

## **Annex B**

# **HOW TO NOTE ON THE EXTENSION OF INTERNATIONAL INSTRUMENTS TO THE CROWN DEPENDENCIES**

This note provides guidance to UK Government Departments on how consultations on the extension of International Conventions, Treaties, Protocols or Agreements (“International Instruments”) are to be initiated with the Crown Dependencies, and what information the lead HM Government department might usefully provide to the Crown Dependencies to assist them in deciding whether or not to have the UK’s ratification of such instruments extended to them.

### **Background**

Unless expressly authorised to do so by HM Government acting for the Crown (known as “Entrustment”), the Crown Dependencies do not have the authority to become party to International Instruments in their own right, because the UK acts for the Crown as the Sovereign party. The long-standing practice of the United Kingdom when it ratifies an International Instrument is to do so on behalf of the United Kingdom of Great Britain and Northern Ireland and such (if any) of the territories of the Crown for whose international relations the UK is responsible that wish the International Instrument to apply to them.

Consultation with the Crown Dependencies regarding extension of International Instruments is a matter of essential policy and administration. International instruments which propose provisions relating directly to the Crown Dependencies should not be negotiated unless consultation in good time in advance has taken place with the Islands in question. Where applicable, the views of each Crown Dependency may also be required to formulate the UK negotiating position on an International Instrument. The UK is responsible to the relevant treaty body under international law for compliance with international obligations undertaken in respect of any of the Crown Dependencies to which an International Instrument has been extended. Because of its ultimate responsibility as the Sovereign State, the UK must therefore ensure that a Crown Dependency which wishes to have such an instrument extended has appropriate domestic legislation and other provisions to comply with its obligations.

A decision on the territorial extent of an International Instrument entered into by the UK is a **domestic** decision and is **not** one that must be agreed by all the other signatories to the Instrument.

The department leading on the International Instrument in question should consult each Crown Dependency directly in the first instance. The department should also keep the MoJ's Crown Dependencies Team informed and updated on the status of the consultation.

Generally speaking, initial consultation with the Crown Dependencies should occur during the course of negotiation of an International Instrument, if the subject of the International Instrument might be relevant to the Crown Dependencies. Even if an International Instrument does not appear to be particularly relevant to the Crown Dependencies, it is still good practice for the Crown Dependencies to be advised of the Instrument so that each Crown Dependency may come to its own view. By doing this, the government of each Crown Dependency can be made aware of the issues and can express any views or concerns they might have with the text under negotiation. However, **at the very latest** the Crown Dependencies should be consulted as soon as there is any question of the UK signing or ratifying an International Instrument.

### Consultation Process steps

It is preferable to begin informal consultation on the International Instrument as early as possible. This can be done through contacting the following officials in the Crown Dependencies:

Guernsey	Jersey	Isle of Man
Jo Reeve – Principal External Affairs Officer - <a href="mailto:erg@gov.gg">erg@gov.gg</a>	Tom Walker – Director, International Affairs - <a href="mailto:T.Walker@gov.je">T.Walker@gov.je</a>	Anne Shimmin – External Relations Manager - <a href="mailto:Anne.Shimmin@csso.gov.im">Anne.Shimmin@csso.gov.im</a>

However, correspondence through formal channels may be required at a later stage (please see Step 2 below). In these instances, lead departments should send letters addressed to the Lieutenant Governor (in the case of Guernsey and Jersey) or the Chief Secretary (in the case of the Isle of Man) to the MoJ Crown Dependencies Team, who will relay them as appropriate. The contact details for formal correspondence are as follows:

Guernsey	Jersey	Isle of Man
His Excellency the Lieutenant Governor Government House The Queen's Road St Peter Port Guernsey GY1 1GH	His Excellency the Lieutenant Governor Office of the Lieutenant Governor St Saviour Jersey JE2 7GH	Mr Will Greenhow The Chief Secretary Government Office DOUGLAS Isle of Man IM1 3PN
<a href="mailto:governorsoffice@gov.gg">governorsoffice@gov.gg</a> cc. <a href="mailto:erg@gov.gg">erg@gov.gg</a> (Jo Reeve)	<a href="mailto:governorsoffice@gov.je">governorsoffice@gov.je</a> cc. <a href="mailto:T.Walker@gov.je">T.Walker@gov.je</a> (Tom Walker)	<a href="mailto:Will.Greenhow@cso.gov.im">Will.Greenhow@cso.gov.im</a> cc. <a href="mailto:Anne.Shimmin@cso.gov.im">Anne.Shimmin@cso.gov.im</a> (Anne Shimmin)

### **Step 1**

- 1.1 The department leading on the International Instrument in question should provide the Crown Dependencies with either a copy of its draft Explanatory Memorandum (EM) or draft consultation paper. Any draft EM or consultation paper should be prepared on the assumption that the Crown Dependencies have no previous knowledge of the subject. It should contain enough information to enable them to understand the substance of the International Instrument without reference to the full text. In short, it should contain:-
- What the Instrument aims to achieve; its concept, how it came about, scope; restrictions, how it will achieve its key aims, the key mechanisms involved and web links to the draft International Instrument if available.
  - What the UK's stance on the International Instrument is; why the UK supports its aims; the UK position on its principles - set in both the domestic and international context; UK policy on related issues. if relevant.
  - What the perceived benefit is for the Crown Dependencies of signing up to the Instrument and emphasis on any issues that may be of particular relevance to the Crown Dependencies (e.g. financial implications).
  - How the UK intends to implement the Instrument, with reference to any relevant UK or international legislation.
  - Timetable: what is the UK's timetable and when it is anticipated that the Instrument will come into force.
  - Contact details of the department officials leading on the consultation.
  - Consultation deadline.

