

STATES OF JERSEY

Corporate Services Scrutiny Panel Quarterly Hearing with the Minister for External Relations

TUESDAY, 18th OCTOBER 2016

Panel:

Deputy J.A.N. Le Fondré of St. Lawrence (Chairman)

Deputy S.M. Brée of St. Clement (Vice-Chairman)

Deputy K.C Lewis of St. Saviour

Senator S.C. Ferguson

Connétable C.H. Taylor of St. John

Witnesses:

The Minister for External Relations

Head of Service, External Relations

Director for External Relations

[14:00]

Deputy J.A.N. Le Fondré of St. Lawrence (Chairman):

Right. Welcome everybody to the quarterly hearing with the Minister for External Relations. Minister, as ever, I am sure you are aware of the notice to your left, I think, which I draw your attention to. Members of the public, as you know, or should know, there are notices around the room which obviously we do expect members of the public and the media to remain quiet at all times while the hearing carries on. Minister, as we proceed through the questions we may stop you if we feel that you have answered the question sufficiently because we want to be trying to be as concise as

possible and obviously we have a very limited amount of time to get through all the riveting questions we want to ask you. So, for the benefit of the tapes if we start going around, Deputy John Le Fondré, Chairman of the panel.

Deputy S.M. Brée of St. Clement (Vice-Chairman):

Deputy Simon Brée, Vice-Chairman of the panel.

Senator S.C. Ferguson:

Senator Sarah Ferguson, member of the panel.

Connétable C.H. Taylor of St. John:

Constable Chris Taylor, member of the panel.

Deputy K.C Lewis of St. Saviour:

Deputy Kevin Lewis, member of the panel.

The Minister for External Relations:

Senator Philip Bailhache, Minister for External Relations.

Head of Service, External Relations:

Kate Nutt, Head of Service, External Relations.

Director for External Relations:

David Walwyn, Director for External Relations.

Deputy J.A.N. Le Fondré:

Okay. Right, well let us just kick off. The stated objective of the Council of Ministers is to maintain the substance of the current Protocol 3 arrangements; I think what you have called the “Jersey Objective”. Could you briefly explain how you hope to achieve this given that the U.K.’s (United Kingdom) relationship with Europe is going to change significantly, we rather assume, following Brexit?

The Minister for External Relations:

I think it is necessary to understand first of all what we mean by maintaining the status quo and perhaps it is worth just sketching that in. By maintaining the status quo what we seek to achieve is to maintain the Island’s situation as a third country so that it is fundamentally outside the European Union so that the financial services companies can take advantage of the status as a third country and deal with the European Union on that basis. So far as trading of goods are concerned we seek

to replicate, if we can, the arrangements which we currently have under Protocol 3 for the movement of goods free of tariff between Jersey and the European Union. We seek to maintain the common travel area if we can so that Jersey people can move freely between the British Isles and Ireland, perhaps, and we seek obviously to maintain our constitutional autonomy and the freedom to move funds between here and the British Isles without inhibition. So that, in essence, is what the Jersey Objective is. How are we going to achieve it? Well, we have established a number of relationships. So far as the United Kingdom is concerned our officials have been in regular contact with the Department for Exiting the European Union, with the Cabinet Office and with the Foreign Office, the Minister of Justice, in order to ensure that the Island's voice is heard in relation to those matters which are of concern to us when they are discussed by officials. In time we hope to have some ministerial meetings as well with the responsible Ministers. In Jersey, we have established a Brexit Unit inside the...

Deputy J.A.N. Le Fondré:

We will come on to that in a minute, on the Brexit Unit.

The Minister for External Relations:

I am sorry?

Deputy J.A.N. Le Fondré:

We will come on to the Brexit Unit shortly.

The Minister for External Relations:

Okay. We have established a Brexit Unit.

Deputy J.A.N. Le Fondré:

Okay. I think you have definitely covered the aims and what has been done. You have talked about the contacts that you have had at officer level. Other than, obviously, the visit of the Minister of Justice very recently what contact have you had at ministerial level with the U.K. Government?

The Minister for External Relations:

We have had written contact with the Prime Minister. The Prime Minister has been in touch with the Chief Minister and has given her assurance that the interests of the Island will be taken into account in the course of the negotiations which are to take place in due course. There have been a number of ad hoc informal meetings with Government Ministers in the context of the Conservative conference a few weeks ago, and we have asked for a meeting with the Secretary of State or certainly with the Minister of State at the Department for Exiting the European Union and we do not know exactly when that will happen but we hope it will happen before too long.

Deputy J.A.N. Le Fondré:

Can I just ask, in terms of the local industry, how proactive has the Government for Jersey been in speaking with the Island's different industries about the potential impacts of Brexit; or has industry been initiating contact with government?

The Minister for External Relations:

I think we have been very active. Before the Jersey Objective was formulated we held a number of meetings with all the relevant industry associations: with the Chamber of Commerce, the Institute of Directors, with the unions - although I do not think they engaged with us - the Fishermen's Association and numbers of others as well, in order to find out what their aspirations were, what their concerns were and what they would like to achieve; what looked good from their perspective at the end of the day. That was really what informed the document which I lodged in the States a few days after the referendum and which led to the Jersey Objective.

Deputy J.A.N. Le Fondré:

Perhaps just expanding on that, are there any other ways you are making sure you understand the issues facing Islanders as well as local businesses?

