. (United Kingdom) bill, which is before Parliament at the moment, will not be part of the Jersey bill. In particular, as I think I mentioned in the debate yesterday, in relation to the question of Henry VIII clauses and the over-delegation of authority to ministers to bring into force bits of European law, which is going to be the case in the U.K. and which is, as one can understand, highly controversial. We are not going to do that, so what we are doing, in essence, is just recognising, as the States recognised a few months ago, that the U.K. is going to leave the European Union and that, as a consequence, we have to repeal the 1973 law.

Deputy J.A.N. Le Fondré:

I will come back to that, but first I want to ask what will happen if the U.K. has not approved its own repeal bill? Can we do ours independently, subject to – or do we need to do it after theirs?

Minister for External Relations:

That is almost a legal question. If the U.K. leaves the European Union, which it is due to do in March 2019, then we need to repeal our protocol. Now, if the U.K. has not repealed its own legislation by then, I should have thought that that that will just be a rather chaotic legislative position in the U.K. We do not need to follow the U.K. into that chaos.

Deputy J.A.N. Le Fondré:

Just exploring what we touched on previously about the Henry VIII clauses, paragraph 18 of the report that was attached to the M.D. (Ministerial Decision) stages that the new law will allow ministers the ability to make further provisions by order. Can you just elaborate on that, explain the reasoning behind it, bearing in mind the comment about not having too great a transfer of power from the Assembly to the Executive?

Minister for External Relations:

I cannot visualise exactly what that paragraph in the report said and it may well be that there is to be provision in the principle law for some gaps to be filled by the minister by order. However, the principal business of importing into Jersey law that part of European law that applies directly to us at the moment is going to be achieved by regulations done under the repealing law. So, that will come back to the States. At that stage, the States will need to consider to what extent ministers should be empowered to fill in gaps by order.

Deputy J.A.N. Le Fondré:

Standing back from it – this is a personal view, it is not something that either of the panels has discussed – there has to be a balance between needing flexibility for situations one has not anticipated versus a permanent order-making power that may not be appropriate. Is there any contemplation, at this stage, of making order-making power, for example, if it is additional, time limited, during, perhaps, the Brexit period and the period of transition?

Minister for External Relations:

Maybe, and this is the kind of issue that we might like to discuss with your panel in due course. I have not gone into that detail. In some respects, clauses that fall automatically are useful but one needs to look at that in context.

Deputy J.A.N. Le Fondré:

Thank you. Before I move on has anybody any comments?

Senator S.C. Ferguson:

Does this law give us greater autonomy to make our own laws than currently exists through the requirement for laws to go to Privy Council for Royal Assent?

Minister for External Relations:

I am so sorry, Senator, it is my fault not yours, but I missed the first part of the question. Could you –

Senator S.C. Ferguson:

Does this law give us greater autonomy to make our own laws than currently exists through the requirement for laws to go to Privy Council for Royal Assent? Will it give us more?

Minister for External Relations:

It may be that the regulations that the States will be asked to make in due course will be able to change the laws that would otherwise require Privy Council sanction, so, if I have understood the question correctly, the answer is yes. The principal law is intended to confer the power on the States, by regulations, to change primary legislation where it is necessary to give effect to the U.K.'s leaving the European Union.

Deputy S.M. Brée

Can I just ask a follow-up there, Minister? Was that an intentional move, by conferring more power on the States Assembly to make and change laws through regulation?

Minister for External Relations:

Yes, because changing laws by the usual process of going through the Privy Council is much more time consuming than doing it by regulations. If the States is empowered to amend primary law by regulations then that change can come into effect after the Third Reading, whereas if we have to wait for Privy Council sanction it can take another 3, 4 or more months.

Deputy J.A.N. Le Fondré:

So, just to clarify, it might be the case that if amendments to certain legislation can only be through primary law it may be conferred as a tidying-up exercise, almost. It will be by regulation as a requirement.

[15:45]

Minister for External Relations:

Yes. We know that the U.K. is going to leave the European Union in March 2019, so suppose we get to January 2019 and we realise that there is some primary legislation that needs to be changed in order to accommodate the fact that the U.K. is leaving the European Union, then we have not got time to do that change to primary legislation by amending the law. The only way we can do it is by subordinate legislation.

Senator S.C. Ferguson:

Changing tack a little, Minister, what are the benefits for Jersey from the Chief Minister's recent visit to Washington during the annual meetings of the I.M.F. (International Monetary Fund) and the World Bank?

