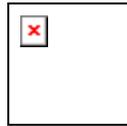


**PROGRESS ON CONSIDERING THE CONCLUSIONS OF THE REVIEW OF FINANCIAL REGULATIONS IN
THE CROWN DEPENDENCIES (“THE EDWARDS REVIEW”)**

**Presented to the States on 8th June 1999
by the Policy and Resources Committee**



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REPORT

On Friday 21st May Lord Williams of Mostyn, the Minister at the Home Office with responsibility for the Channel Islands and the Isle of Man, visited Jersey to meet with representatives of the Insular Authorities to review the current status of the conclusions of the Edwards report on financial regulation in the Channel Islands and the Isle of Man. This was the second such meeting, and a further meeting is scheduled to be held in September.

Lord Williams welcomed the open and constructive spirit with which all concerned -and this includes the United Kingdom as well as the Islands - are taking the Edwards report conclusions forward.

When the Edwards report was published in November last year a Task Force was set up to progress the report's conclusions. The Task Force is chaired by myself, and includes the President and Vice-President of the Finance and Economics Committee, a member of the Policy and Resources Committee (Deputy Le Sueur), the Attorney General, the Chief Executive of the Policy and Resources Committee and the Director General of the Financial Services Commission. It is the intention of the Task Force to keep States Members fully informed of the progress being made, as and when there is something to report. The occasion of the second meeting with Lord Williams is considered to be an appropriate opportunity for a report to be made to States Members on the current status of the conclusions of the Edwards report.

Following the publication of the Edwards report the Task Force asked the Financial Services Commission to consider all of the reports conclusions, take action in areas within its own competence and give advice to the Task Force on other matters.

In responding to these requests, the Financial Services Commission established several working parties, comprising representative members from all of the major industry associations, to consider the implications of each of the report's conclusions. This process is now well under way, with the preliminary assessment for approximately two thirds of all of the conclusions now complete and a clear timetable in place for the assessment of the remaining conclusions. For those which have been accepted in principle, detailed implementation plans are now being drawn up. For other of the conclusions a detailed and comprehensive research programme has been initiated and one of the objects of the research being undertaken is to enable the Financial Services Commission to gain a clear view of policy and practice in other relevant jurisdictions and, where appropriate, obtain a more detailed understanding of the full legal implications of following the recommended course of action in the Edwards report.

In considering the conclusions of the Edwards report, and their application to the Island, the Authorities have had two key objectives in mind. One is to ensure the Island maintains its high regulatory standards. The other is to ensure that the Island's reputation and economic interests are fully protected. Regard also has been had for the existence of an international level playing field in respect of those jurisdictions with which the Island would expect and wish to be compared.

Many of the conclusions of the Edwards report were an endorsement of action which the Island authorities had already planned or had initiated. Three such areas which the States have already endorsed are referred to below, using the Edwards report paragraph numbers -

All Crimes Money Laundering

"14.6.6 - By the end of the year, the Islands will have 'all crimes money laundering legislation, again on broadly UK lines, giving the Authorities power similar (but not identical) to those at (a) and (b) above in relation to the proceeds of all crimes, including fiscal offences."

The Proceeds of Crime (Jersey) Law 1998 has now received Royal Assent and will be brought into force on 1st July 1999.

Time bars for prosecution

"14.5.32 - Jersey has a Miscellaneous Provisions Law 1978, which requires that the prosecution of most statutory offences must be brought within three years of the date when the alleged offences were committed".

Legislation repealing time bars to prosecution was approved by the States in March. It is now with the Privy Council awaiting Royal Assent.

Board structure: political participation

6.4.9 - For all the reasons discussed, and well though the present arrangements seem to have worked in practice, the Islands would in my opinion be well advised to consider moving to independent professional regulatory boards without political participation".

The required amendment to the Jersey Financial Services Commission Law has been approved by the States. It is now with the Privy Council awaiting Royal Assent.

Proposals to regulate service providers are also well advanced

“13.4.1 - The case for registering and regulating service providers is very strong”.

The initial industry consultation period in respect of the draft Fiduciary and Administration Business Law was concluded on the 31st March. The response from the finance industry has been positive and the Authorities remain confident that the new legislation will be put to the States by the end of the year, in accordance with the planned timetable. The timely introduction of this important and innovative new law will reconfirm Jersey’s position at the leading edge of financial regulation and, as described in the Edwards report, ‘clearly in the top division of offshore finance centres’.

A key feature of the detailed assessment of the Edwards conclusions has been an extensive level of consultation with the finance industry. The Authorities firmly believe that the response to the Edwards conclusions should draw on the considerable experience and expertise of local industry practitioners.