The Minister for External Relations:

We give briefings to States Members from time to time; I think there is one at the beginning of next month. We certainly are open to any engagement from any individual who wishes to express a view as to what the future might hold. But the truth of the matter is that we are all waiting at the moment to find out what line the United Kingdom is going to take when the trigger is pressed on Article 50 and when the United Kingdom begins its negotiations for exiting the union. At the moment that is a closed book so I can well understand that many associations and members of the public are waiting to see what happens.

Deputy J.A.N. Le Fondré:

Have you had any feedback from any of the consuls, like the French Consul or the Portuguese?

The Minister for External Relations:

We have had quite regular engagement with the ambassadors in London, with the German Ambassador, the French Ambassador, Portuguese Ambassador, and indeed many informal discussions with the honorary consuls in Jersey. I think the general view that we have gleaned from those diplomatic discussions is that members of the European Union regret the decision that has been taken by the United Kingdom Government but are reconciled to it and trying to make the best of the situation.

Deputy J.A.N. Le Fondré:

No, I meant in terms of understanding the views of Islanders and possibly non-British residents essentially.

The Minister for External Relations:

I beg your pardon, you mean of the sort of minority communities over here?

Deputy J.A.N. Le Fondré:

Yes.

The Minister for External Relations:

Well, I mean, I had a meeting with the Honorary Consul for Poland this morning and we do engage from time to time with them. I think that the minority communities in Jersey have been encouraged - I hope they have been encouraged - by the words of the Chief Minister in relation to the situation that will obtain after the United Kingdom has left the European Union. I personally think it would be politically inconceivable that their situation would be any different from what it is at the moment but of course that is not within our gift and we have to wait and see what happens with the United Kingdom's deliberations.

Deputy J.A.N. Le Fondré:

Okay, thank you. I will give you over to Simon.

Deputy S.M. Brée:

What, if any, are the implications on the Island's constitutional relationship with the U.K. post-Brexit? For example, will these need to change in order to allow Jersey to develop independent relations with European trading partners?

The Minister for External Relations:

That is a very difficult question to answer.

Deputy S.M. Brée:

Hence the fact we are asking it.

The Minister for External Relations:

It is not to say it is not a good question but whether it is possible to answer it, I think, is another matter. As I said earlier on, we do not know what the United Kingdom is going to seek to achieve. I mean, I suppose that one can say that 3 things emerge from the Prime Minister's speech at the

Conservative Party conference. The first was that the trigger was going to be pressed before the end of March 2017, so we know when the starting gun will go off, more or less. The second thing was that uncontrolled immigration into the United Kingdom from the European Union is not going to happen in the future, there will be some controls, and thirdly, the Prime Minister made it clear that the European Court of Justice would have no jurisdiction over matters affecting the United Kingdom so that the Supreme Court in the United Kingdom would be the ultimate judicial authority on matters affecting legal situations. So, we know that that is the position of the Prime Minister at this stage and one can begin to read tea leaves, Deputy, as I am sure you have, and we read the tea leaves too and we do research on the different hypothetical situations that might arise but I do not think it is helpful to say any more than that at this stage.

Deputy S.M. Brée:

So what discussions has the Council of Ministers had on the Island's constitutional relationship with the U.K. post the U.K. referendum vote?

The Minister for External Relations:

I do not think we have had any discussions. I think that the situation is set out pretty clearly in the report which I lodged at the end of June, which was that we seek to maintain, so far as we can, the existing constitutional relationship with the United Kingdom.

Deputy S.M. Brée:

You qualified that answer by saying "so far as we can". What circumstances do you envisage where we cannot?

The Minister for External Relations:

Well, I think I said, in answer to your earlier question, that we read the tea leaves, Deputy, and we do our best to anticipate what different scenarios might arise but I am not sure that it is very helpful to speculate about what the position might be if such-and-such a decision were to be made by the United Kingdom Government.

Deputy S.M. Brée:

Well, let me ask then: if the U.K. pursues what is being called a hard Brexit, i.e. no freedom of movement of people and no single market access, how will this or how might this affect the policies you are currently pursuing?

[14:15]

The Minister for External Relations:

Well, we are not part of the single market at the moment so whether or not the United Kingdom seeks to become part of the single market is, so far as the direct constitutional relationship between Jersey and the E.U. (European Union) is concerned, not material, we are outside the E.U. and so we are not concerned with that. Now, it is true that some people are very concerned that if the United Kingdom is not within the single market, that could be detrimental to the City of London and to the financial services industry in the United Kingdom, and clearly if there is damage to the financial services industry in the U.K., one might expect that there would be at least some spin-off to the financial services industry over here. But we do not know.

Deputy S.M. Brée:

What about the freedom of movement of people?

The Minister for External Relations:

Well, freedom of movement is a difficult subject and you are quite right, that the view that the Conservative Government articulated at the conference was that there would be no uncontrolled immigration from the European Union into the United Kingdom and the obvious consequence of that is that there will be some controls, some limits on the immigration into the U.K. But how that will be achieved is a matter of speculation. Some people have talked about a point system in the Australian style but others would say that a point system is really not a very good way of regulating immigration because points can add up in the wrong way and you will get the wrong people coming in and the right people kept out. But that is one option. Another option would be to say: "Well, we will have a limit. About 350,000 people came in from the E.U. in 2015; we do not want as many as that we are going to have 150,000." We could say: "Well, you know, how is that going to apply to Jersey?" Well, we do not know. At the moment the Immigration Act of the United Kingdom applies to Jersey, we are part of the general system of immigration control so that if the U.K. were to put in place some kind of limit of that kind then, in principle, one could see that was applied to the Channel Islands. One could go on and say: "Well, I am sorry, that is not acceptable to us we do not want those kind of controls because we need immigration for our agricultural industry, for our tourism industry, even for our financial services industry." So, we will then have to balance up the pros and the cons of whether or not the current situation suits us or does not.

