



Ministry
of Justice

Government Response to the Justice Select Committee's Report 'Crown Dependencies: developments since 2010'

March 2014



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Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice by
Command of Her Majesty

March 2014



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**Government Response to the Justice Select Committee's Report
'Crown Dependencies: developments since 2010'**

Ministerial Foreword

Her Majesty's Government welcomes the Justice Select Committee's latest report on the relationship between the UK and the Crown Dependencies. This relationship is a valuable, historical and special one and the Government accordingly takes its responsibilities towards the Islands very seriously.

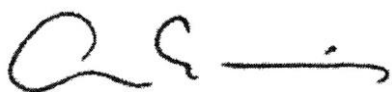
We share the Committee's view that there have been significant improvements since the last report in 2010. These positive developments would not have been possible without the efforts of many people in the Islands and in the UK. We would like to express our appreciation to all involved for their commitment and hard work.

A key development since 2010 is the publication of a factsheet summarising the nature of the constitutional relationship between the UK and the Crown Dependencies, as well as practical, step-by-step guidance for UK Government departments which explains how to work with the Islands. These documents, which are the product of joint working between officials in the Ministry of Justice and the Crown Dependencies, are currently available online at the gov.uk website and are attached to this paper at **Annex A**.

These documents have facilitated understanding of the constitutional relationship and of all UK Government departments' responsibilities to engage with the Crown Dependencies in their respective areas. As the department responsible for managing the Government's relationship with the Islands, the Ministry of Justice will continue its efforts to improve awareness and understanding of how the relationship operates. As part of this work, Lord Faulks will write to Ministers across Government as Lord McNally did in 2010.

It is our view that early constructive engagement between the Islands and Her Majesty's Government helps to avoid situations where the Crown Dependencies feel that their views on matters which affect them have not been taken into account by the UK. We therefore encourage the Crown Dependencies and UK Government departments to communicate as early and directly as possible. As ever, the Ministry of Justice stands ready to support dialogue and help to resolve any differences if this assistance is required.

We welcome the Committee's recognition that the Ministry of Justice is delivering on its constitutional duties with respect to the Islands. With new personnel in post at Ministerial and official levels, the Ministry of Justice looks forward to continuing its work with the Crown Dependencies to ensure that the relationship is characterised by mutual respect, candour and a shared commitment to continuous improvement.



Chris Grayling

Lord Chancellor and Secretary of State



Lord Faulks

Minister of State

Government response to the Committee's Conclusions and Recommendations

Relationship between the UK Government and the Crown Dependencies

As stated in the Ministerial foreword above, the publication of the factsheet and 'How To' notes on the gov.uk website has helped facilitate understanding of the constitutional relationship and the responsibilities of UK Government departments in respect of the Crown Dependencies. The factsheets and 'How To' notes should be seen as living documents and will need to be reviewed and refined from time to time.

The Government agrees with the Committee that it is important to continue efforts to improve understanding of the constitutional relationship between the UK and the Crown Dependencies, including through holding learning events in Whitehall (following the first such event at the Foreign and Commonwealth Office). Lord Faulks will write to Ministers in other departments to enhance cross-Government awareness and understanding of how the relationship works and of the Ministry of Justice's remit regarding the Islands, including handling Parliamentary Questions. The Ministry of Justice will explore ways in which the Policy Profession agenda might be used to improve understanding of the constitutional relationship within the UK Civil Service.

In addition, by encouraging more direct and early engagement between the Crown Dependencies and Government departments, situations where the Islands feel that their views have not been taken into account by the UK Government should become increasingly rare.

The Government shares the Committee's view that the existing constitutional relationship works well. Nevertheless we recognise the need to keep the processes by which the relationship is supported under review and are open to exploring how to improve further the way that we manage our relationship with the Islands.

As long as the existing constitutional relationship between the Islands and the Crown (which is managed by the Ministry of Justice on behalf of the Crown) remains in place, there are limits to what the Crown Dependencies can expect in terms of increased autonomy. As the Ministry of Justice made clear in giving evidence to the Committee, there is also limited scope for Her Majesty's Government to make further reductions to the scrutiny of the Islands' legislation and their compliance with international obligations. These are responsibilities which the UK rightly takes seriously.

While there is scope to explore ways in which the constitutional relationship could evolve further, it cannot be picked apart in a piecemeal fashion. Any consideration given to changing the relationship must be looked at as a whole, paying particular regard to the responsibilities that would accompany any move towards greater autonomy.

Should the Crown Dependencies identify any areas of the constitutional relationship which they would like to review, we would encourage them to articulate what these might be and how they would see any such changes working in practice. A thorough consideration of any possible proposal would have to precede consultation with the Ministry of Justice and any other relevant stakeholders so that the necessary advice could ultimately be submitted to the Crown.

The matter of international representation for the Crown Dependencies is addressed in a separate section on page 10 below.

