

EXTENSION OF TREATIES TO OVERSEAS TERRITORIES

Introduction

Unless expressly authorised to do so by the UK Government, Overseas Territories do not have the authority to become party to treaties in their own right. The UK must extend the territorial scope of its ratification of treaties to include them. This is normally done either at the time of ratification, or at some later date. When the UK is involved in the negotiation or signature of any treaty which could apply to the Overseas Territories it is important that they are fully consulted at the earliest stage. The Overseas Territories must then be allowed a proper length of time to consider the implications of having any treaty extended to them.

The relevant UK Government Department is responsible for ensuring that the Overseas Territories are ready to have the treaty extended to them, eg by checking that enabling legislation is in place. They also need to consider whether it will be possible to accept any reservations that a Territory proposes. FCO can give advice on the process; and how urgent the issue is in the light of competing requirements for the Overseas Territories to have other treaties extended to them. The Territories have to consider several treaties every year and lack the capacity to cover everything quickly. Best practice is for an OGD to clear with the FCO the initial e-mail/letter to the Territories before sending.

We cannot compel the Territories to request extension of any treaty but we can and should give the Territories a steer on the wider importance of a particular treaty and why it might be in their interests to have it extended at the earliest opportunity (or as a medium-term priority). Not all treaties will be relevant to every Territory. Government Departments should respond quickly if one or more Territories proactively shows interest in having a treaty extended to them.

This guidance is broken down into how to **extend and consult at the time of the UK's Ratification** and **how Territories can request extension at a later date**.

Background

The Overseas Territories consist of the following territories, with a total population of around 260,000. Anguilla; Bermuda; British Antarctic Territory; British Indian Ocean Territory; British Virgin Islands; Cayman Islands; Falkland Islands; Gibraltar; Montserrat; Pitcairn, Henderson, Ducie and Oeno Islands (commonly known as the Pitcairn islands); St Helena, Ascension and Tristan da Cunha (a single Territory); South Georgia and South Sandwich Islands; Turks and Caicos Islands; and Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus.

The UK, Overseas Territories and Crown Dependencies form one undivided realm. Each Territory has its own Constitution and its own Government and its own local laws. They have a substantial measure of responsibility for the conduct of their own affairs. In general the UK is responsible for the defence, external relations and internal security of the Territories; and has an overall responsibility for their good governance. The Territories are not part of the UK, constitutionally. However, the Queen is their Monarch and the people of the permanently-populated territories have chosen to retain their connection with the UK. Most of the people of the Territories are British citizens, apart from on the Sovereign Base Areas, which contain several thousand Cypriot citizens. For further information on the Overseas Territories please see the UK Government's June 2012 [White Paper](#).

When consulting the Overseas Territories officials should bear in mind the considerable diversity between territories. For example, Bermuda has a population of around 62,000, a Parliament dating from 1602 and a high degree of control over its own affairs; while the Pitcairn Islands have a population of about 50 and an Island Council dealing only with internal affairs. Three Territories

(British Antarctic Territory; South Georgia and the South Sandwich Islands; and the British Indian Ocean Territory) do not have permanent populations. The Sovereign Base Areas in Cyprus are administered by the Ministry of Defence. Ascension does not have an indigenous population and there is no right of abode.

Consultations should include information relevant to all territories and, where applicable, tailor advice to local circumstances.

1. Extension at the time of UK ratification

Consultation with Overseas Territories

a) Why should the Territories be consulted?

Consultation with the Territories regarding extension of a treaty is a matter of good policy and administration. Some treaties directly affect particular Territories. Where applicable, the views of Territories may also be required to formulate the UK negotiating position on a treaty. The UK is responsible under international law for the due performance of treaty obligations undertaken in respect of the Territories. The UK must make sure not only that a Territory is willing to accept particular treaty obligations, but also that those obligations can be fulfilled by the Territory. If they cannot, the UK bears ultimate responsibility.

b) Can the UK force the Territories to have certain treaties extended to them?

No. The UK should let Territories know the importance it places on having a particular treaty extended to them, but cannot compel any Territory to request extension. In some cases (e.g. tax and transparency issues) the UK will want to encourage all (or some) Territories to request extension at the same time as the UK; or as soon as possible after. On the subject of international human rights conventions, the Government said in the White Paper:

“The UK Government’s long-standing practice in this area is to encourage the Territories to agree to the extension of UN human rights conventions that the UK has ratified, but to extend these to the Territories only when they are ready to apply them”.

c) When should the Territories be consulted?

Generally speaking, **initial consultation with the Overseas Territories should occur during the course of negotiation of a treaty**, if the subject of the treaty is relevant to the Overseas Territories. By doing this, Territory Governments can be made aware of the issues and can express any views or concerns they might have with texts under negotiation. In particular, Gibraltar bases its legislation on the UK version, therefore they require early sight of the UK legislation, even in draft form.

Where a treaty is being negotiated by the UK on behalf of one or more of the Territories, e.g. a treaty geographically limited to the Caribbean, the Territories should normally be kept closely involved in the negotiations, perhaps even forming part of the UK delegation. Where a treaty is not directly relevant to the Overseas Territories, they would not normally be consulted at the negotiation stage. However, they should be consulted as soon as there is any question of extending a treaty to them.

It is important for Government Departments to liaise with Overseas Territories Directorate (OTD) in the FCO before consulting Territories. OTD can check the wording of the introductory correspondence and can advise on handling and the priority that the Territories should give to the particular treaty. The Territories do not have the capacity to deal with a lot of treaty work at the same time.

d) How long will it take to secure extension to Overseas Territories?

