

THE OVERSEAS TERRITORIES AND THE HOME OFFICE



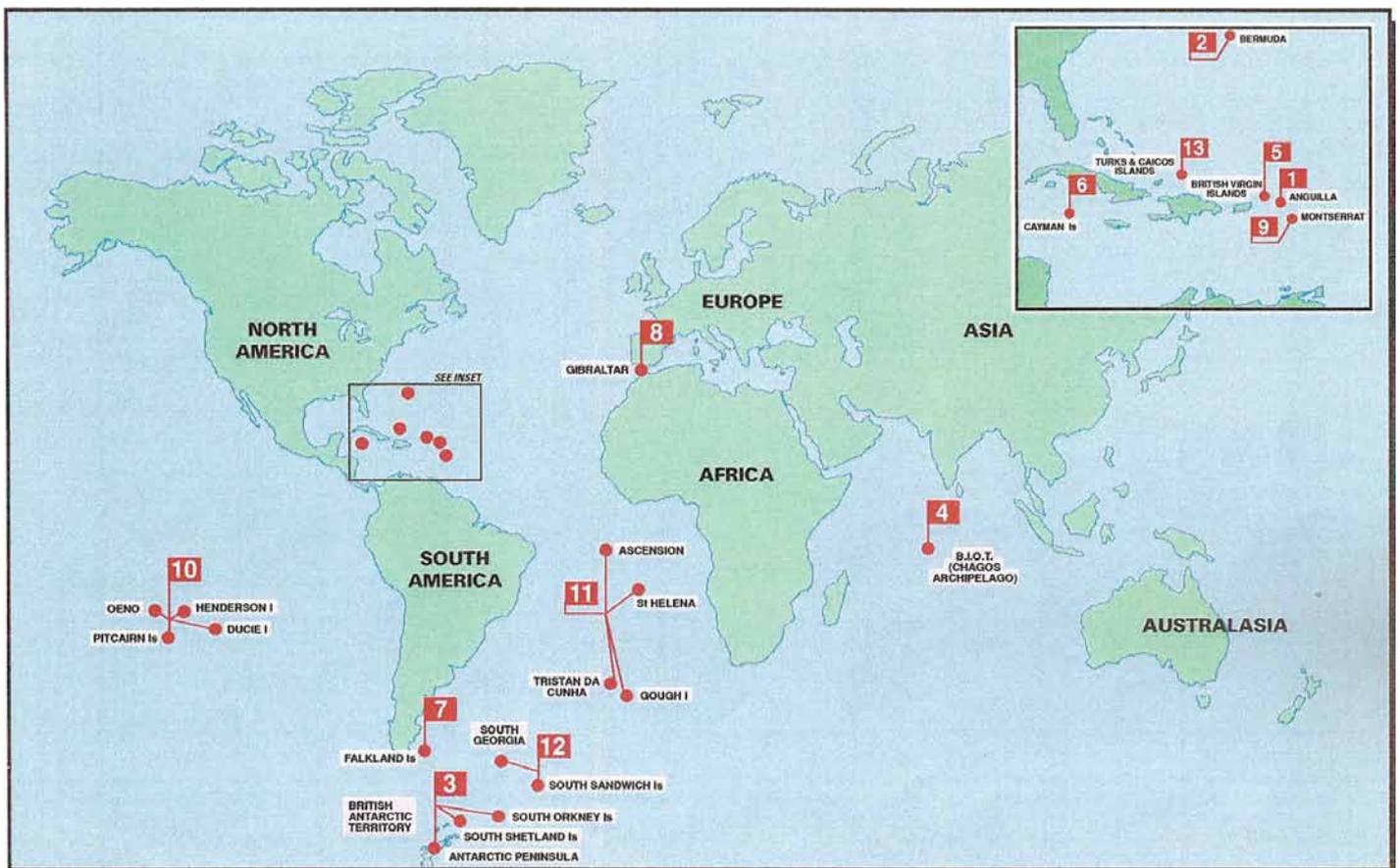
Home Office

April 2012



Introduction

The UK has 14 Overseas Territories in a variety of locations around the world. Her Majesty the Queen is sovereign of all the Territories. The Territories are constitutionally not part of the United Kingdom. All of them have separate constitutions made by an Order in Council. All the permanently-populated Territories have Governors. The Governor is appointed by and represents Her Majesty the Queen. He/she both represents Her Majesty in the Territory; and represents the Territory's interests to the UK Government in London. The UK is generally responsible for the defence, security, international relations and overall good governance of the Territories and the well-being of their citizens.¹ Following agreement by the UK Cabinet's National Security Council in 2011, each UK Government Department is responsible for engaging with the Territories in its own area of competence and expertise. This paper sets out how the Home Office will fulfil these responsibilities.