Deputy S.M. Brée:

So in those circumstances you would say that we would need to re-examine our constitutional relationship with the U.K.?

The Minister for External Relations:

No, I do not think one is re-examining one's constitutional relationship with the U.K., what one would be re-examining is the current system for controlling immigration. But we control our own borders

at the moment because although freedom of movement of people does not apply as a matter of law to Jersey, in practice it does because under our protocol we have to not discriminate between the nationals of member states, and so if we want British people to come in from the United Kingdom freely then we have to allow British people and Poles and Portuguese to come in freely as well, and we regulate that through the Housing and Work Law, which enables us to limit the number of people who can come in and live and work in the Island. Now that may or may not work in the future.

Deputy S.M. Brée:

Okay. All right, thank you.

Deputy J.A.N. Le Fondré:

Okay, now I know I have got one or 2 questions at this end. Does anybody else have any questions? Kevin, you said you wanted to ask something.

Deputy K.C. Lewis:

Minister, you touched on something earlier that caught my ear. You said you wished to preserve the common travel area. You are referring to the U.K., Ireland, Crown Dependencies' common travel area but obviously England, Wales, Scotland, Northern Ireland, Republic of Ireland, Crown Dependencies have always had this and given the Republic of Ireland have never been part of the European Union Schengen free travel area, do you think there is a chance of losing the free travel area?

The Minister for External Relations:

Well, I am no better informed in that respect, Deputy, than you are. I mean, the obvious difficulty is in relation to the border between Northern Ireland and the Republic because if the Republic is part of the European Union, where there is freedom of movement, and there is not freedom of movement into the United Kingdom, then there is a border between Ireland, the Republic, and Northern Ireland and there has to be some resolution of the difficulty of preventing uncontrolled immigration over the border into Northern Ireland.

Deputy K.C. Lewis:

As you are aware, Deputy Le Fondré and myself are on the British-Irish Parliamentary Association.

The Minister for External Relations:

Yes.

Deputy K.C. Lewis:

There is a lot of disquiet about that in the Republic and in Northern Ireland.

The Minister for External Relations:

I have been to the British-Irish Council where the Taoiseach expressed very considerable concerns.

Deputy J.A.N. Le Fondré:

I guess that was the point we were making.

Deputy K.C. Lewis:

Minister, the Brexit Planning Unit was announced in September and funding for the unit was approved from central contingencies, the economic productivity and growth draw down provision.

Is the unit now in operation?

The Minister for External Relations:

Yes, it is.

Deputy K.C. Lewis:

Excellent. Who is running the unit both at ministerial and officer level and how many other officers will be working in it?

The Minister for External Relations:

I hold political responsibility for the unit, the Head of Service, Kate Nutt, is the head of the unit but obviously she has other things to do apart from Brexit matters. Mr. Walwyn is obviously also involved in the unit, he perhaps spends a little bit more time on Brexit affairs but he has other responsibilities too, and we have the one official, Matt Fiott, who is charged with the responsibility of co-ordinating the different efforts of government. So within the Ministry for External Relations there are those 3 people who constitute the Brexit Unit. But of course the Ministry for External Relations liaises with all the other relevant departments of government and one or perhaps more, I am not sure, certainly one representative of each of those departments is seconded to work with the Brexit Unit and the Ministry for External Relations to examine the implications of Brexit across the whole range of governmental activities.

Deputy K.C. Lewis:

What will the specific aims of the unit be?

The Minister for External Relations:

I think the central aim is to ensure that government's response is joined up and that every department in the Government of Jersey knows what the overall objective is and ensures that the

central unit and my ministry are informed about what may be happening so that we do not trip ourselves up.

Deputy K.C. Lewis:

What will be the immediate priority?

The Minister for External Relations:

The immediate priority, I think, is to find out what the implications are for Brexit, both in legislative terms and in administrative terms and any other terms that may be relevant. Certainly we have discovered that probably rather more laws and regulations for the measurement might have to be the subject of amendment as a result of Brexit. Whether they are amended or not, they will, nonetheless, require some policy decisions to be made in order to decide whether the voluntary bringing in of community rules or European Union rules is something that we want to continue in the future.

Deputy K.C. Lewis:

A total of £1.7 million has been awarded to the Brexit Unit up to 2018. What is this money going to be spent on?

The Minister for External Relations:

Well, you will not be surprised to hear that it is not going to be spent on Mrs. Nutt and Mr. Walwyn alone, and they may be a bit disappointed about that but the ...

Head of Service, External Relations:

Do you want me to take that, Minister?

The Minister for External Relations:

Yes, could you deal with that? Yes.

Head of Service, External Relations:

Absolutely. So, yes, you are absolutely right, I think it is £1.75 million has been allocated into the Brexit pot up to 2018. About £1.3 million of that comes to External Relations and that is to support recruitment of some additional staff, that is to support any additional travel that might be required over the course of the next couple of years, and also any advisory assistance and consultancy, anything like that; expertise that might be needed. So what I would say about that money is we might not necessarily need it all, it is a ceiling to be called upon as and when needed but we will have to see how things play out over the next couple of years. As part of that £1.75 million, a portion

has been allocated to the financial services team as well. Financial services are doing a key stream of work and some of that money has also been apportioned to the law officers.

Deputy K.C. Lewis:

How long do you envisage the unit to be in place?