Insular legislation and treaty extension

Insular Legislation

Her Majesty's Government welcomes the Committee's acknowledgement that the system for processing insular legislation for Royal Assent has been successfully streamlined. As a result, the typical clearance time (measured from the date that the Ministry of Justice receives the law until the date when it is recommended for Royal Assent) is 20 working days at most.

Like the Committee, the Government recognises that the Isle of Man's system, whereby Royal Assent is largely delegated to the Island's Lieutenant Governor, has improved turnaround times for Manx legislation. While the system for processing insular legislation for Royal Assent has been successfully streamlined, the Government shares the Committee's view that it is for the Bailiwick of Guernsey (which includes the islands of Guernsey, Alderney and Sark) and the Bailiwick of Jersey to consider and decide for themselves whether they would prefer to replicate the Isle of Man's approach in their own jurisdictions. In the meantime, the Government would like to express appreciation for the time and effort that officials from the Isle of Man have put into explaining how their Royal Assent system operates in order to aid consideration of this option within the other Crown Dependencies.

Treaty Extension

The Crown Dependencies cannot sign up to international treaties under their own aegis (unless they have been entrusted to do so) but can have the UK's ratification of international instruments extended to them. The Government agrees that there is scope to streamline the extension process for international agreements. This is an area where the Ministry of Justice continues to work closely with the Islands and other government departments, including the Foreign and Commonwealth Office.

There are several factors that can delay a Crown Dependency request for an international instrument to be extended. However, we consider that enhancing the compliance information that the Islands provide as part of their extension request is an important step in the right direction. This was borne out at the international instruments workshop with the Islands which the Ministry of Justice facilitated in August 2013.

The Crown Dependencies are currently leading on this area of work and the Government is grateful to Guernsey's officials for volunteering to coordinate the drafting of a model compliance matrix that can be adapted as appropriate by the Crown Dependencies for each international instrument extension request that they make. This matrix will have two main purposes: to set out the substance of the Crown Dependency's request; and to demonstrate clearly how their domestic provisions will support the extension of the relevant international instrument. This should help the Government department or departments who have policy responsibility for that instrument to take a proportionate, risk-based approach to assessing the extension request and should also help to avoid duplicating work that has already been carried out by the Islands' Law Officers. The relevant Government Department may occasionally encourage the Crown Dependencies to secure independent legal advice in relation to their compliance with an international instrument. If the Crown Dependencies have already taken this step, it is important that they do not hesitate to indicate this clearly to the relevant department.

Once the model compliance matrix has been agreed, we will be in a position to update the 'How To' note on the extension of international instruments and raise awareness of the process across Government, including through the use of 'teach-in' sessions in individual departments. We consider that these sessions will be a helpful way of enhancing mutual understanding, and will provide the Islands with an opportunity to explain their international outlooks.

Government departments have to manage a number of competing priorities using finite resources. The Ministry of Justice has therefore introduced a 'forward look' system through which we encourage the Crown Dependencies to scan their horizons and provide advance notice of specific international agreements which they might wish to have extended to them. This will enable the Ministry of Justice to help the Islands identify and 'warm up' relevant officials in the lead departments (if this help is needed), and to ensure that either the Ministry of Justice or the Crown Dependencies sends them the 'How To' guidance so that they are primed to deal with a request when it is ready to be submitted. This should help departments to plan and allocate their resources accordingly, and therefore help to avoid delays.

The Ministry of Justice will continue to encourage other Government departments to respond promptly to the Islands' requests for the extension of international instruments. However, we recognise that it will not always be possible for departments to meet the four-week deadline set out in the online guidance. Where delays cannot be avoided, departments should communicate proactively with the Islands to reassure them that their request has not been forgotten and to negotiate alternative timeframes.

We do not consider that it would be practical to presume that a department has given assent if the lead department does not respond within four weeks. This is because the Ministry of Justice cannot formally request that the Foreign and Commonwealth Office extend an instrument until the lead department has carried out a proportionate compliance assessment. Instead, we encourage the Islands to chase requests and, where appropriate, escalate them, with the support of the Ministry of Justice if this is required.

In order to assist the Crown Dependencies with their horizon scanning, officials from the Foreign and Commonwealth Office's Treaty Section have agreed to provide the Islands and the Ministry of Justice with advance notice of forthcoming international instruments for UK signature and information on the policy 'owner' for each instrument. Treaty Section officials have also indicated that they would be amenable to visiting the Islands with a view to enhancing mutual understanding.

Consultation by UK Departments

Her Majesty's Government agrees with the Committee that it is important for UK authorities to consult and engage with the Islands to ensure that, as far as possible, the Crown Dependencies have the opportunity to feed in their views on issues which affect them. The Crown Dependencies factsheet and the 'How To' notes refer explicitly to consulting the Islands on UK primary legislation and international instruments. However, it is best practice for the UK Government and the Crown Dependencies to engage with each other on a broader range of matters.