Minister for External Relations:

There were a number of benefits. He had the opportunity, first of all, to engage with a number of U.K. ministers. He was able to meet with the Chancellor of the Exchequer, he was able to have a long discussion with the British Ambassador in Washington, he was able to meet up – I think I am right in saying – with the Finance Ministers of Rwanda and Bahrain and the opportunity to have these conversations in once place is enormously valuable. At a gathering of that kind, a lot of key individuals come together in one place and instead of having to go to Washington and Bahrain and Rwanda, one can have a number of very useful conversations by killing, as it were, many birds with one stone.

Senator S.C. Ferguson:

Forgive me if this is a simplistic question, but does he attend the meetings of the I.M.F. and the World Bank?

Head of International Agreements, External Relations:

I accompanied the Chief Minister on that visit, alongside Richard Corrigan, who is our Chief Officer, Financial Services, Digital Competition and Innovation. The answer is yes. One of the key events during that week is an annual meeting of Commonwealth finance ministers and the Chief Minister is able to attend that meeting as part of the U.K. delegation. It is worth noting that Jersey was the only one of the U.K.'s dependent territories that was part of that delegation. That is an indication of the fact that Jersey has been very proactive in pursuing these relationships. A range of discussions takes place in plenary as well those sorts of meetings for which one has to have invited access. By participating in the way that we do, we benefit through the U.K.'s membership of those bodies.

Senator S.C. Ferguson:

You said that the P.M. attended the Commonwealth meetings, but did he actually go to an I.M.F. meeting, did he go to a World Bank meeting, and which ones were they?

Head of International Agreements, External Relations:

We can follow up with the detail on exactly which plenary discussions we attended. However, to give you an example, we attended one of the sessions at which the Managing

Director of the World Bank presented on productivity increases.¹ That was chaired by Priti Patel [MP], the International Development Secretary.² That was one of the I.M.F. and World Bank events that we attended. The way it works is a bit like Davos. A number of different plenary discussions take place at the same time. Some are open access for those people and delegations with a general invitation and then there are other meetings, for example the Finance Ministers' meeting, where there is more restricted access and one gets in through a country delegation. Yes, we attended a range of meetings. In addition to that, we had separate financial meetings that the Minister has referred to with the finance ministers [of Rwanda and Bahrain]. We also did a series of calls on Capitol Hill, where we met with a member of the New Jersey congressional delegation, we met with the new Deputy Assistant Secretary for International Taxation in the U.S. (United States) administration; and we also met with a member of the International Illicit Finance Committee, terrorist financing committee of the House of Representatives³. So, those calls are all designed to reinforce our U.S. relationships as well as the multi-national activity and then some bilateral meetings with key representatives from other countries. So, it is quite a mixed programme.

Senator S.C. Ferguson:

At our last hearing we asked about Jersey's progress in gaining membership of the World Trade Organisation. You stated: "It has been a much longer process than we would have wished." What progress have you made since our last meeting?

Minister for External Relations:

It has been a very long and protracted process because, as I think I said in the States yesterday, there are legal differences of opinion. In order to have the W.T.O. Agreement extended to us, we have to comply with a number of conventions relating to intellectual property. There is the T.R.I.P.S. (Trade-Related Aspects of Intellectual Property Rights) Convention, which is the most important one but in order to subscribe to the T.R.I.P.S. Convention we have to be able to satisfy the requirements of the Paris Convention and lawyers have changed their advice in the United Kingdom Government. Whereas we were progressing until the summer of 2016 on the basis that if we changed our laws in certain respects we would then open the door to ratification of the agreement on our behalf, the

¹ It was later clarified to the Panel that this was actually the President of the World Bank Group, Mr Jim Yong Kim. He led a discussion on the importance of human capital in a rapidly digitalising world economy.

² The Panel was later notified that The International Development Secretary was in fact a keynote speaker in that session, rather than the Chair.

³ It was later clarified that he was referring to the House of Representatives Financial services Subcommittee on Terrorism and Illicit Finance.

latest legal view has been to cast some doubt on the possibility of having a separate register of intellectual property in Jersey. We have had a separate register of intellectual property in Jersey, albeit a subsidiary one, for the last 50 years and that poses considerable difficulties for us. Our own legal advisers do not agree with the advice that has been given, and although we do not know this for certain, we suspect that the legal advisers of other departments in Whitehall share our view. None the less, there is a legal difficulty which we are working at and which is very current.

Deputy J.A.N. Le Fondré:

Yesterday, in the committee debate in the States, we discussed the fact that the Isle of Man had the W.T.O. regime extended to it quite some time ago. Would that have a separate intellectual property register?