Head of Service, External Relations:

Well, the funding is in place until 2018. We know Article 50 has to be activated, or the Prime Minister has said that it will be activated by the end of March next year. So, I would anticipate the team being in place for the period of negotiations taking place but we will have to consider what is needed and whether we need to extend.

Deputy K.C. Lewis:

So it could be extended, yes.

Head of Service, External Relations:

We will have to see how things play out.

Deputy K.C. Lewis:

Yes, and obviously bearing in mind that the earliest date that the U.K. can leave the European Union would be March 2019.

Head of Service, External Relations:

Absolutely, yes, so we will need to consider resources and what is required over the next couple of years.

Deputy K.C. Lewis:

The press release refers to a range of other work to assist the scale and nature of the economic opportunities arising from Brexit. What does this range of other work relate to?

The Minister for External Relations:

Principally it is trying to develop markets, both existing markets and new markets, in the Far East and the Middle East and in Africa for the benefit of industry in Jersey.

Deputy K.C. Lewis:

At the moment obviously you are dealing with things within your own ministry but is there an intention to create a new ministry for Brexit, as in the U.K., for instance?

The Minister for External Relations:

No. We think that the Brexit Unit that we have set up will be able to cope adequately with all the co-ordination that is going to be necessary. No, there is no intention to create another ministry.

Deputy J.A.N. Le Fondré:

I have got one question, I think. Hopefully everyone shakes their heads; that is it. You made reference to taking on potentially additional staff. Is that going to be permanent posts or will that just be for the period?

Head of Service, External Relations:

For the period, yes, they will be fixed terms.

Deputy J.A.N. Le Fondré:

Okay, so, is that for the period under the financial period until March 2019?

Head of Service, External Relations:

Yes, for the period over the next 2 years, I think, up until the U.K. exits. Yes.

Deputy J.A.N. Le Fondré:

Okay, and possibly an overlap at the end or something, yes. Okay. Right, Chris.

The Connétable of St. John:

Sorry, would that staff be here in Jersey, London, Brussels?

Head of Service, External Relations:

We anticipate that the majority would be Jersey based but there is some funding for additional resources in London, some support staff in London. The office is being used increasingly by States departments because there is so much going on in the U.K. at the moment so there is a requirement for some additional support there.

The Connétable of St. John:

Right, well, if we move on to the next thing which is the practical implications of Brexit. In a post-Brexit world will Jersey regain full control over our borders in respect of freedom of movement of people?

The Minister for External Relations:

Well, we touched on this in the discussion in relation to Deputy Brée's question earlier on, and the truthful answer is I do not know. We shall have to wait and see what view the United Kingdom takes

of its wish to protect its own borders. Certainly, from a political viewpoint, my aim is to retain the control over our borders that we currently have.

The Connétable of St. John:

Right, so you are hoping there will be no impact in the changes to freedom of movement, for example, for the migrant workforces for agriculture and tourism?

[14:30]

The Minister for External Relations:

That is my aspiration.

The Connétable of St. John:

That is your aspiration. What will the impact of Brexit be for E.U. nationals currently in the Island and will it affect their status?

The Minister for External Relations:

Well, again I think we touched on this in discussion with Deputy Brée a while ago. I think it would be, as I said earlier, politically inconceivable that any government could require European Union nationals who are already established, either here or in the United Kingdom, to go back to the country from which they originally came; I just do not see that happening. But this obviously is a matter which is not within the competence of the Government of Jersey; it depends upon the view taken by the United Kingdom Government on its own borders.

The Connétable of St. John:

How will Brexit impact on the projected growth in the finance industry, both in terms of people in business and the related growth that will result in tax receipts which we rely on?

The Minister for External Relations:

Again, that is quite a difficult question to answer because one is looking into a crystal ball. All I can say, I think, sensibly in answer to that is that the position of Jersey is not going to change fundamentally so far as the financial services industry is concerned because we are a third country, we are outside the European Union. The financial services industry has developed over the last 40 years on that foundation and that foundation is not going to change. So, whether or not the consequences of Brexit are going to be beneficial or detrimental to Jersey depend, I think, on 2 things: firstly, they depend upon whether or not the financial services industry in London, in the City of London, is adversely affected, that would obviously be a downside. On the other hand, we may very well be able to develop fresh markets outside the European Union and that is very much what

we are trying to do at the moment by seeking to make relationships in certain African countries or with certain African countries and in the Gulf area and in China as well.

The Connétable of St. John:

The double tax agreements that have been made with European countries, are they with individual countries or with the E.U. as a whole?

The Minister for External Relations:

They are mainly tax information exchange agreements rather than double tax agreements. There are some double taxation agreements but only with a small number of smaller countries on the whole. But they are country-to-country agreements, nothing to do with the European Union.

The Connétable of St. John:

Thank you.

Senator S.C. Ferguson:

What will be the impact on the ability of Islanders to work, live and travel freely within the European common travel area?

The Minister for External Relations:

I do not know.

Senator S.C. Ferguson:

Are we going to have a system where the immigrant Islanders from the U.K. are going to be tied up like the Islanders with no grandparents born outside the U.K. border?

The Minister for External Relations:

You are talking about the stamp in the passport?

Senator S.C. Ferguson:

Yes.

The Minister for External Relations:

Well, one of the consequences of leaving the European Union is that the stamp in the passport will go. No Jersey person may have a stamp in his or her passport any longer.

Senator S.C. Ferguson:

But none of us will be able to go and easily live and work in the U.K.

The Minister for External Relations:

We might all have invisible stamps in our passport.