There has been a demonstrable benefit where UK Government departments have engaged with the Crown Dependencies at an early point in negotiations on international agreements; it has ensured that each Island's status has been acknowledged and that they have been properly consulted about the extension. This has proved to be particularly valuable where an international agreement that included the Islands as a temporary measure recently came up for renewal and it was initially assumed that their inclusion could automatically be carried forward into the new agreement. The lead department in the UK engaged with the Crown Dependencies early on in the negotiations. With the support of the Ministry of Justice, the Islands successfully established that their inclusion in the new agreement could only be taken forward with the consent of their governments. The lead department successfully carried this argument through to the treaty-holding authority to be taken into account the next time that the agreement comes up for renewal.

In addition, the Ministry of Justice is encouraging departments across Whitehall to keep the Crown Dependencies in mind when there are changes to international agreements or regulations that may be of interest to the Islands, particularly in policy areas where departments have engaged with them in the past. For example, it would be a mistake to assume that, because an EU regulation or agreement falls outside the scope of Protocol 3¹, the Crown Dependencies will not need to be consulted because they will not have to implement it. In fact, there are instances where UK legislation has been extended to the Crown Dependencies to which such regulations and agreements do apply. Where that is the case, they will need to be consulted on the potential impact of changes. It should also be noted that the Crown Dependencies may have chosen to implement domestic provisions to mirror regulations or agreements which do not fall within Protocol 3 in order to enable them to operate a level playing field with UK and international partners. Where departments are not sure if the Crown Dependencies will have an interest, they should seek the views of the Islands' authorities.

Failure to engage with the Islands in a timely fashion in relation to a UK Bill can result in delays to the progress of UK legislation if the relevant department does not consult the Crown Dependencies until prompted to do so by Parliamentary counsel. This can mean that departments have to reschedule a Bill's introduction or delay its Parliamentary progress. If the Crown Dependencies are included in an Act, it cannot be assumed that they can be included in any revised provisions; they must be consulted first.

The Government is pleased to note the growing direct contact between departments and the Crown Dependencies during the drafting stages of UK Bills. This has ensured that provisions that need to be retained for the Islands are not repealed inappropriately and has enabled the Crown Dependencies to work directly with the Government to ensure

¹ Under Protocol 3 to the UK's Treaty of Accession to the European Community, the Crown Dependencies are part of the customs territory of the European Union.

that any necessary Statutory Instruments extending UK provisions to them are amended – and usually done so in a timely fashion.

It is also important for Government departments to engage constructively with the Islands when the activation of a permissive extent clause in a UK Act leads them to request that UK legislation be extended to them. We note that there have been instances where departments have not accorded such requests the appropriate level of priority, which in turn has led to some significant delays in implementation. Departments should ensure that consultations with the Crown Dependencies are more appropriately scheduled and timetables for action agreed with the Islands.

International relations and entrustments

Her Majesty's Government respects the Crown Dependencies' desires to develop their international identities and enhance their international engagement within the boundaries of the constitutional relationship. As part of this the Government supports the Islands' establishment of representative offices in Brussels, London (in the case of Jersey) and Caen (Jersey and Guernsey).

Within this it is important to recognise that 'international relations' covers a wide range of different scenarios and therefore a 'one size fits all' approach to representation of the Crown Dependencies internationally is neither practical nor appropriate. As Cathryn Hannah explained during the oral evidence session in November 2013, we consider that a pragmatic, case-by-case approach is needed and should be pursued.

As we have explained, we take the view that early engagement and consultation with the Crown Dependencies – with the aim of working together to resolve or clarify any differences – is vital in this area and is an essential principle for interaction between Her Majesty's Government and the Islands. Furthermore, it is a key component of each of the international identity framework documents which the UK signed with the Crown Dependencies in 2007 and 2008. The text of the agreements reads:

"1. The UK has no democratic accountability in and for [name of Crown Dependency] which is governed by its own democratically elected assembly. In the context of the UK's responsibility for [name of Crown Dependency]'s international relations it is understood that –

- The UK will not act internationally on behalf of [name of Crown Dependency] without prior consultation.*
 - The UK recognises that the interests of [name of Crown Dependency] may differ from those of the UK, and the UK will seek to represent any differing interests when acting in an international capacity. This is particularly evident in respect of the relationship with the European Union where the UK interests can be expected to be those of an EU member state and the interests of [name of Crown Dependency] can be expected to reflect the fact that the UK's membership of the EU only extends to [name of Crown Dependency] in certain circumstances as set out in Protocol 3 of the UK's Treaty of Accession.*
- 2. [Name of Crown Dependency] has an international identity which is different from that of the UK.*
 - 3. The UK recognises that [name of Crown Dependency] is a long-standing, small democracy and supports the principle of [name of Crown Dependency] further developing its international identity.*
 - 4. The UK has a role to play in assisting the development of [name of Crown Dependency]'s international identity. The role is one of support not interference.*
 - 5. [Name of Crown Dependency] and the UK commit themselves to open, effective and meaningful dialogue with each other on any issue that may come to affect the constitutional relationship.*
 - 6. International identity is developed effectively through meeting international standards and obligations which are more important components of [name of Crown Dependency]'s international identity.*