Minister for External Relations:

I do not think so. However, I think that when the Isle of Man had the W.T.O. extended to it, there was no whiff of Brexit in the air and I suspect that the U.K. was rather more relaxed extending the agreement to the Isle of Man than it is now. It is looking at the agreement in the context of its own position when it comes outside the European Union because it will then have to negotiate a whole lot of adjustments to different schedules of the agreement to take itself out of the European Union schedule and have a separate one for itself.

Deputy J.A.N. Le Fondré:

Just out of curiosity – I think it was back in 1997 when the Isle of Man was brought in – do we have any idea why Jersey and Guernsey did not take up the offer at that time? Was it available to us or was it just ancient history and we just could not move on it?

Minister for External Relations:

I think that the difficulty was that a lot of legislative amendment had to take place in order to lay the groundwork for membership of the W.T.O. and we have done that groundwork now in that we have passed two or three fairly substantial laws dealing with intellectual property. Their preparation and enactment took quite a lot of time.

Head of Service, External Relations:

The Minister is absolutely right that it has taken a long time. However, we had a meeting with officers across government in Whitehall only a couple of weeks ago, involving all the key players including the Ministry of Justice and the Foreign Office. That was a step forward in getting everybody around the table along with our lawyers and our I.P.O. guys here as

well. We have had a response from them on the arguments that we put forward and we are now assessing those arguments and we will respond in due course. So it is plausible that we are now moving forward on this and we will make some progress in the very near future.

Deputy J.A.N. Le Fondré:

Good. What will happen – we all hope that we shall – if we do not get an extension of the agreement to Jersey, particularly is there is a hard Brexit?

Minister for External Relations:

If the W.T.O. does not apply to us then we shall not be able to rely upon its tariffs. Quite what effect that will have is difficult to anticipate at the moment because if we have freedom to trade with the U.K. and the vast bulk of our trade is with the U.K. it may not make a lot of difference. None the less, we do think, as a matter of policy, that it is important for us to have the W.T.O. agreement extended.

Deputy J.A.N. Le Fondré:

A finally query before we move on, is there a differentiation between goods and services? Are there different regimes or -?

Minister for External Relations:

There are, yes.

Deputy J.A.N. Le Fondré:

Do we have to meet different criteria? Is that the requirement?

Minister for External Relations:

Yes.

Head of Service, External Relations:

There are two different sets of schedules. At the moment we are working through those line by line to understand what the requirements would be on Jersey if we did have membership and where we think that would be beneficial and where it might not be so beneficial and we might need to request a reservation or a carve-out of some sort. So, there are two different regimes and we are working through that in minute detail.

Deputy J.A.N. Le Fondré:

And it is theoretically feasible that in a particular area one can have a carve-out?

Head of Service, External Relations:

We have to have both. We cannot have goods without services but within the pot of both those things, jurisdictions frequently do have carve-outs of all sorts of different areas.

Deputy J.A.N. Le Fondré:

The Chief Minister visited Brussels earlier this week. Given that you have previously dealt with the issues to do with, for example, blacklisting, do you not think that your presence at the meeting would have been beneficial?

Minister for External Relations:

I was in London when the Chief Minister was in Brussels and I was not going to be in two places at the same time. The Chief Minister and I divide up the responsibilities of conducting foreign relations to an extent and the lot fell upon the Chief Minister to go to Brussels this time while I was in another capital.

Deputy J.A.N. Le Fondré:

Just moving on to – I would not call it the blacklist, but the first list of non-co-operative jurisdictions under the common E.U. list of third country jurisdictions for tax purposes, which is a lovely description, it possibly due as early as the end of this year, we understand. Can you outline the work that you and your department have undertaken to ensure that Jersey is not included on the list?

Minister for External Relations:

It is a cross-departmental piece of work because it involves the financial services unit, the Chief Minister's department as well as the Ministry of External Relations with the assistance of our Channel Islands Brussels Office. Jersey and Guernsey are working closely together in this respect. The European Union has certainly announced that it wishes to create this list of non-co-operative jurisdictions by the end of the year and it is working to that programme at the moment. We have had the opportunity to make Britain's submissions to the E.U. We have not yet had the opportunity to engage face to face with the code of conduct group but we hope that will come before any final decision is made. It would be extremely unfair if any decision were to be made without giving the jurisdiction the opportunity to address any concerns that there might be.

[16:00]

Deputy J.A.N. Le Fondré:

Given the position of the U.K. within the E.U., is the U.K. still a member of the code of conduct group?

Minister for External Relations:

Yes, it is and the U.K. has been very helpful to us. Of course it is at the backs of our minds – and it is no doubt at the backs of the minds of a number of others too – that the United Kingdom is not going to be there in 18 months' time. So, whereas it may be convenient to rely upon the U.K. at this stage, we need to address any concerns that the E.U. has directly with – we need to build up some kind of rapport with the code of conduct group because when the U.K. is no longer a member of the E.U. we will be on our own.