Senator S.C. Ferguson:

Right. Yes, obviously that is a change we are going to see in our passports. Will we all need to go and have new passports, to go back to the royal blue ones?

The Minister for External Relations:

Well, we will not have European Union passports any longer so, yes, we will have to have British passports.

Senator S.C. Ferguson:

Will it be possible to have the passport office move back to Jersey then?

The Minister for External Relations:

We still have a passport office in Jersey.

Senator S.C. Ferguson:

Yes, but I think, are Jersey passports not issued, effectively, in London although we pick them up here?

The Minister for External Relations:

Mr. Walwyn might be able to correct me if I am wrong, but I think the position is that the printing is done in England for security reasons but the applications are completed in Jersey. They are still Jersey passports in the sense that they are, as a matter of law, issued on behalf of the Crown by the Lieutenant Governor. So they are still Jersey passports.

Senator S.C. Ferguson:

But does that mean we are all going to have to go and have new ones and pay for them? Just a thought.

The Minister for External Relations:

Certainly you will need a new passport, Senator, I do not know whether you will have to pay for it, I expect you will.

Deputy S.M. Brée:

Could I just ask a quick question? You say we will need new passports; when will we need new passports? Are you saying that in March 2019 our passports are no longer valid for travel within, well, certainly Europe and the world?

The Minister for External Relations:

I think this is probably one of a great number of matters which would be hopefully dealt with in the agreement between the United Kingdom and the European Union for withdrawal from the European Union. It is a matter which affects the European Union, it is a European Union passport. It affects the U.K. as well and clearly I would have thought that there would be some transitional arrangement which allows E.U. passports to continue in force for a period of time so that the passport office is not overwhelmed by 100,000 applications for Jersey passports.

Deputy J.A.N. Le Fondré:

Fifty-five million.

Senator S.C. Ferguson:

Yes, because presumably things like protection for travellers and the compensation arrangements that the E.U. impose, those are all going to fall by the wayside or be replaced by what or who?

The Minister for External Relations:

Well, we will go back to the status quo ante before the United Kingdom entered the European communities. So whatever was the provision in 1972, in principle, I would have thought will be the provision in 2019.

Senator S.C. Ferguson:

Yes, I cannot quite remember that, can you? The laws that have been imposed on us, by virtue of our current relationship with the E.U., or those that refer to E.U. directives and regulations, presumably those are all going to need to be amended or repealed.

The Minister for External Relations:

Yes, I mean not many laws have been imposed on us, if I may say so. I think with the arrangements for implementing the protocol obviously apply to us as a result of our relationship with the European Union but many of the European Union rules that we have applied in the Island have been done voluntarily because it has been a sensible thing to do, to join into the European rules rather than have our own separate rules. Data protection is one of the examples usually given. We want to be part of the data protection umbrella of the European Union so that information can flow freely between Jersey and every European country. I would imagine that we would continue that in force.

Senator S.C. Ferguson:

Yes, and there are a lot of international treaties, the Antarctic Protection of Seals springs to mind, I think is one of them. What is going to happen to all those sort of treaties? Some are international and some are through the E.U.

The Minister for External Relations:

Again, I think that is a matter which would be one of those many things that would have to be negotiated between the European Union and the United Kingdom, as a matter of general principle, a matter of international law. When there is a change of constitutional status there is a presumption that an international obligation continues until the new international state, in this case the United Kingdom, decides to put an end to that relationship. So that if there were European Union conventions or obligations which have been entered by the European Union then they would continue until the United Kingdom decided whether or not they should continue in force, so far as the U.K. is concerned or not.

Deputy J.A.N. Le Fondré:

Chris, have you got anything?

The Connétable of St. John:

I have got nothing.

Deputy J.A.N. Le Fondré:

Sarah, are you done?

Senator S.C. Ferguson:

Yes.

Deputy J.A.N. Le Fondré:

Have we covered your 18.1 there?

Senator S.C. Ferguson:

Yes, there is, I think.

Deputy J.A.N. Le Fondré:

We have done that, okay. Right, Simon, do you want to ask your question? I have got a question I want to ask too.

Deputy S.M. Brée:

Yes. Just going back to the issue of freedom of movement of people and the implications of Brexit. How will Brexit impact on the Council of Ministers' current, or should one say lack of, population policy and is one being developed as part of the long-term plan relating to Brexit?

The Minister for External Relations:

If I may say so that is outwith my general area of responsibility. I do not think it is a matter of External Relations but we have a population policy at the moment which is an interim population policy, which - but it is not my domain - is under consideration.

Deputy S.M. Brée:

So what you are saying is there will not be any greater impact on that policy as regards to Brexit?

The Minister for External Relations:

No. I would have thought the problem would be the other way; the problem would be in ensuring that we get the migration that we need for the purposes of our industries.

Deputy J.A.N. Le Fondré:

I have got one other question. Is everybody else okay?

Deputy S.M. Brée:

Yes.

Deputy K.C. Lewis:

I have got one. Expanding on Senator Ferguson's question regarding E.U. legislation, would it be your wish to continue to adopt E.U. legislation so that we could be in step with Europe which may aid our trading agreements? I am also minded to think of Norway, which is not part of the European Union but has open borders and has signed up to all the European legislation. I know we are not a sovereign nation.