7. *The UK will clearly identify its priorities for delivery of its international obligations and agreements so that these are understood, and can be taken into account, by [name of Crown Dependency] in developing its own position.*
8. *The activities of the UK in the international arena need to have regard to [name of Crown Dependency]'s international relations, policies and responsibilities.*
9. *The UK and [name of Crown Dependency] will work together to resolve or clarify any differences which may arise between their respective interests.*
10. *[Name of Crown Dependency] and the UK will work jointly to promote the legitimate status of [name of Crown Dependency] as a responsible, stable and mature democracy with its own broad policy interests and which is willing to engage positively with the international community across a wide range of issues."*

The Government is mindful of the fact that the Crown Dependencies are not sovereign states; they are dependencies of the Crown. Under international law they are territories for which the UK is responsible. While this is not explicitly stated in the international identity framework documents, this is the context within which those documents were agreed.

The international identity framework documents acknowledge that the interests of the Crown Dependencies and the UK will not always be aligned. Nevertheless, as part of those agreements, the UK has undertaken to support the Islands in developing their international presences – including by seeking to represent differing interests – and has pledged not to act for the Islands internationally without prior consultation. These commitments should not be mistaken for guarantees that the UK will always be in a position to represent the Islands' views internationally where those views diverge from the UK's own interests.

In international negotiations, the UK has to consider the wider audience and the perspectives of other sovereign states (some of whom have dependencies of their own) and particularly the impact that the Crown Dependencies' input might have on the UK's bargaining position.

As the Isle of Man highlighted in their written evidence to the Committee's inquiry, there are multilateral organisations whose formal constitutions do not allow for the formal participation of non-sovereign states – even where the UK would support participation by the Islands. It is therefore important to remember that it is not always within the Government's gift to allow the Crown Dependencies to play the part on the international stage that they might like to.

A good example of the UK supporting the Islands in representing themselves in areas of direct interest to them is HM Treasury's initiative to help the Crown Dependencies become members of MONEYVAL, the Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism. The Crown Dependencies are also members of the British-Irish Council in their own right. The most recent summit of the British-Irish Council took place in Jersey in November 2013, and the Government commends Jersey for hosting such a successful event.

The Crown Dependencies have also participated in international fora as part of the UK delegation at both Ministerial and official level, for example, the Commonwealth Finance Ministers' Meetings and the Commonwealth Meetings of Senior Officials of Law Ministries.

The Government will continue to consider opportunities for the Crown Dependencies to participate in international fora on a case-by-case basis, bearing in mind the constitutional relationship. As ever, it will also be important to strike a balance between the specific aims and structures of the international forum in question, and its relevance to the interests of the Islands.

The Ministry of Justice will work with the Foreign and Commonwealth Office and other Government departments to boost awareness of the importance of early engagement on international issues which potentially affect the Crown Dependencies and to inform them of forthcoming international discussions where they might have an interest in attending or providing input for agendas and communiqués.

We are aware that the Foreign and Commonwealth Office is undertaking similar work in relation to the international representation of the Overseas Territories. The Ministry of Justice and the Foreign and Commonwealth Office agree that there is scope for us to join up our efforts in this area while ensuring that the Crown Dependencies and the Overseas Territories, which enjoy different constitutional relationships with the Crown, are not conflated with each other. The Government would also like to acknowledge and thank the Crown Dependencies for the support and assistance they have provided to the Overseas Territories, including hosting visits by Governors and Governors-designate and briefing them on justice-related issues.

In late 2013, the then Minister Lord McNally invited the Crown Dependencies to set out their international priorities and suggest areas where they felt that they would benefit from greater representation through the UK, as well as how they would propose that this representation would work. The Ministry of Justice remains receptive to the Islands' proposals on this, and would be happy to discuss with the Islands how views diverging from those of the UK might be represented in different scenarios. However, we recognise that the Crown Dependencies and other Government departments will need to seek agreement on the most appropriate way of ensuring that the Islands' perspectives are represented on the international stage in any given case. As ever, the Ministry of Justice stands ready to support engagement if needed.

The Ministry of Justice is also supportive of the Crown Dependencies seeking letters of entrustment in additional policy areas and looks forward to hearing from the Islands on any specific proposals they may have. Entrustments are not matters on which the Ministry of Justice can take decisions alone: it will be important for the relevant Government departments to be consulted and to give their approval for specific entrustments.

The Department for Business, Innovation and Skills is continuing to work with the Crown Dependencies, the Overseas Territories and the EU Commission regarding Bilateral Investment Treaties. The first EU-wide investment agreement has yet to be finalised but discussions are underway to put in place a solution that works for all parties concerned once the first EU treaty comes into force. Officials remain in regular contact on this and an options paper has been submitted to the EU Commission.

Under the 'Grandfathering Regulation' the UK can seek the EU's approval to negotiate further Bilateral Investment Treaties, if desired. The Crown Dependencies can be factored in to any future treaty discussions, where there is agreement between all the parties involved.