## **Step 2**

- 2.1 Where it is necessary for a department to consult **formally** it should send the letters addressed to the relevant contacts in the table above to the MoJ Crown Dependencies Team (contact details at the foot of this note) with the relevant documents enclosed. In the cases of the Isle of Man and Guernsey, all correspondence should be sent electronically as email attachments. The department must allow each Crown Dependency adequate time to consider the implications of having any International Instrument extended to them. In addition, officials should bear in mind that all the Crown Dependencies are unique and, as such, they should not be treated as a 'package'. For example, within the Bailiwick of Guernsey there are three jurisdictions which might not all share the same approach to an instrument. They may differ in which instruments they wish to have extended to them or in the timing of such extensions.

The MoJ's Crown Dependencies team recommends a **minimum consultation period of 6 weeks**, more if possible. The department should also inform the Crown Dependencies that they are to respond directly to them, copying in the MoJ Crown Dependencies Team (contact details at the foot of this note).

- 2.2 The department should note that it is not always possible for a Crown Dependency to be included in the instrument of ratification even though the Crown Dependency may wish the International Instrument to apply to it. Generally, this will be because the Crown Dependencies concerned do not have the necessary legislation in force to support extension at the point of UK ratification. Rather than the Crown Dependencies having to work to the UK's extension schedule, there is provision in most International Instruments that allows the scope of ratification to be extended to include them at a later date when the necessary legislation is in place. This practice has been agreed to by other States and is regarded by the UN Secretary General as establishing a "different intention" for purposes of Article 29 of the Vienna Convention.
- 2.3 In such cases, the department should note the position of each Crown Dependency and continue with the UK's ratification.

## **Step 3**

- 3.1 If any of the Crown Dependencies indicate that they do wish to be included in the instrument of ratification they should be able to demonstrate that the necessary domestic provisions are in place to support extension of the International Instrument. The standard method for a Crown Dependency to demonstrate its compliance with an International Instrument will be through a transposition table setting out, often on an article by article basis, the relevant domestic legislation and/or other provisions.

- 3.2 The transposition table should include confirmation that the Attorney General's Chambers (in the case of the Isle of Man) or the Law Officers' Department (in the case of Jersey or Guernsey) is content that, in its view, the domestic legislation/provisions set out in the table are sufficient for the Crown Dependency to comply at the point of extension with the International Instrument in question to a similar extent as the UK. Copies of, or links to, any legislation or other documents referred to in the table should be provided to the department.

#### **Step 4**

- 4.1 On receipt of the request, the department should satisfy itself on behalf of the Crown that the Crown Dependency concerned has the necessary domestic provisions in place to support the request by considering the detailed transposition table. It is for the department to decide whether it should carry out a detailed review or be content to just undertake a quality assurance check that the Crown Dependency's legislation broadly meets the requirements of the International Instrument in question.
- 4.2 However, any checks should be carried out in a pragmatic manner, taking into account the circumstances of the requesting Crown Dependency. In particular, a Crown Dependency's implementing provisions need not be identical to those of the UK and it should be recognised that a Crown Dependency may not need all of the provisions that exist in the UK if they are not relevant to the Crown Dependency.
- 4.3 If the department considers that the Crown needs to query an aspect of the request from the Crown Dependency, then any such request for clarification should be put in writing, submitted to the Crown Dependency in question and copied to the MoJ Crown Dependencies Team. The department should conclude this step of the process within **4 weeks** of receiving the request.

#### **Step 5**

- 5.1 When the department is content that the International Instrument can be extended it should inform the MoJ Crown Dependencies Team and ask whether the MoJ would wish to review the extension request, bearing in mind HM Government's constitutional responsibilities in respect of international relations.
- 5.2 The MoJ should respond within **14 days**, unless there are good reasons for not doing so. If the MoJ cannot respond within this timescale, it should inform the lead department and the relevant Crown Dependencies, giving reasons for the delay, and setting out a timetable for resolution of any issues.

## **Step 6**

- 6.1 If there are any issues, the MoJ will liaise with the lead department and the Crown Dependency to resolve them. When the MoJ's Crown Dependencies Team is content, the lead department must then ensure that the Crown Dependency is included in the UK's instrument of ratification to the extent requested.
- 6.2 When the instrument of ratification is submitted to the treaty body by the FCO, the FCO will be responsible for notifying the Crown Dependency and providing them with a copy. It should also provide a copy of any formal acknowledgement from the treaty body and confirm when the International Instrument comes into force.
- 6.3 Once the instrument of ratification is lodged, the lead department will be responsible for notifying the Crown Dependency, confirming when the International Instrument will come into force. The MoJ's Crown Dependencies Team should be copied in to any correspondence.

### **Contact Details for the MoJ Crown Dependencies Team:**

Ministry of Justice  
Law, Rights and International Directorate  
Crown Dependencies Team  
102 Petty France  
London  
SW1H 9AJ

Email: [crown.dependencies@justice.qsi.gov.uk](mailto:crown.dependencies@justice.qsi.gov.uk)

### **Contact details for the FCO Treaty Section:**

Email: [Dale.Harrison@fco.gov.uk](mailto:Dale.Harrison@fco.gov.uk)  
[treaty.fco@gtnet.gov.uk](mailto:treaty.fco@gtnet.gov.uk)

Telephone: 0207 008 1107