Deputy S.M. Brée:

Minister, with regard to the potential for Jersey to be placed on the, for want of a better word, blacklist, one of the European Parliament's risk indicators leaps out. It states: "No corporate income tax or a zero corporate tax rate. The existence of a tax system with no corporate income tax or a zero corporate tax rate." We do qualify for inclusion on the blacklist under those terms. How are we going to counter that?

Minister for External Relations:

The fact that we have a zero tax rate is not, of itself, a cause for putting us on the blacklist because tax is not a competence of the European Union. So, what the European Commission has done is to use the existence of a corporate tax rate as a gateway for answering another question, which is whether companies in the Island have a sufficient economic substance and are not simply syphons, which are taking tax away from member states of the E.U. Obviously, we passed through the gateway because we have a corporate tax rate of zero and we have been asked to address this criterion 2.2 [on economic substance], which is different and which has led to a certain amount of difficulty because the E.U. has, itself, found it very difficult to identify what it means in terms of the criterion that it has drawn up. What is economic substance? What does it mean? We have not had a satisfactory answer to that question.

Senator S.C. Ferguson:

The E.U. continues to throw out legislation with monotonous regularity. We have had the Sanctions (North Korea) Order 2017 or the Milk and Dairies Order 2017. We are continuing to see ministerial decisions and legislation coming into force that relate to complying with the

E.U. legislation or sanctions, even if we are not in the E.U. At what point are we going to stop?

Minister for External Relations:

It is important to understand that these E.U. sanctions are usually – not always but usually – implementing the United Nations sanction. So, the world order, through the Security Council, has decided that there should be sanctions against North Korea and the E.U. implements those sanctions through its own legislation and we, in turn, use our own legislative mechanisms to give effect to the sanctions that have been implemented by the European Union. However, I think you can rest a little bit at ease, Senator, because it is not really the E.U. exercising its legislative power here. It is simply implementing a United Nations decision.

Senator S.C. Ferguson:

I can appreciate that. It was probably not a very good example. However, the E.U. legislation brackets milk and dairies. You know –

Head of Service, External Relations:

Well, I do not. I am afraid I am not completely up to speed with that particular regulation or that – but I would imagine that –

Senator S.C. Ferguson:

I am not asking what it is. I am just asking when we are going to stop getting all these things.

Head of Service, External Relations:

Once the U.K. leaves the E.U. and when we are implementing our own legislation there will still be a need, as there is now, to look at certain things that come out of Europe and ask ourselves whether we need to implement them, potentially for good neighbour purposes, potentially for trade purposes, for access. So I wonder whether that particular regulation is to do with safety and other sorts of checks.

Senator S.C. Ferguson:

It is not the content of them that I am asking about. It is the fact that they come down the railway line with a monotonous regularity and we keep just bringing them in. When are we going to stop having to do them?

Head of Service, External Relations:

Taking this example, I know that we do not supply milk but if we wanted to, we would have to meet certain health and safety standards and that would necessitate implementing certain European legislation. That is a choice that we have, Senator, it is not something that we have to do, and we have that choice at the moment.

Deputy J.A.N. Le Fondré:

So, the issue is equivalence, so even after Brexit if one wants to export into Europe, whatever it is, there will still be legislation coming down the line, which we will still have to bring in.

Head of Service, External Relations:

Yes, in the same way as any other third country.

Senator S.C. Ferguson:

The Brexit Information Report, July update, published by the Ministry, states that the government of Jersey is therefore actively working to enhance its relationship with priority non-E.U. markets. Does Jersey have a strategy to engage with non-E.U. markets in anticipation of a final Brexit deal?

Minister for External Relations:

Yes, it certainly does.

Senator S.C. Ferguson:

If so, where?

Head of International Agreements, External Relations:

The strategy has been developed by the Ministry of External Relations and I think it has been approved by the Council of Ministers. It is not something that we have published at this stage; it has been developed over the course of 2017. As you will see, it outlines our engagement approach in respect of prioritised markets but it also makes clear where the focus of attention will be because we recognise that we have limited resources and we cannot be in all places at all times and we have to try to focus where we think we are likely to achieve greatest success in certain markets. That will be no surprise to you. It follows very much from sources such as the McKinsey review, which makes it clear that [Jersey should focus on] high potential growth markets. So, it is in the Middle East, Asia, Commonwealth

and sub-Saharan Africa [markets] where we see we have the greatest commonality and also the greatest potential for market development.