Good government

We welcome the Committee's conclusions on the UK's responsibilities regarding the good governance of the Crown Dependencies. Her Majesty's Government agrees with the position set out in the Kilbrandon Report, and later in the Committee's reports published in 2010 and 2014, that it would take a most extreme circumstance, such as a fundamental breakdown in public order, to justify direct intervention by the UK in the running of the Islands.

The Government recognises that the Crown Dependencies are democratic, self-governing jurisdictions and takes a proportionate approach to our responsibilities in relation to their good governance. We will continue to give careful consideration to the correspondence which we receive in relation to the Crown Dependencies and approach the jurisdiction concerned if we require more information on their policies and mechanisms for dealing with a specific issue. This helps us to check that we can be satisfied that the Crown Dependencies are equipped to deal with issues appropriately.

Turning to comments made by the Committee on Sark; the Government shares the Committee's view that the ongoing community divisions on Sark are highly regrettable. This is an acknowledgement of one of the very real challenges that is facing the Island, but should not be viewed as detracting from recognition by the Committee and the UK Government of the good progress that has been made so far. The most important thing in moving forward is for the people of Sark to ensure that any differences that may exist in the community should not be allowed to obstruct or distract Sark's government from the vital work it has identified it needs to do in order to secure a sustainable future for the Island.

The Ministry of Justice's strategy in respect of Sark is to maintain a watching brief on governance issues and to continue to encourage and support good governance. In our view, progress in this area should make the possibility of a fundamental breakdown in good governance increasingly unlikely. We urge the government of Sark to build on the progress that it has made so far, and to make the best possible use of the practical help and support which continues to be offered by the UK Government and other 'Friends of Sark' (which includes Alderney, Guernsey, the Isle of Man and Jersey).

Annexes – Factsheet and How To Notes



Fact sheet on the UK's relationship with the Crown Dependencies

This fact sheet is aimed at providing an introductory overview of the UK's relationship with the Crown Dependencies and the Islands' international personalities. For more detailed information on the Crown Dependencies, please see the Annexes to the March 2014 Government Response to Justice Select Committee Report on the Crown Dependencies and the links to further reading at the end of this document.

Constitutional relationship

The Crown Dependencies are the Bailiwick of Jersey, the Bailiwick of Guernsey and the Isle of Man. Within the Bailiwick of Guernsey there are three separate jurisdictions: Guernsey (which includes the islands of Herm and Jethou); Alderney; and Sark (which includes the island of Brecqhou).

The Crown Dependencies are not part of the UK but are self-governing dependencies of the Crown. This means they have their own directly elected legislative assemblies, administrative, fiscal and legal systems and their own courts of law. The Crown Dependencies are not represented in the UK Parliament.

The Crown Dependencies have never been colonies of the UK. Nor are they Overseas Territories, like Gibraltar, which have a different relationship with the UK. The constitutional relationship of the Islands with the UK is through the Crown and is not enshrined in a formal constitutional document. HM Government is responsible for the defence and international relations of the Islands. The Crown, acting through the Privy Council, is ultimately responsible for ensuring their good governance.

The Queen is the Head of State of each Island and the Lieutenant-Governor for each Crown Dependency is Her Majesty's personal representative. The Lord Chancellor and Secretary of State for Justice is the Privy Counsellor with special responsibility for Island Affairs. At present, Lord Faulks is the Minister responsible for the conduct of Islands' business within Whitehall.

The Ministry of Justice is responsible for managing the constitutional relationship with the Crown Dependencies, which involves a variety of different responsibilities including involvement in key Crown Appointments and processing their legislation for Royal Assent.

However, as per the Justice Select Committee Report 2010, all UK Government Department have a responsibility to engage directly with the Crown Dependencies on their policy areas. The Annexes to the March 2014 Government Response to Justice Select Committee Report on the Crown Dependencies contain information on how Government Departments should consult Crown Dependencies on relevant issues.

Nationality and Immigration

The British Nationality Act 1981 confers British Citizenship on all those with close connections with the UK, the Channel Islands and Isle of Man. The Islands have adopted the common format passport and the Lieutenant Governor remains the passport-issuing authority in the Islands.

Jersey, Guernsey, the Isle of Man and the Republic of Ireland, together with the UK, comprise the Common Travel Area. There is no immigration control between the UK and the Islands or between the Islands themselves. Rather, the Islands form part of the border for the British Isles as a whole.

Island Legislation

The Islands' legislatures make their own domestic legislation.

Principal legislation made by the Islands' legislatures requires Royal Assent or sanction. The Ministry of Justice examines such legislation to ensure that there is no conflict with international obligations (including ECHR compliance) or any fundamental constitutional principles. This enables the Lord Chancellor to advise the Privy Council whether Her Majesty in Council can be advised to make an Assenting Order, and thereby grant Royal Assent. For non-reserved Isle of Man legislation the Ministry of Justice will directly inform the Lieutenant Governor when the Lord Chancellor is content that the delegated responsibility to grant Royal Assent may be exercised.