1 The British Overseas Territories Act 2002 made the previously known “dependent” territories as British Overseas Territories. A further change took place on 21 May 2002. If a person was a British overseas territories citizen (except by virtue of a connection only with the Sovereign Base Areas of Akrotiri and Dhekelia), immediately before 21 May 2002, they automatically became a British citizen on that date. A person born on or after 21 May 2002 in a British overseas territory will be British otherwise than by descent at birth if born to a British citizen parent or person settled in the territory. A person born or after 21 May 2002 outside of a British Overseas territory will be a British citizen by descent if born to a British citizen able to transmit their British citizenship.

However, it is possible for a person to be a British Overseas Territories citizen by naturalisation, or if a child by registration (sections 18 and 17 of the British Nationality Act 1981 respectively), and so for that individual not to be automatically British. Such an individual would only become British by virtue of registration under section 4(2) of the British Nationality Act 1981 if the relevant requirements are met. These include residence in the UK, good character and excess absences, amongst others.

The Current Context

The size and location of the Territories present a number of unique challenges in the field of home affairs. The majority of the Territories in the Caribbean are often the target of organised criminals, particularly drug traffickers on the cocaine route from South America, which means that the UK directly benefits through helping the Territories to reduce a substantial threat to the UK. In recent years we have seen the emergence of gang-related violent crime in affected Territories, associated with control over street level drug distribution. Similarly, when a Territory experiences a short term 'spike' in violent crime, it can often exceed the local police force's capacity to deal effectively with the problem. The Home Office provides a range of assistance to the Territories to address some of those challenges. We are keen to help and develop our relationship with the Territories as far as the current financial situation permits, for which reason we seek to recover from the Territories the costs of providing our expertise and human resources.

SERIOUS ORGANISED CRIME

Drugs trafficking and the movement of criminally derived funds from the drugs trade remain one of the biggest **organised crime threats**, both to the UK and to the Caribbean Territories. In 2011 the Serious Organised Crime Agency (SOCA - a Non-departmental Public Body of the Home Office - www.soca.gov.uk) supported the Caribbean Territories with training, equipment and staff secondments to combat a broad spectrum of serious and organised crime impacting both upon the region and also the European Union and the UK. The offences involved have included drug trafficking, money laundering, extortion and illegal use of firearms.

POLICE ASSISTANCE

The Home Office has also provided much support at the request of local police forces in the form of **police assistance** to the Territories. A list of recent examples can be found at **Annex A**. All requests to provide assistance that involve the overseas deployment of police officers and staff from forces in England and Wales must be authorised by the relevant Police Authority (Police and Crime Commissioners after November 2012) as well as the Home Secretary. Each request for authorisation is considered by the Home Office on its merits. To avoid any resource constraints on police forces for UK policing, in all cases, they seek recovery of their costs, normally from the Foreign and Commonwealth Office, the Department for International Development, the requesting country or the international organisation in question.

MUTUAL LEGAL ASSISTANCE

The UK has a number of **Mutual Legal Assistance** bilateral treaties in place with a wide range of countries. Mutual legal assistance allows countries to request and provide assistance in obtaining evidence located in one country to assist in criminal investigations or proceedings in another country. It is therefore, an important tool in fighting international crime (including economic crime and drug trafficking) and terrorism. In May 2011 the Home Office consulted the Territories (with assistance from the Foreign and Commonwealth Office) on the possibility of extending any or all of these mutual legal assistance treaties to the Territories. This would effectively result in a treaty between the Territory to which the treaty had been extended and the other State involved in the treaty. This will assist the Territories in obtaining evidence for investigations and prosecutions from the States whose treaties are extended to them. Initial reaction to the consultation from the Territories was positive and we would welcome further progress in this area of co-operation.