Minister for External Relations:

That follows a trend that we have followed for many centuries. We are a trading nation. We always look outwards to develop industries, cod fishing or knitting or –

Deputy J.A.N. Le Fondré:

Dairy?

Minister for External Relations:

Dairies, yes, doubtless.

Senator S.C. Ferguson:

We were thwarted on tobacco.

Minister for External Relations:

We were thwarted on tobacco, it is true, but the influence of Brexit, I think, is certainly something that forces us to look more widely afield and there are certain parts of the world, in particular the Gulf and China, maybe even, to a certain extent, Africa as well, where political engagement really lays the foundation for economic engagement. Not always but sometimes, we need to be able to have a political rapport before it is possible for traders to go through the door and trade.

Deputy S.M. Brée:

Minister, you have informed us that the global markets strategy effectively is the policy. It has been approved by the Council of Ministers but it has not been published. Why not? If it is a departmental policy statement, then it is a public document. Or are you suggesting that in your instance you do not have to make your policy public?

Minister for External Relations:

No, I do not think that we would say that. However, I am sure that you will understand that some aspects of the policy are sensitive. If one identifies particular countries that one wants to deal with for particular reasons and one identifies the difficulties of dealing with that particular country and how one can overcome those difficulties, one cannot, necessarily, put these things into the public domain.

Deputy S.M. Brée:

So, will you be issuing a policy statement from your Ministry as to what Jersey's foreign policy is?

Minister for External Relations:

We have done that already. We have -

Deputy S.M. Brée:

Yes, but something a little more specific.

Minister for External Relations:

We can certainly issue a high-level policy statement about the global market strategy. I do not see any reason why we should not do that.

Head of International Agreements, External Relations:

Very briefly, we recognise that if you think about the issues associated with Brexit, on the opportunity side is some of this work is associated with global markets. We would propose to provide a briefing - we can certainly do that for the Panel, but I think that a briefing for States members would, perhaps, be of wider interest – in which we would set out what our engagement approach will be, where some of the focus of activity is and what that activity will look like over the coming months. However, when I said that we had sent this up for decision by the Council of Ministers that was in September of this year, so we have had the sign-off on that only recently. In due course we will publicise elements of it but bearing in mind what the Minister has said about some of the sensitivities in terms of the level of detail in country-specific information.

Deputy S.M. Brée:

So, will your department be issuing an updated policy on foreign policy in the very near future or not?

Minister for External Relations:

If the scrutiny panel is suggesting to me that it would be helpful for some high-level strategy document to be issued to explain what our global engagement strategy is then, of course, I think we would certainly be happy to do that.

Deputy S.M. Brée:

That will be a publicly available document?

Minister for External Relations:

It would be a publicly available document. It would be a report.

Deputy S.M. Brée:

I think all members of the public, including members of this panel, would welcome such a report.

Minister for External Relations:

We will take note of that.

Senator S.C. Ferguson:

My question was that a number of countries have been publicised in the press as wanting to enter into trade agreements with the U.K., with the possibility of Brexit. Are we going to piggy-back on any of those?

Minister for External Relations:

We might, Senator. We certainly have asked the U.K. Government to ensure that if it does enter free trade agreements with other countries that the facility should be there for that agreement to be extended to us if we would like to do that. We are, as you know, I think, trying to have bilateral investment treaties as well with particular countries that are important to us. So, yes, the possibility of extending a U.K. free-trade agreement is certainly something that we have in mind.

Deputy J.A.N. Le Fondré:

Minister, you have referred to areas of the world that we are interested in. Are you able to identify what countries have been or are targeted as a priority in non-E.U. markets, at all?

Minister for External Relations:

In very broad terms, yes, we can. We have an interest, Obviously, in the Gulf and we have a longstanding relationship with the United Arab Emirates.

[16:15]

We are also endeavouring to further relationships with Saudi Arabia and with Bahrain and the Chief Minister will be paying a visit to those two countries in the not-too-distant future. In Africa we have very long had a connection with South Africa and many businesses have already established themselves over there and we have South Africans living in the Island

and South African businesses over here as well. Kenya and Nigeria are important economic areas of Africa and we will certainly be trying to develop relationships there. As you know – people have spoken about this before – we have a memorandum of understanding with Rwanda and a double taxation agreement with Rwanda and we will certainly hope, as soon as we have the necessary entrustment, to have a bilateral investment treaty with them too. And, of course, China and India. So, those are the broad areas that we are targeting at the moment.

Deputy J.A.N. Le Fondré:

Who decides which countries are identified as priority countries?