UK legislation rarely extends to the Crown Dependencies and should not be extended without first consulting the Islands' Authorities and obtaining their consent. In instances where it does extend, it may do so either by virtue of the Act itself or by Order in Council made with their agreement under an enabling provision contained in the Act which provides for it to be extended to the Crown Dependencies. An enabling provision for an Order in Council, known as a "permissive extent clause" (PEC), in a Bill could take the following form: "Her Majesty may by Order in Council provide for any of the provisions of this Act to extend, with or without modifications, to any of the Channel Islands or the Isle of Man". For an Act to extend otherwise than by an Order in Council is now very unusual. Departments must consult the Crown Dependencies at the earliest opportunity in the event that extension is under consideration and a PEC should not be included in a Bill without the prior agreement of the Islands.

More detailed information on how to engage with the Crown Dependencies on UK legislation that may affect them is included in (Government Response to Justice Select Committee Report on the Crown Dependencies) **Annex A – How to note on the extension of UK primary legislation to the Crown Dependencies.**

International Personality

The Crown Dependencies are not recognised internationally as sovereign States in their own right but as "territories for which the United Kingdom is responsible". As such they cannot sign up to international agreements under their own aegis but can have the UK's ratification of such instruments extended to them, unless they have been entrusted to do so, as they have been in the case of Tax Information Exchange Agreements, and other

agreements relating to taxation that provide for exchange of information on tax matters, with EU Member States, including the UK, the Organisation for Economic Co-operation and Development and the G20 member countries.

However, the Crown Dependencies are developing their international identities and in 2007, the then-Secretary of State for Constitutional Affairs signed an agreement with the Chief Ministers of each of the Crown Dependencies stating that the UK would not act internationally on their behalf without prior consultation and recognising that in international matters, particularly in relation to the EU, UK and Crown Dependency interests may differ. The agreements also set out a framework for the further development of the international identities of the Crown Dependencies. Copies of the framework agreements with each Crown Dependency are available on the Crown Dependencies Governments' websites (links in section 7 below).

Relationship to the European Union

The Islands have a special relationship with the European Union provided under Protocol 3 to the UK's Treaty of Accession to the European Community. This relationship cannot be changed without the unanimous agreement of all the Member States of the Union. Under Protocol 3, the Islands are part of the customs territory of the Union and therefore Union customs matters, the common customs tariff, levies, quantitative restrictions and any measures having equivalent effect apply. There is free movement of agricultural goods and derived products between the Islands and the Union. Also included are measures relating to the trade in agricultural goods and derived products with third countries.

However, other EU Rules do not apply to the Crown Dependencies. Implementation of the provisions on the free movement of persons, services and capital is therefore not required, and the Islands are not eligible for assistance from the structural funds or under the support measures for agricultural markets. EU tax instruments do not apply, nor do the developing justice and home affairs initiatives or the Schengen acquis, although the Islands support improved judicial co-operation within Europe and have also voluntarily applied for recognised equivalent status in a number of key law and policy areas.

Treaties and international agreements

Article 29 of the Vienna Convention on the Law of Treaties provides that "unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory". The long-standing practice of the UK when it ratifies, accedes to, or accepts a treaty, convention or agreement is to do so on behalf of the United Kingdom of Great Britain and Northern Ireland and any of the Crown Dependencies or Overseas Territories that wish the treaty to apply to them. The UK's ratification, accession or acceptance can also be extended at a later date.

This means that, when the UK is planning to ratify a particular convention or treaty, it should consult the Crown Dependencies about whether they wish to have it extended to them.

More detailed information on how to engage with the Crown Dependencies on International

Treaties and Agreements that may affect them is included in (March 2014 Government Response to Justice Select Committee Report on the Crown Dependencies) **Annex B –**

How to Note on the extension of International Instruments to the Crown Dependencies and Annex C – How to Note on dealing with requests from the Crown Dependencies to extend the UK's ratification of international Instruments.

Useful links

- **Government Response to Justice Select Committee Report on the Crown Dependencies (March 2014):**
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/293235/government-response-justice-select-committees-report-crown-dependencies-developments-2010.pdf
- **Justice Select Committee Report on the Crown Dependencies (January 2014):**
<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmjust/726/726.pdf>
- **The Isle of Man:**
 - **Isle of Man Government:** www.gov.im
- **Bailiwick of Jersey:**
 - **The States of Jersey:** www.gov.je
- **Bailiwick of Guernsey:**
 - **The States of Guernsey:** www.gov.gg
 - **The States of Alderney:** www.alderney.gov.gg
 - **Sark Chief Pleas:** www.gov.sark.gg

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Annex A How To Note: Extension of UK primary legislation to the Crown Dependencies

This guidance sets out the procedure that UK Government departments and the Crown Dependencies should follow when:

1. UK Government departments are considering whether primary UK legislation in whole or in part may need to have effect in any of the Crown Dependencies; or
2. UK Government departments receive a request from a Crown Dependency seeking to extend provisions of a UK Act (with or without modifications) to their jurisdiction by activation of a permissive extent clause contained within the Act in question.