The Minister for External Relations:

I think that would depend upon the policy area in question to be discussed before the question of data protection, and I think there would be very good grounds for saying that we would want to continue to enforce the law that we have at the moment which is consistent with European Union rules in order to ensure the free flow of information. Another area which falls within the remit of the Ministry for External Relations is international sanctions. Now, whether we would want to maintain the situation that we have at the moment, which is essentially to implement our sanctions by bringing into force European Union regulations, I think is an open question. We may want to do things differently and I think we will need to look to see how the United Kingdom will want to implement

United Nations sanctions and whether we want to follow the U.K. or whether we want to row our own boat or whether we want to link ourselves as before to the European Union.

Deputy K.C. Lewis:

Thanks.

Deputy J.A.N. Le Fondré:

A query I had, which is going back to the issue around the passports and the invisible stamp that Jersey people are going to have in them: is there any mileage in raising the issue in the negotiations with the U.K. of what the position is going to be of people who have got European parents or grandparents? Because up until now if you have a British passport but have a non-British grandparent but a European member you have the stamp in your passport, as I understand it. Is there a possibility that effectively that stamp, when it gets removed, you will not have an invisible stamp put in its place? Is that something that can be raised during the negotiations or not? Because previously it has been the British setting the limit if you have a European grandparent; you still have the stamp in your passport because it was a British passport it was not another passport, if that makes sense.

The Minister for External Relations:

Well, you have a stamp in your passport because you are a British citizen and because the stamp represents the arrangements that were made by the United Kingdom when the U.K. entered the European communities. So when the U.K. is no longer in the European Union I would not have thought there would be any question of any stamp in any passport. You either have a right to go and work in the European Union because you are a member or a citizen of a member state or you do not.

[14:45]

Deputy J.A.N. Le Fondré:

So essentially you need to be a French citizen with a French passport to be able to work there rather than somebody with a French grandparent, for example, but happens to be a citizen of Jersey?

The Minister for External Relations:

Yes, I mean I think that depends on citizenship, does it not? So, if you have French grandparents and you are entitled to a French passport then you would achieve all the rights of a French citizen.

Deputy J.A.N. Le Fondré:

It would be that way you have to go. Okay. Right, moving on if everybody is okay. Simon.

Deputy S.M. Brée:

We touched on it a little bit earlier on but one specific area about current legislation that I would ask is: what will the position be in relation to Jersey's continued application or adoption of the European Human Rights Law conventions as now enshrined in Jersey Law, and is there any intention to repeal this and reissue?

The Minister for External Relations:

The European Convention on Human Rights is, in principle, nothing to do with the European Union. The European Convention on Human Rights is an instrument of the Council of Europe and at the present time the United Kingdom Government does not intend to withdraw from the E.C.H.R. (European Convention on Human Rights) so there is no reason why the Human Rights Law 2000 that we have should be affected. One of the things that I was able to discuss with the Minister of State when he came over here was the plans of the United Kingdom Government to introduce a British Bill of Rights which might replace, in the United Kingdom, the Human Rights Act 1998. But even if the British Bill of Rights comes into being, the U.K. will still subscribe to the European Convention on Human Rights; so the convention will still apply it is simply that the rights will be embodied not in the Human Rights Act but they will be embodied in the new British Bill of Rights. Now, we have not seen a draft of that yet so we do not know how it will work but I made it clear that, so far as we were concerned, we were attached to the Convention on Human Rights. Certainly it is the government policy and I think it is probably a general policy that most Members of the States would subscribe to, that the European Convention on Human Rights is a good thing. It gives people, individuals in Jersey, who fall out with the authorities, who cannot get justice as they see it from local institutions to go outside the Island to an external institution and to seek to enforce their rights from there.

Deputy S.M. Brée:

But if the U.K. did introduce a British Bill of Human Rights, would we be required to adopt that?

The Minister for External Relations:

No.

Deputy S.M. Brée:

We would not?

The Minister for External Relations:

No. I have used the phrase, wrongly, of a British Bill of Rights because one of the things that I asked the Minister to ensure was that it was referred to as a United Kingdom Bill of Rights not a British Bill

of Rights applying throughout the British Isles but a United Kingdom Bill of Rights. So I think that the proper title, if I remember correctly, is just a bill of rights.

Deputy S.M. Brée:

I mean it does raise the question, and I think you touched on it, the amount of work that has been done so far on looking at the impact on Jersey's primary laws with regards to Brexit. Do you envisage this to be a larger piece of work than you originally envisaged?

The Minister for External Relations:

Yes, I think, is my cautious answer to that question. I think the assumption had been that because we are only attached to the European Union in a very limited way, that there would not be very much legislation which would have to be considered. The advice that I received from the Law Officers' Department is that that assumption may not be correct and there may be many more pieces of legislation which over the last 40 years have been influenced in one way or another by European Union legislation and therefore has to be looked at. So, I think the answer is it could be a bigger task than we originally envisaged, yes.

Deputy S.M. Brée:

Okay, thank you.

Senator S.C. Ferguson:

Would you be envisaging, then, a Bill of Rights, sort of constitutional bill for Jersey?

The Minister for External Relations:

No.

Senator S.C. Ferguson:

You mentioned earlier that the Prime Minister of the U.K. had declared that the Supreme Court in the U.K. would be the ultimate legal body. How does that fit in with the human rights requirements?

The Minister for External Relations:

That is an interesting question and I do not know the answer to it. It depends, to a large extent, upon what happens when the Human Rights Act in the United Kingdom is repealed and replaced by the Bill of Rights. My understanding, but this is merely from what I have read in the media reports, is that the intention is to make the Supreme Court, again, supreme over the European Court of Human Rights and to make some provision that the judgments of the European Court of Human Rights are to be taken into consideration but not necessarily binding upon the Supreme Court. Personally, I find it quite difficult to see how that can be reconciled with membership of the European

Convention on Human Rights but obviously I think one will have to wait and see what comes out when the papers are published.