Minister for External Relations:

We take advice. The McKinsey report was the first report to recommend Nigeria and South Africa and Kenya as countries in which we should take an interest. However, we also take advice from industry. We have, through our global markets strategy, a working group, the global markets co-ordination group, which co-ordinates, not surprisingly, [activity across the public sector] with the private sector and talks to the Jersey Financial Services Commission and to others. So, advice comes from a number of different quarters and we exercise our own discretion as well.

Deputy J.A.N. Le Fondré:

What mechanism is going to be in place to build on the strategy going forward? Obviously, it is early days but presumably this is going to evolve and gather pace at some point.

Head of Service, External Relations:

It is important to note, as well, that McKinsey is being refreshed at the moment, as you know, so we will be looking to incorporate the outcomes of that piece of work into the evolving strategy.

Head of International Agreements, External Relations:

The strategy is, to some degree, a snapshot in time. Our approach, absolutely, is a long-term approach. We think that this sort of work takes persistence and it takes time to build momentum and repeated visits over the course of many years to really build very strong government to government relationships. However, at the same time, we will review that strategy at least on an annual basis, refreshing it, making sure that we are learning from our experience and I would anticipate that there will be fluctuations in movement with certain markets. In some cases, where we make early progress, it may be possible to move them

down from the top priority list because we have achieved what we wanted to do. In other cases it may become clear that we are not going to be able to achieve what we want in the short term and we will redeploy resources accordingly. So it is a working document but the strategy underpinning it, the rationale, is the same. We will just continue to refresh it to make sure that it is still relevant and fit for purpose.

Deputy J.A.N. Le Fondré:

I presume you do some form of risk profiling or assessment when you are putting the strategy together on the countries you are potentially dealing with. Can you elaborate on that a little bit?

Minister for External Relations:

We do. I will ask Tom to answer.

Head of International Agreements, External Relations:

One of the features is that, while we have an overall strategy document, which we have talked about, we also have country plans that sit underneath each of those strategies. Our, our top 12 to 15 priority countries have [detailed country] plans. Each of those country plans has a risk matrix with mitigation attached to it and that covers, as you would expect, the full range of risk, including political and economic risk. It also looks at reputational and human rights issues. Those are taken into consideration when we are looking at the markets. We have described already, from the range of countries, quite a range of different factors. This is a broad range of jurisdictions and that is why we say that it makes sense to have a country-level detail that takes that into relevant information from every one of those target markets.

Senator S.C. Ferguson:

Yes, there is a degree of risk attached to the prime markets that we have described, is there not? South Africa, Kenya, Rwanda, the Middle East - these are fairly risky areas, surely?

Minister for External Relations:

They are all risky areas, Senator. There is a spectrum of risk, is there not? One might put North Korea at one end of the spectrum as a country with which one would probably not want to have very much to do. At the other end of the spectrum, one could put United Kingdom, European Union countries on the whole and in the middle there are a number of different countries where the risk factors are different in different specific areas and where one has to make a judgment as to whether the risk of engaging with that country outweighs

the benefits that are to be derived from dealing with it. And that is life; risk is part of life. If one is going to advance, one has to take risks.

Head of International Agreements, External Relations:

We also look at reward. There are some countries that are potentially high risk but they are very large markets and achieving better market access would bring significant benefits that would translate into jobs and growth in Jersey. What you will not find in the strategy is that we have high-risk countries that are low reward. So, we take into consideration the market potential for those jurisdictions when looking at issues of risk.

Deputy J.A.N. Le Fondré:

And, just to clarify, presumably if you have a high-risk country you have to have certain controls and greater procedures there for dealing – if there is a risk. Would that be right?

Head of International Agreements, External Relations:

Yes, that is right. So, for certain countries where we have identified that there is an additional human rights risk, for example, then we need to make sure that we have a robust strategy in place for mitigating that risk.

Deputy S.M. Brée:

It is interesting that you raise that issue because in your risk-profiling model you said that it does include human rights assessments. However, those priority non-E.U. markets that you have mentioned all have bad human rights records of one form or another. So, are you saying that the risk-profiling model that you use counters any human rights issues with what is a potential reward? That is, you are doing a relatively simple calculation to say: “If that market were to earn us, potentially, in excess of X amount of money, we would draw a veil over its human rights records.”