GIBRALTAR

The Home Office has an important role in support of **Gibraltar** as it is considered a part of the UK for the purposes of the European Union and is therefore bound by EU law. We provide advice on implementing its law consistent with EU Directives in the Justice and Home Affairs field. Regular meetings between officials from the Home Office, the Ministry of Justice, the Foreign and Commonwealth Office and the Government of Gibraltar help to resolve issues relating primarily to EU business, including implementation of Directives, current proposals and opt-ins to EU legislation. Other assistance is sometimes provided on an ad hoc basis, such as the recent request by the Government of Gibraltar to have the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, extended to their territory. The Home Office offered advice on the process involved in extending this treaty to the Territory.

MIGRATION AND VISAS

The Home Office's UK Border Agency (UKBA - www.ukba.homeoffice.gov.uk) assists the Territories through handling and processing visa applications on behalf of the Territories. **Visa applications** are received through Visa Application Centres (VACs). For some Territories, UK Entry Clearance Officers make decisions and issue visas on their behalf, whereas for others, they receive the visa applications and forward them onto the relevant Territories for their consideration. UKBA will continue to provide this service to the Territories for as long as they require it.

UKBA also provides practical support and cooperation to the Territories on **migration** issues ranging from assistance with visa policy to training in forgery detection. UKBA will ensure such assistance continues in the future. In most cases, the Territories' visa legislation and regimes are closely aligned to the UK. Where they are not aligned, the UK has the authority to make decisions where UKBA considers the application under Territory legislation. Territories inform UKBA when changes are made to their legislation or visa regimes.

EQUALITY

The Home Office continues to work to help deliver **Equal Rights and Equality of opportunity** in the Territories. The Home Office's Government Equalities Office (GEO) leads for the UK on issues relating to women, sexual orientation and transgender equality matters. It has responsibility across government for leading the UK co-ordination for the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). This includes helping the Territories which have had the Convention extended to them (currently the British Virgin Islands, Turks and Caicos Islands, Falkland Islands and South Georgia and the South Sandwich Islands) for example drawing up guidance to assist them produce contributions to the UK's periodic reports. The GEO has also supported the Foreign and Commonwealth Office/Department for International Development's Building Human Rights Capacity project, which works to support other Territories to have the Convention extended to their territory, by sending an expert to participate in a project workshop.

Future Engagement with the Territories

Much of our assistance to the Territories is based on requests from the Territories and it is therefore difficult to give an accurate assessment of our future activity which depends largely on their future level of need. However we are keen to maintain our positive and mutually beneficial relationships with the Territories to address key concerns and areas of shared interest.

SERIOUS ORGANISED CRIME

SOCA will engage with the Territories wherever possible to tackle **serious and organised crime** threats and continues to play a prominent role in identifying training and resource needs for local law enforcement. SOCA is working with the Home Office to develop a regional strategic and operational response to organised crime in the Territories in order to reduce the threat to and impact on the UK.

In the Caribbean, SOCA has recently instigated a comprehensive strategy to counter the threat posed by maritime trafficking of cocaine, principally by yacht. Officers from 13 countries in the Caribbean region, including officers from several of the Caribbean Territories attended a recent conference to discuss how this would be taken forward. This initiative was supported with Foreign and Commonwealth Office funding and has created an 'Intelligence team/network' that is now better trained to combat this threat.

The activities of the Eastern Caribbean Criminal Justice Adviser (funded by US State Department) and ECFIAT (Eastern Caribbean Financial Investigations Advisory Team) - funded by the Department for International Development – are currently restricted to the Eastern Caribbean. There are obvious benefits of extending their functions to the Territories but new funding would need to be identified.

Future engagement with the Territories will also include the new National Crime Agency (NCA), which will be fully established in 2013 (subject to legislation). The NCA will look to build on existing law enforcement relationships with international partners, working with them where appropriate to tackle and disrupt criminals, such as drugs smugglers, who target the UK from overseas.

POLICE ASSISTANCE

The identification of opportunities to provide **police assistance** overseas falls within the remit of the Foreign and Commonwealth Office, the Department for International Development and the Ministry of Defence. Police forces/authorities take decisions on availability as well as the viability of providing the resource. Our role will continue to involve taking a view on whether proposals should be supported after considering the nature of the request, the political situation, and the safety of serving officers.

We remain committed to supporting requests for short-term assistance in relation to emergency situations or to assist the local force cope with spikes in crime which might (for a limited period) exceed local capability.