Senator S.C. Ferguson:

Yes, because what happens to the 1689 Bill of Rights in the U.K.? I mean, given that in Europe you can ... I am sorry if I am using up time.

Deputy J.A.N. Le Fondré:

You can have time for about 30 seconds.

Senator S.C. Ferguson:

Given the way that the law in Europe works very differently to the English common law, is it advisable to have all these Bills of Rights and so on if we are going to be splitting off again?

The Minister for External Relations:

I think that is a question you will have to put to the Prime Minister.

Senator S.C. Ferguson:

Yes.

Deputy J.A.N. Le Fondré:

On that note, right, Chris, anything at the moment?

The Connétable of St. John:

Nothing on this section.

Deputy J.A.N. Le Fondré:

No, I will just move on, okay. On this section, okay, right. I just want to ask, and you have touched on it but I would like a little bit more detail. Particularly regarding financial services, could you simply just state the position as to where we are regarding financial services including funds as regards Europe in terms of third country status and passporting?

The Minister for External Relations:

Yes. I will ask Mr. Walwyn to put the flesh on the bones but in very broad terms the E.S.M.A. (European Securities and Markets Authority), which was the authority in Europe which deals with standards has decided that Jersey, Guernsey, Japan and Canada and another country; five countries anyway, are eligible for the A.I.F.M.D. (Alternative Investment Fund Managers Directive) passport and the expectation might have been, before the referendum, that the passport would be

issued in short order by the European Commission. I think the European Commission has decided to hold back on the issuing of the passport for reasons which presumably have something to do with the decision of the United Kingdom to leave the European Union. Mr. Walwyn might like to fill in a bit more on that.

Director for External Relations:

Thank you, Minister. Yes. Recently the Commission has decided that they need time to have a prudent and cautious review of the situation regarding passporting, and, as the Minister says, this is presumed to be as a consequence of the vote by the U.K. electorate to leave the E.U. On a positive side, however, the national private placement regime continues and Jersey and indeed Guernsey will be able to continue to take advantage of these national private placement regimes for alternative investment funds. So it should not be disruptive and certainly we have not been singled out in any way.

Deputy J.A.N. Le Fondré:

So, that is applied to Canada and Japan as well, is it? Sorry, everywhere.

Director for External Relations:

Yes, or it is stopped, you know, or having a period of reflection for all countries when applying for a passport.

Deputy J.A.N. Le Fondré:

Right. So that is on funds. Now, is that the only area that passporting is relevant for Jersey?

Director for External Relations:

Yes, basically.

Deputy J.A.N. Le Fondré:

What is the position then on third country status as regards us and as regards financial services?

Director for External Relations:

That continues unchanged and we maintain third country status with regard to financial services and market access.

Deputy J.A.N. Le Fondré:

In the general ... yes, nothing has been ...

Director for External Relations:

Yes, and all the acquired rights of the last 40 years continue.

Deputy J.A.N. Le Fondré:

Is that tied into the U.K., in other words, as the U.K. leaves or do we retain that third country status?

Director for External Relations:

It is a very good question. We should retain that third country status. Of course the change is for the U.K. because the U.K. would itself become a third country as well. But as a matter of principle we are third countries already with regard to financial services. So that is no change for us but a change for the U.K.

Deputy J.A.N. Le Fondré:

Right, okay. Irrespective of the outcome of the negotiations?

Director for External Relations:

That is true, although as the Minister has said, with regard to passporting under A.I.F.M.D., it has been held up for every essentially passporting country as a result of the U.K. vote.

Deputy J.A.N. Le Fondré:

Okay, but in the wider context financial services is stable.

Director for External Relations:

The same.

Deputy J.A.N. Le Fondré:

Okay. Right. Simon.

Deputy S.M. Brée:

Just trying to clarify that very quickly. You are quite satisfied that the current third party country status Jersey enjoys is not going to be renewed or repealed post-Brexit; i.e. there is no connection between the granting of third country status and our relationship with the U.K. while the U.K. was a member country?

Director for External Relations:

There are no guarantees of course and as we have mentioned, for the A.I.F.M.D. passport the period of reflection is clearly a result of the Brexit decision. So that does mean that the Commission and others will be considering what it means to give a passport in the context of what it would mean to

give the U.K. a passport in that area, and that is the reason, we presume, why there has been this period of reflection.

Deputy S.M. Brée:

So, taking that a step further, what confidence can you give to the financial services industry that the current passports being provided will not be repealed post-Brexit?

Director for External Relations:

Because the third party relationship is a third party relationship. There is no ...

Deputy S.M. Brée:

But you have already said that there is a question mark over your ... you cannot guarantee that our third party ... sorry, third country status will be maintained, therefore, surely that then does mean there is a risk that the passporting element will be reviewed and possibly repealed as well.

Director for External Relations:

No, I did not say that our third country status could not be maintained. What I did say is that the Commission, in considering A.I.F.M.D. passporting, has had a period of reflection while it considers what the implications would be for issuing a passport because they anticipate, I imagine, that they would be issuing or the U.K. would be asking for a similar passport in future.

Deputy J.A.N. Le Fondré:

So we are separating the 2. We have third country status, which should be okay ...

Director for External Relations:

Yes, exactly.

Deputy J.A.N. Le Fondré:

... and then the passporting side which is presently on hold.