There may be occasions where this guidance note does not quite fit the issue at hand. In such cases all parties will need to agree and implement a specifically tailored approach.

Background

Direct application

UK primary legislation does not, of itself, ordinarily apply to the Crown Dependencies. Only in rare cases, with the agreement of the Crown Dependencies concerned, will an Act be expressed to apply directly. It may apply by necessary implication, although this too will now be rare.

Extension by Order in Council

Almost invariably nowadays, UK primary legislation intended to take effect in the Crown Dependencies will do so by Order in Council **made with the agreement of the Crown Dependencies concerned under an enabling provision**, known as a permissive extent clause, contained in the Act of Parliament.

Processes

1. UK primary legislation having effect in the Crown Dependencies

- 1.1 The Bill team or legal advisers from the UK Government department leading on a proposed Bill that may have effect in/impact on the Crown Dependencies should contact each of the Crown Dependencies as early as possible in the process. This can initially be done informally through the following contacts in each of the Crown Dependencies:

| Guernsey | Jersey | Isle of Man |
|-----------------|---------------------------------------|--|
| Billteam@gov.gg | T.Walker@gov.je R.Whitehead@gov.je | Della.Fletcher@cso.gov.im Anne.Shimmin@cso.gov.im |

However, for Jersey and Guernsey, correspondence through formal channels may be required at a later stage (subject to the advice of the contacts listed above). In these instances, lead departments should send letters addressed to the Lieutenant Governor to the MoJ's Crown Dependencies Team, who will relay them to the relevant Crown Dependency. The contact details for the Lieutenant Governors of Jersey and Guernsey are as follows:

| Guernsey | Jersey |
|--|--|
| His Excellency the Lieutenant Governor Government House The Queen's Road St Peter Port Guernsey GY1 1GH governorsoffice@gov.gg | His Excellency the Lieutenant Governor Office of the Lieutenant Governor St Saviour Jersey JE2 7GH governorsoffice@gov.je |

1.2 The lead department should provide the Crown Dependencies with the following information to enable each of them to determine whether the inclusion of a permissive extent clause (or, exceptionally, direct application), would be appropriate for their jurisdiction:

- A copy of the draft Bill, or a copy of the draft provisions which may affect the Crown Dependencies;
- Explanatory note setting out the purpose and effect of the Bill and/or the provisions relevant to the Crown Dependencies;
- Contact details of officials leading on the Bill;
- Proposed legislative schedule, including the anticipated date for introducing the Bill into Parliament; and
- Any additional information officials feel may be helpful to the Crown Dependencies, such as the impact on existing legislation and any resultant changes that may be necessary.

The relevant Crown Dependencies should respond to the lead department within **eight weeks** of receipt of the information, indicating whether they are content with the proposed inclusion of a permissive extent clause (or, exceptionally, direct application).

- 1.3 The lead department should copy the MoJ Crown Dependencies Team (contact details at the foot of this guidance) in to any communication with the Crown Dependencies relating to the legislation.
- 1.4 The lead department and the Crown Dependencies should progress consideration of the proposals in consultation with the MoJ Crown Dependencies Team and its legal advisers on the final draft of any provisions as agreed by the department and the Crown Dependencies, should the latter agree either to a permissive extent clause or to more specific inclusion in the Bill.
- 1.5 When the final position has been agreed, each Crown Dependency should write to the lead department confirming its position and copy the MoJ Crown Dependencies Team in to that correspondence. Email correspondence is acceptable.
- 1.6 When a Bill has received Royal Assent that:
 - a. **Contains a permissive extent clause:** the lead department should send a copy of the Act to the Crown Dependencies – or relevant Crown Dependency if the clause does not apply to all of them – for information, copying in the MoJ Crown Dependencies Team. The Isle of Man only requires an electronic copy of, or an internet link to, the new Act of Parliament.
 - b. **Extends directly to the Crown Dependencies, or any one of them:** the lead department should send 3 hard copies of the Act to the MoJ Crown Dependencies team. The lead department should also send copies of the Act to the relevant Crown Dependency or Dependencies in advance of drafting an Order in Council.
- 1.7 In the rare event that “b” applies, the MoJ Crown Dependencies Team will then prepare and submit two Orders in Council to the Privy Council on behalf of Jersey and Guernsey. These are Orders in Council made under the Royal Prerogative and will direct that the Act be registered in the Royal Courts in each jurisdiction. The purpose of registration in this instance is to give public notice to the island communities in Jersey and Guernsey that the Act applies within their jurisdiction. (This is not necessary for the Isle of Man.) Orders in Council made under the Royal Prerogative are not the same as the Orders in Council used to extend provisions of UK Acts to the Crown Dependencies under a permissive extent clause as set out below.
- 1.8 Once the Orders in Council are given Royal Assent, the MoJ Crown Dependencies Team will transmit them, with a hard copy of the Act, to Jersey and Guernsey via the formal channel, as explained in 1.1 above. The Isle of Man does not require a hard copy of the Act but should be provided with an electronic copy.