Head of International Agreements, External Relations:

No, we are not saying that. It just is not as simple as making a calculation that would work in that way. It is absolutely true that in many cases we are talking about emerging markets. We take the view that, over the long term, those are going to be the engines of global growth and for an island such as Jersey it is very important that we have good working relationships with them. We are not unique in doing this. One of our mitigations is that when we are thinking about our long-haul markets we work very closely with the British Embassies in the relevant countries. They are making decisions about risk and the level of engagement that

they have and they have an in-country presence that, as a non-sovereign jurisdiction, we do not. So, we are not doing this blindly or in the dark. However, I cannot say that there is a calculation that gives an absolute answer. The solution involves constant monitoring, watching what other jurisdictions do, talking to our British diplomatic contacts at the Foreign Office – which my team spends some time doing [both in London and] in-country [through British Embassies and High Commissions]. Through that, we come out with an approach that appropriately manages Jersey’s activity in those markets.

Senator S.C. Ferguson:

Back to back with that, what co-ordination takes place between your Ministry and the Overseas Aid Commission?

Minister for External Relations:

We have quite close co-ordination at official level with the Overseas Aid Commission and the new chief executive, if that is his title⁴, meets very frequently with officials in my ministry so that each of us knows what the other is doing. The Overseas Aid Commission is an independent organisation; it is not for the Ministry of External Relations to tell it where it should invest its money. However, at the same time, it would be very foolish if one part of the overall government of Jersey were acting in total ignorance of what the policy of another part of the government was. So, we make sure that that does not happen.

Senator S.C. Ferguson:

Obviously, your Ministry does not try to direct the direction of overseas aid but if we are taking an interest in a particular part of the globe, then support from Jersey Overseas Aid for projects in particular countries would be particularly useful.

Minister for External Relations:

Yes. There are two examples in Africa. Rwanda is one, where the project with cows, which is being pursued by the Overseas Aid Commission, has been a very positive factor in our engagement with the Rwandan government. More recently, in Kenya, the Attorney General seized some money that was stashed away by former Kenyan government ministers and discussions have taken place with a view to returning that money to Kenya and spending it on some worthwhile projects. The Overseas Aid Commission has been involved in those discussions as well. Those are two examples of positive interaction between organisations.

⁴ The title is in fact “Executive Director”.

Deputy J.A.N. Le Fondré:

I am keeping a reasonably close eye on the time, and will dip into a couple of our top-up questions. Earlier in the week we had a, possibly, one-off in-committee debate on Brexit. Do you think the States Assembly should be given a chance to debate external relations policy on a regular basis?

Minister for External Relations:

Yes, I do. It is certainly my intention, for as long as I am Minister of External Relations, to ensure that that happens. That was the first in-committee debate that we have had but we have certainly tried to engage with States members more informally, as you know, on a number of occasions. From my perspective, that seems to have been quite successful. I was very encouraged by the in-committee debate yesterday and it is certainly something that I should like to repeat from time to time.

Head of Service, External Relations:

Of course, we are looking forward to the review of common policy on external relations and that might lend itself to some further thought in this area about how we engage more with the States.

Deputy J.A.N. Le Fondré:

We have had an in-committee debate on your report on your activity between 2013 and 2015, and we were going to ask: "No further reports have since been published. Why?" Would the short answer be that Brexit has been the game changer since then?

Minister for External Relations:

A game changer for what?

Deputy J.A.N. Le Fondré:

In terms of the activity of the department.

Minister for External Relations:

Yes. It certainly has been a game changer, for better or for worse, and shown the need to focus on global markets and the establishment under Brexit funding of a group of officials in the Ministry who have responsibility for developing those markets.

Deputy J.A.N. Le Fondré:

I think I touched on this yesterday, but cannot recall the responses of ministers. You have obviously expanded the department. Have you sufficient resources within the Ministry to deal with what is going to be a tight, pressurised and, no doubt, exciting and interesting time? In an ideal world, one would have infinite resources but, in practical terms, that is never going to happen so do you think you have adequate resources these days to deal with what you think is coming down the line in terms of Brexit pressures and everything else?

Minister for External Relations:

It is very difficult to say. Perhaps I will ask Kate to answer that.

Head of Service, External Relations:

It is fair to say that when we wrote the original business case for the Brexit funding we did not know what we were going to need on the core Brexit side or on global markets.

[16:30]

At the moment, I am content with what we do have. We could always have more resources and do more but we are covering a lot of ground with the resources that we have and certainly in respect of global markets, we are seeing some real, concrete deliverables. The team is doing really well there and we are resourced sufficiently at the moment to keep that up. On the Brexit side, as you know, we have a cross-government structure in place, so we are co-ordinating activity and very much relying on the expertise within the department to keep the programme moving forward. So long as that co-operation continues we are in a good place. Should that change I shall, of course, let you know.

Deputy J.A.N. Le Fondré:

That is the question. Is there a risk of an individual department thinking, "Brexit is external relations, so it is nothing to do with us, so I might have this one agreement that I have to sort out," but has not clocked, for example, staffing impact or something along those lines. Do you think there is a risk there, and are Departments fully aware of it?