Director for External Relations:

On hold, that is right.

Deputy J.A.N. Le Fondré:

Following on, if Canada gets it, one would presume that the U.K., at some point, would get it. Okay. I was nodding to the microphone.

The Minister for External Relations:

Deputy Brée is suggesting that third country status has been granted. I do not think anybody grants third country status. Third country status is a matter of fact. We are a third country because we are outside the European Union and that cannot be taken away from us.

Deputy S.M. Brée:

No, third country status is recognised officially by the European Union and that, therefore, then carries certain rights and privileges with it when you are doing business within the European Union. Would you agree with that?

[15:00]

The Minister for External Relations:

Not quite. I think the European Union gives certain privileges and market access to third countries if they are compliant with the European rules and have equivalent state methods and regulation and that allows them to say: "Yes, you may market your instruments, whatever they may be, in the European Union." But third country status is a question of fact. We are a third country; there is nothing that anybody can do about that because we are not in the European Union.

Deputy J.A.N. Le Fondré:

Yes, I will pick up. I thought the implication of third country status, from my perspective and particularly with regard to financial services, was that it, as Simon was saying, granted a certain ability to therefore take deposits from Europe, sell various products and not have to ...

The Minister for External Relations:

I believe that is what Mr. Walwyn is saying. There is no guarantee that the kind of indulgence or the kind of privileges that the European Union gives to us, and has given to us in relation to A.I.F.M.D., are going to continue. We hope that they will but there cannot be a guarantee.

Deputy J.A.N. Le Fondré:

Okay. Any questions at this stage for the Minister?

Deputy S.M. Brée:

No.

Deputy J.A.N. Le Fondré:

We are at the end of our time limit so if you are happy to run on for 5 minutes we can wrap up. I mean we can either wrap up now or we can run on for 5 minutes and finish with a couple of extra questions if you have the time, Minister?

The Minister for External Relations:

We all have to be somewhere else at 3.15 p.m. but 5 minutes is fine.

Deputy J.A.N. Le Fondré:

Okay, that is fine. Do we want to go just straight to our next section or the end section?

Deputy S.M. Brée:

Yes. We will go to the end section.

Deputy J.A.N. Le Fondré:

The end section. Really, it is a top-up on your more recent activities, Minister, in terms of what you have been doing, who you have meeting with at high government level, and what are the expected outcomes from those meetings. Obviously we are aware of the Minister of Justice; is there anything else you wish to add on that front? Then I will have the concluding remark.

The Minister for External Relations:

Yes. Very briefly, we had a meeting yesterday with the Préfet Maritime, who was coming here for meetings with the Harbour Office and officials who are concerned with monitoring the difficulties of both tourism and migrants coming in unlawfully, and that was, I think, a very useful discussion. So he went on to Guernsey and it was really an opportunity to explain to him how the Island's defences worked, and I think he found it a very useful visit and I think the officials who met him found it helpful as well. We had a visit from Monsieur Hervé Morin, the President of Normandy, not very long ago and Monsieur Bas, who is the President of the Department of La Manche, and that was an important occasion in the sense that the Chief Minister was able to sign an agreement, which is the first time that Jersey and Guernsey and La Manche and Normandy had joined together in a collaboration which hopefully will lead to increased trade between Normandy and Jersey and also, indirectly, to better relations with the French. One of the things that was said to me was: "We bring a lot of money into Jersey. This is a part of the way in which you run your financial services industry; is it possible some of that money can be reinvested in Normandy?" We said: "Yes, we do not see any reason why not." So we have put Jersey business in touch with the relevant officials in Normandy and we hope that there will be an opportunity for Jersey investors to help Norman businesses by investing in them. So it is one of the concrete and positive results that come from these kind of diplomatic meetings.

Deputy J.A.N. Le Fondré:

Okay. Any questions?

Deputy K.C. Lewis:

One quick one. Regarding the European Union, there are, I think, 17 countries, maybe more, in the European Union that have regions within their borders that lack greater autonomy and some independence, and because of this obviously many countries are terrified of their countries fragmenting. In Italy you obviously have Sardinia, France, Corsica and the Basque regions. Likewise, Spain, Basque, Catalonia, Canary Islands; that they would not even consider an application from a devolved government to be members of the European Union. I am talking obviously of Scotland. So, is the best that Jersey can hope for some kind of status quo?

The Minister for External Relations:

Yes, I think it is perfectly true that our relationship with the European Union at the moment is a relationship of a dependent territory and a member state, and when the U.K. is no longer a member state we will be in a different position so far as the European Union is concerned. On the other hand there is a history of 40 years of dealings with the European Union and I hope that that will put us in a rather different position from some of the territories that you have mentioned.

Deputy K.C. Lewis:

Okay, thank you.

Deputy J.A.N. Le Fondré:

Well, just before we conclude I do want to put one thing on record, which you will be delighted to know is congratulations. Having spent 2 days, as at least one of your officers knows, in Belfast and Dublin on a British-Irish Parliamentary Committee looking at Brexit, I think the fact that Jersey was able to produce a paper on its position pretty well on day one of Brexit or post-referendum, does need to be acknowledged, Minister. I think congratulations are due to you and your team particularly for getting us there because it was certainly clear that some other jurisdictions had done preparations and others had not, and I think for us as a small island to have done that; well done. I just wanted to put that on record.

The Minister for External Relations:

Thank you very much. Very much appreciated.

Deputy J.A.N. Le Fondré:

Thank you very much for the hearing and, yes, it has been very interesting. That concludes the hearing, thank you very much.

[15:05]