This consultation process has been extremely constructive and has enabled the Authorities -

- to make good progress on a large number of ‘technical’ recommendations relating to existing policy or practice;
- to establish a clear framework and timetable for the assessment of recommendations which raise important points of principle for the Island’s finance industry; and
- where applicable, to agree with the industry on the nature and scope of additional research required to identify both the legal and commercial implications of accepting certain recommendations.

The Financial Services Commission and the Task Force have been particularly sensitive to the fact that a number of the Edwards report conclusions raise important points of principle which are being actively considered by jurisdictions world-wide, including the United Kingdom. Many of the reports conclusions carry significant human rights implications, particularly in view of the forthcoming introduction into domestic legislation of the European Convention on Human Rights. The Task Force is committed to ensuring that the response to the Edwards report is informed, well judged and compatible with the Human Rights Convention. Professor Gearty, who is Professor of Human Rights at Kings College, London, has been engaged to provide an opinion on the potential implications of the Convention in respect of the report’s conclusions.

Of the 141 conclusions in the report that are relevant to Jersey, 80 have been implemented or are being recommended for acceptance; 57 are subject to further research and consideration and four have not been accepted.

The four conclusions that to date the Task Force has agreed should not be taken forward are, again using the Edwards report paragraph numbers -

Control of banking exposures

“7.10.1 - There may be scope for limiting the risks from exposure to parent banks through asset sale and repurchase”.

This concern was originally raised by one of the consultants used by Edwards in which he noted that the 25 per cent exposure limit is not applied to placements of funds with parents. However the consultant also noted that the controls that historically had been applied to parent exposure by the Financial Services Commission had proved successful to date. The Commission therefore believes that its existing policy and procedures are sufficient and does not envisage that it would be appropriate generally to require local banking operations to enter into repurchase agreements with their parents. It is also understood, as a result of further discussions with the consultant, that it is now accepted that the proposal in the Edwards report would have practical application only in particular circumstances rather than as a general supervisory tool. The proposal therefore is not accepted as a general practice but may be used where it is considered to be appropriate.

Insurance business applications - power to waive licence requirements

“9.8.10 - I hope the Jersey Authorities will give serious consideration to the extent of the Authorities -

- waiver/exemption powers;

- discretion to grant licences”.

Although separate references are made in the Edwards report to these two matters the Commission and the Task Force have concluded that both comments referred to the same underlying issue.

Waiver/exemption powers are included in several of Jersey’s regulatory laws and were singled out for criticism only by the insurance consultant engaged by Edwards. In practice, the Authorities are unlikely to use this power in relation to insurance business and there are sufficient safeguards in place, such as adherence to the ‘four eyes’ principle, to ensure that only applicants which meet the Authorities’ strict authorisation criteria are permitted to conduct business in the Island. However, the waiver/exemption powers provision does afford the legislation a level of flexibility, and is widely regarded as an important ‘fall back’ to retain in the event of future circumstances or eventualities not already provided for by the specific exemptions listed in the legislation.

Independent Financial Centres Audit Office

“17.6.1 - As a fall back, the UK Crown Dependencies as well as British Overseas Territories should consider setting up a small independent financial centres audit office”.

This recommendation was put forward as a ‘back stop’ position in the event that certain other proposals in respect of existing arrangements, including the Offshore Group of Banking Supervisors for which the Island presently provides the chair, ‘do not bear fruit’. The Commission and the Task Force believe that the existing fora are effective and can be developed to make them more so, and that organisations on an international scale are likely to be much more effective in producing the results sought for by Edwards than a body solely concerned with the Crown Dependencies and the British Overseas Territories.

Conclusion

The general view, endorsed by Lord Williams, is that the Island has made good progress in considering the conclusions of the Edwards report. This had been made easier by the fact, as stated earlier, that many of the report’s conclusions refer to action which had been planned or started by the Island Authorities in advance and independently of the report, as part of their own programme of regulatory development.

A significant number of the conclusions have now been accepted in principle and their implementation is already or will shortly be in progress. Certain other conclusions however raise important points of principle which are by no means unique to Jersey. These are the subject of international debate to which Jersey intends to contribute fully. The infrastructure the Authorities have put in place in order to consider and respond to the conclusions of the Edwards report will ensure that the Island is well placed to do so.

Since the publication of the Edwards report with its clear and positive statements on the quality of the regulation exercised by the Island Authorities, there has been a significant and important improvement in the view taken of the Island by overseas regulators and law enforcement agencies. The Edwards report gave independent confirmation of the standards to which the Island has aspired and the degree of success the Island had had in achieving those standards in comparison to many other jurisdictions. In responding further to the conclusions of the Edwards report the Insular Authorities are determined to build upon the success to date and thereby to further enhance the Island’s standing in the international community.