2. Request from a Crown Dependency for the extension of a UK Act, or any part thereof, under a permissive extent clause.

2.1 A Crown Dependency will contact the UK Government department that has policy responsibility for the Act in question and request extension of the Act, or certain specified provisions of it, under the terms of the permissive extent clause. If the Crown Dependency requires the name of an appropriate contact in the department, or if it has difficulty in obtaining a response from the department the MoJ Crown Dependencies Team will assist. In all cases, the Crown Dependency will inform MoJ that they have initiated contact with the lead department.

The request should:

- Reference the permissive extent clause in the Act;
- Set out the legislative provisions within the Act that are to be extended to the Crown Dependency;
- Highlight any jurisdictional modifications and clarify their necessity; and
- Provide a preliminary draft Order in Council for discussion. This need not be prepared using the UK Statutory Instrument template, to which officers in the Crown Dependency may not have access or which may not work correctly on their computer systems.

The Crown Dependency should copy the MoJ Crown Dependencies Team in to the request for information at this initial stage.

2.2 The Crown Dependency and lead UK department should then progress the drafting of the instrument. Primary drafting responsibility generally lies with the Crown Dependency in question, working closely with the lead UK department. However, as an Order in Council is a piece of UK secondary legislation, the lead department is responsible for ensuring that a final draft version is prepared using the UK Statutory Instrument template. Both should ensure that the resulting draft does what it sets out to do and extends UK provisions to the Crown Dependency appropriately and in a way that they can be properly implemented and, where necessary, support or be supported by domestic legislation.

2.3 Once the Crown Dependency and the lead department have agreed a final draft of the Order, either the Crown Dependency or the department should forward it to the MoJ Crown Dependencies Team, ensuring that those engaged on the draft are copied in, with a request that MoJ lawyers review it with the Joint Committee on Statutory Instruments and other drafting and constitutional/legal requirements in mind. The Crown Dependency should also propose a timetable for the Order to be submitted to Privy Council, bearing in mind that reviewing the Order may require some engagement between MoJ lawyers and lawyers in the Crown Dependencies

and the lead UK department, which could result in adjustments to the drafting of the instrument. The Crown Dependency should also draw attention to any relevant procedural/parliamentary requirements in its jurisdiction.

- 2.4 When MoJ lawyers have completed their review of the Order and the final text has been agreed with the Crown Dependency and UK Government department, the Crown Dependency should write (email correspondence is acceptable) to the MoJ Crown Dependencies Team requesting that the Order be submitted to the next available sitting of the Privy Council. A brief background note on the purpose of the instrument should be included to facilitate the submission of the Order to Ministers for clearance.
- 2.5 The MoJ Crown Dependencies team will submit the instrument to Ministers, via MoJ Legal Advisers, with a recommendation that it be made at the next available sitting of the Privy Council.
- 2.6 On receipt of the Minister's authorisation, MoJ's Parliamentary Branch will transmit it to the Privy Council Office requesting that it be put forward for Royal Assent.
- 2.7 After the sitting of the Privy Council, Parliamentary Branch will send a copy of the Order to the MoJ Crown Dependencies team, who will then ensure that it is transmitted to the relevant Crown Dependency to take action according to their domestic requirements.
In the case of the Isle of Man only an electronic copy needs to be provided.
- 2.8 The Crown Dependency should send an acknowledgement of receipt of the Order to the MoJ Crown Dependencies Team.

Contact Details for the MoJ Crown Dependencies Team:

Ministry of Justice
Law, Rights and International Directorate
Crown Dependencies Branch
102 Petty France
London
SW1H 9AJ
Email: crown.dependencies@justice.gsi.gov.uk



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 - erg@gov.gg | Tom Walker – Director, International Affairs - T.Walker@gov.je | Anne Shimmin – External Relations Manager - Anne.Shimmin@cso.gov.im |

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 governorsoffice@gov.gg cc. erg@gov.gg (Jo Reeve) | His Excellency the Lieutenant Governor Office of the Lieutenant Governor St Saviour Jersey JE2 7GH governorsoffice@gov.je cc. T.Walker@gov.je (Tom Walker) | Mr Will Greenhow The Chief Secretary Government Office DOUGLAS Isle of Man IM1 3PN Will.Greenhow@cso.gov.im cc. Anne.Shimmin@cso.gov.im (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.gsi.gov.uk

Contact details for the FCO Treaty Section:

Email: Dale.Harrison@fco.gov.uk

Treaty.fco@gtnet.gov.uk

Telephone: 0207 008 1107



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.gsi.gov.uk

Contact Details for the FCO Treaty Section:

Email: Dale.Harrison@fco.gov.uk

treaty.fco@gtnet.gov.uk

Telephone: 0207 008 1107

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