However we do not generally support long-term secondments of UK officers to augment forces in Territories or large-scale deployments of serving officers from the UK to Territories to manage outbreaks of disorder. These should only be undertaken as a last resort, given the distance and the lead time required to physically transport staff. The preferred option is to build long-term capability through the provision of training. Alternatives such as encouraging mutual support between neighbouring Territories are also encouraged.

MUTUAL LEGAL ASSISTANCE

The decision on whether the Territories wish to have **Mutual Legal Assistance** (MLA) treaties extended to them is ultimately one for them to take (along with agreement from the other party to the treaty). Legislation may need to be put in place by the Territories to allow them to assist another country in an investigation by gathering evidence in their territory on behalf of the other country. The Territories will also need to ensure that their courts have the authority to issue summonses, search warrants or other orders necessary to execute the request. The Territories are wholly responsible for sending and executing MLA requests within their own jurisdictions. Although the Home Office cannot provide direct help to the Territories with the drafting of any legislation (if that is necessary) we do provide advice on the relevant UK legislation.

GIBRALTAR

The Home Office will continue to offer training for policy makers to raise awareness and ensure that **Gibraltar** is consulted at an early stage on EU issues. We are currently able to apply for EU funding under a number of streams. However Gibraltar is not included in the preventing crime or terrorism programmes. Gibraltar is eligible to apply for Refugee, Integration and Returns Funds under Asylum and migration funds.

Negotiations are ongoing on the European Investigation Order (EIO). Once the EIO enters into force, it will apply to Gibraltar. It will not apply to any other Territories outside Europe.

MIGRATION AND VISAS

The European Commission is carrying out a consultation with EU Member States prior to issuing a legislative proposal for revising the **Schengen EU Common Visa List** (CVL). This proposal will go through the co-decision process with the EU Council of Ministers and the European Parliament and we expect a vote to take place later this year in the European Parliament and Justice and Home Affairs (JHA) Ministerial Council.

The UK does not participate in the Schengen provisions on immigration (including visas and border controls) and is therefore not involved in decisions on Schengen visa requirements. However, though we have no control over the final decision and will not be expected to implement new measures or amendments, we will continue to engage in dialogue about issues affecting British nationals (currently only British nationals with the right of abode and British National Overseas Citizens are exempt from the visa requirement when entering the Schengen zone). UK Ministers therefore recently agreed that the UK should recommend to the EU Commission that all categories of British national are made exempt from the requirement for a Schengen visa, including British Overseas Territories Citizens. The UK has written to the EU Commission to that effect and we await a final decision.

EQUALITY

Working closely with FCO and DFID and in light of limited resources, GEO will continue to help **progress women's rights** in the Territories by offering advice, where necessary, regarding the extension of CEDAW as well as involvement in the periodic reporting process.

ANNEX A

POLICE ASSISTANCE PROVIDED TO THE OVERSEAS TERRITORIES

The Home Office has recently supported the following requests to provide police assistance to the Territories:

- The Metropolitan Police Service (MPS) delivered strategic and tactical firearms command training courses in **Bermuda**. Cornwall and Devon Constabulary and Northumbria helped Bermuda Police Service (BPS) to develop their investigative capability and the Metropolitan Police Service assisted in the implementation of intelligence led policing.
- Hampshire Constabulary deployed a Scenes of Crime Supervisor to the **Royal Virgin Islands Police Force**, to help develop their Scenes of Crime Unit.
- Surrey Police deployed a police officer to **Ascension Island** to investigate a suspected drugs problem.
- A Metropolitan Police officer was assigned to the **Sovereign Base Area Police in Cyprus** to assess their requirements and capabilities for responding to a terrorist incident.
- Police officers from a number of forces were deployed to the **Cayman Islands** to assist with an investigation into an increase in the number of gang related murders and incidents of serious crime involving firearms.
- A team of Metropolitan Police officers assisted the **Gibraltar** police to investigate allegations of misconduct. Avon & Somerset Constabulary have provided training to support Aviation Security in Gibraltar.
- Hampshire Constabulary provided advice and assistance to police in **St Helena Island** in the investigation of sexual offences against children.
- The Metropolitan Police Service provided investigative support and capacity building to the **Turks and Caicos Island** Police Force to deal with a spike in violent crime. Northumbria Police undertook a scoping visit to examine options to enable local police to provide an effective response to a serious breakdown of law and order.



Home Office

ISBN: 978-1-84987-750-3
Published by the Home Office
© Crown Copyright 2012