

Annex C

HOW TO NOTE ON DEALING WITH REQUESTS FROM THE CROWN DEPENDENCIES TO EXTEND THE UK'S RATIFICATION OF INTERNATIONAL INSTRUMENTS

This note provides guidance on how to take forward requests from any of the Crown Dependencies asking for the UK's ratification of International Conventions, Treaties, Protocols or Agreements ("International Instruments") to be extended to include the Crown Dependencies.

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 UK 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 for whose international relations the UK is responsible that wish the International Instrument to apply to them.

It is not always possible to include the Crown Dependencies in the instrument of ratification, even though one or more may wish that International Instrument to apply to their particular jurisdiction. Generally this tends to be because the requesting Crown Dependency does 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, once 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.

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.

Initiating consultation

The Crown Dependencies themselves are responsible for initiating requests. They must write directly to the lead UK Government department (“the department”) which has responsibility for the International Instrument under discussion. Generally speaking, the lead department will have consulted the Crown Dependencies during the course of negotiation on the International Instrument which is the subject of a request.

The initial contacts in the Crown Dependencies are:

Guernsey	Jersey	Isle of Man
Jo Reeve – Principal External Affairs Officer - erg@gov.gg	Tom Walker – Director, International Affairs - T.Walker@gov.je	Anne Shimmin – External Relations Manager - Anne.Shimmin@cso.gov.im

Process

Step 1 – A Crown Dependency requests extension

- 1.1 Each Crown Dependency is responsible for initiating extension requests. It should write directly to the department with lead responsibility for the International Instrument in question, requesting its extension and setting out the scope of the extension, i.e. whether the same provisions, reservations and declarations as the UK should apply or not. If requested to do so by a Crown Dependency, the department should provide any information it may have on how the UK complies with the provisions of the International Instrument in question.
- 1.2 If a Crown Dependency has any difficulty in deciding which department has lead responsibility, if it requires the name of an appropriate contact in the department, or if it has difficulty in obtaining a response from the department, the MoJ’s Crown Dependencies Team will assist (contact details at the foot of this note).
- 1.3 When a Crown Dependency is ready for the extension to be progressed it 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. 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 with the International Instrument in question at the point of extension to a similar extent as the UK. Copies of, or links to, any legislation or other documents referred to in the table should be sent to the department.

- 1.4 The MoJ's Crown Dependencies team should be copied in to the extension request. Where appropriate, the request should also identify any reservations or derogations which the Crown Dependency wishes to be entered on its behalf.

Step 2 – Lead department review

- 2.1 On receipt of the request, the lead department should satisfy itself that the Crown Dependency has the necessary domestic provisions in place to support the request by considering the detailed transposition table. It is for the lead department to decide whether it should carry out a detailed review or whether it is content to undertake a quality assurance check that the Crown Dependency's legislation broadly meets the requirements of the International Instrument in question. The department should complete this step within **four weeks** of receiving the request.

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, or may wish to enter different exceptions or reservations. If the department considers it necessary for the Crown to query an aspect of the request, then any such request for clarification should be put in writing, submitted to the Crown Dependency and copied to the MoJ.

If the lead department fails to decide what steps it intends to take within the timescale set down, the relevant Crown Dependency shall contact the MoJ's Crown Dependencies team, asking for their assistance to resolve the issue.

The three Crown Dependencies are entirely separate jurisdictions and departments should not treat them as a "package". If one or two of the Crown Dependencies have requested extension of an international instrument the lead department should not delay considering the request until the others are also in a position to have the instrument extended.

- 2.2 Once the lead department is content for an International Instrument to be extended to a Crown Dependency, it should inform the MoJ Crown Dependencies Team and ask the MoJ to take forward the formal request for extension. The request should be copied to the Crown Dependency concerned.

Step 3 – MoJ review extension request

- 3.1 The MoJ's Crown Dependencies Team will review the extension request, bearing in mind HM Government's constitutional responsibilities in respect of

international relations. If there are any issues, the MoJ will liaise with the lead department and the Crown Dependency to resolve them. Once content, the MoJ will formally ask the FCO to take forward the extension request with the appropriate authority. The formal request should be copied to the Crown Dependency concerned. The MoJ review of the request must be completed within **two weeks** of confirmation from the lead department that it is content for the International Instrument to be extended.

Step 4 – FCO draft Instrument of extension

4.1 The FCO will draft the necessary instrument of extension, ensuring that it is correctly drafted and referenced as dictated by the requirements of the International Instrument-holding body and contains any reservations or exceptions requested. The FCO should send the draft instrument for formal approval in advance of submission, with the MoJ Crown Dependencies Team copied in to any related exchanges. When the instrument is submitted to the treaty body, the FCO will provide a copy to the Crown Dependency directly. Unless there are extenuating circumstances, this step in the process should normally have been completed within **four weeks** of the formal request by the MoJ for extension of the relevant Instrument.

The FCO should also email the official in the Crown Dependency with a copy of any formal acknowledgement received from the treaty body and information concerning the entry into force of the instrument for the Crown Dependency.

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

Contact Details for the FCO Treaty Section:

Email: Dale.Harrison@fco.gov.uk
treaty.fco@gtnet.gov.uk

Telephone: 0207 008 1107