Head of Service, External Relations:

Absolutely, there is a risk. As I said, at the moment we are very much relying on structures that have been put in place by External Relations and agreements that we have made. I know the chief officers and the External Relations team has good relationships with its

counterparts in other departments but, to a degree, it relies on goodwill and domestic issues could come up and divert attention, so there is a risk there.

Minister for External Relations:

This is a bit of a moveable feast, and it is quite difficult to have a crystal ball and to anticipate what one might want in future. As a result of Brexit and the withdrawal of the U.K. from the E.U., our relationship with France is going to become increasingly important. We must have a good relationship with our closest geographical neighbour. At the moment we have reasonably good relations with the regions of Brittany and Normandy, but we have, frankly, no relationship with the national with the national government in Paris. If we were to seek to have another office, for me it would be an office in Paris. However, that would need to be funded and it would need resource to make it work. I am not going to be bidding for that with the Council of Ministers in the immediate future because we have a more urgent problem, in a sense, that Brexit funding lasts only until 2019 so I have to persuade my colleagues that much of the resource that we have at the moment, which has been put into place to deal with global markets and other things, ought to be continued after 2019 and that may be a problem.

Deputy J.A.N. Le Fondré:

Presumably that is, in particular, if the transitional arrangements carry on after that date.

Head of Service, External Relations:

Yes.

Deputy J.A.N. Le Fondré:

Very quickly, two wrap-ups: the first is a recent local media report on a landmark case, whereby money transferring between the U.K. and Jersey cannot have controls placed on it because Jersey is a third country with E.U. free movement of capital. What impact does that have on Jersey's international position, particularly now, at a time when we are negotiating our position with the U.K. because of Brexit?

Minister for External Relations:

We would have been very disappointed had the English Court of Appeal come to any different conclusion because we thought that the position was absolutely straightforward and we were rather disappointed that Her Majesty's Revenue and Customs took a different view. So, we were certainly relieved when the court accepted our arguments and confirmed that we are a third country for the purpose of movement of capital.

Deputy J.A.N. Le Fondré:

Final question, then, and I hope it is a nice, easy one to end on. There was a report in the media in August that New Zealand would, once again, accept Jersey nationals into the country on a working holiday visa after initial plans to prevent this. Would you like to outline your Ministry's involvement in trying to resolve the issue? I also understand that the Ministry had some involvement in providing assistance when Hurricane Irma went through the Caribbean.

Minister for External Relations:

This is an ongoing problem. I had a plea from a young woman who had found herself in difficulty as a result of this change in policy by the New Zealand government and I do not know whether Kate can add anything in the current state of affairs.

Head of Service, External Relations:

Only that dialogue happened between the London office and the High Commission in London. Any interventions that we made were via that route but it is one of the things that we would normally get involved in and try to help where we could. Did you want to say anything on the hurricane?

Minister for External Relations:

On Hurricane Irma? No, you can answer on Hurricane Irma.

Head of Service, External Relations:

We were speaking to the Foreign Office in the immediate aftermath of the hurricane because there are firms here with presence in or connections to the B.V.I. (British Virgin Islands) in particular and they were concerned about being able to get staff out of the B.V.I. They were very successful in doing that by their own private means, but we were working with the F.C.O. (Foreign and Commonwealth Office) and wanted to find out when the airport would be opened in order to get people in and out and we also had industry here getting in contact with us offering assistance, which we were then able to convey to the Foreign Office as well and that was very well received.

Head of International Agreements, External Relations:

I neglected to mention when we were talking about Washington that one of the very valuable meetings that the Chief Minister had was a dinner with Premier Orlando Smith of the B.V.I., when he was able to spend a good hour and a half, I think, talking through with him some of

the challenges that the B.V.I. is facing, and understanding what it is going to mean for its firms, what it will mean for those Jersey companies that have relationships with B.V.I. firms and just, by way of an example of how difficult that has been, the Premier told the Chief Minister that he still has not moved back into his home; there is no roof on his house. That situation is not uncommon in the B.V.I., so it really is a very challenging situation. We all welcomed the discussion of the Commonwealth Finance Ministers, where the U.K. put forward a proposal for overseas development assistance, O.D.A., to be re-categorised so that it can be deployed to spend on countries such as the B.V.I. that are not low-income countries but which experience a devastating natural event that effectively turns back the clock on their development. That was one of the more positive outcomes of the finance ministers' event.

Deputy J.A.N. Le Fondré:

Thank you very much. On that note, almost to time, we will pause for five minutes. That concludes this hearing.

[16:37]