Territory Governments must be given adequate time to examine a treaty and its implications, with advice as necessary from the UK. To ensure compliance with the treaty, Territory governments will be required to legislate or make administrative arrangements (including possibly resource allocation) as necessary before the treaty is extended to them. It follows that hurried or token consultation is not acceptable, nor is the assumption that a Territory is content to accept, and is in a position to fulfil particular treaty obligations, because it has not replied to any consultation. None of this precludes the setting of deadlines for Territory responses and chasing them up, to maintain momentum. It should be made clear when responses, including nil responses, need to be received within a given timeframe, and these should always be sought. However, **deadlines should be sensible and take into account the very limited capacity of the Territory administrations.**

The preferred UK practice is to declare on ratification to which, if any, Overseas Territories a multilateral treaty will extend. Subject to the terms of the particular treaty the list may be added to later by a diplomatic note produced in co-operation with the FCO's Treaty Section, which can advise on the format. However, for each treaty, lead officials should establish with their legal advisers whether extension to the Overseas Territories is possible, and if so, whether it must be at the same time as UK ratification, or whether it can occur later in respect of some or all of the Territories. This information should inform the timeframe set for completion of the consultation (see below). It should be noted that where extension to the Territories can be done after ratification, the UK prefers to extend to a group of Territories in one go rather than having multiple single extensions.

e) How should we consult the Overseas Territories?

The Government Department (OGD) that has the policy lead on a particular treaty is responsible for drafting (in consultation with the lead FCO functional Department, where relevant) the consultation paper to be sent to the Overseas Territories. This is normally in the form of a letter sent by e-mail; but can be in any form considered appropriate in the circumstances, eg a diptel (telegram). Whatever the form, it should be addressed to Governors, Administrators and/or Commissioners as appropriate. It is important to ensure that the key information can be forwarded on to the elected Government of the Territory without the Governor's office needing to make changes. The covering e-mail can contain commentary that does not need to be passed to the local government.

Within the FCO the consultation paper should be cleared by the lead FCO functional department, with Strategy and Co-ordination Section (SCS) in Overseas Territories Directorate (OTD), FCO Legal Advisers, and Treaty Section. In the case of Gibraltar, it should also be cleared with European Union - Mediterranean (EU-M), and with both MOD and EU-M in the case of the Cyprus Sovereign Base Areas (SBAs). Camisha Bridgeman (camisha.bridgeman@fco.gsi.gov.uk; 020 7008 2693) from SCS, OTD, FCO, can help find the right contacts in FCO.

f) What should the consultation document contain?

The consultation paper **should be drafted on the assumption that the recipient has no previous knowledge of the subject.** Guidance should be sufficient to enable Territory Governments to understand the substance of the treaty without reference to the full text. The consultation paper should attempt to address all questions that the Territory Governments may pose and recognise the differing capabilities, interests and capacities within the Territories. Please contact OTD if an example is required.

In short, it should contain:-

- **The concept of the treaty.** For example; what it aims to achieve, what triggered the interest in the issue and definitions of any technical terms. The scope of the treaty should be addressed, setting out who is eligible to join the treaty and highlighting any restrictions such as, for a Protocol, being party to the parent Convention. The consultation paper should then explain how the treaty will achieve its key aims and include an explanation of the mechanisms involved and clarify why there may be a need for legislation.
- **What the UK's stance on the treaty is.** Why the UK supports the aims of the treaty will be key for Territory Governments to establish whether the treaty complements their own objectives. This section should also consider the UK position on the principles of the treaty, set in both the domestic and international context. UK policy on related issues should also be addressed and, if applicable, any background to the stance of the EU or other key parties. Where extension of the treaty is a must from the UK's point of view, this section should also include argument as to why the Overseas Territories should agree to the extension of the treaty and the possible consequences for HMG/the Territories if they do not. If the UK wants to encourage the Territories to have this treaty extended to them, but does not consider it to be very urgent, this section should indicate the relative priority that the Territories should give to requesting extension of the treaty (to be agreed with FCO OTD).
- **What the perceived benefit is for the Overseas Territories.** The consultation paper should clearly set out the benefits, if any, of joining the Treaty for the Overseas Territories. This information will be key in encouraging the involvement of Territory Governments and will need to take into consideration the differing circumstances in the Territories. In order to provide relevant briefing it may be useful to divide the consultation paper into groupings such as geographical regions or size of population. The consultation paper should include any issues which may be of particular relevance to Overseas Territories. This information should assist the Territory Governments in determining if they are interested in having the treaty extended to their territories.
- **How will the Overseas Territories meet the requirements of the treaty?** This information should refer to how the UK has implemented the treaty and should refer to our implementing legislation, if any. It should also mention any other relevant legislation such as EU regulations. An indication should be given as to where copies of such legislation can be obtained, usually a website address particularly where it is too bulky to include with the consultation letter. Territories should be provided with an indication of how onerous the legislative requirements will be, particularly any financial burdens, if there will be technical limitations to consider, or difficulties in application of the treaty within a limited population. It should also refer to any reporting obligations, and any infrastructure required to meet obligations, such as reporting committees or mechanisms to collect information and publish reports. If the UK is willing to legislate for the Overseas Territories by Order in Council, this offer should be set out in the consultation paper, as this may have a bearing on the Territories' willingness to agree to the extension of the treaty.
- **When will the treaty enter into force?** Territory Governments should be given details of when the treaty will enter into force for the Territories, such as number of parties required or number of days after the extension is notified to the depositary. Also, if possible, links to websites providing updated information on the treaty (FCO Treaty Section are available to advise on this).

- **Contact details of the department officials leading on the consultation.**
- **Consultation deadline** (normally at least four weeks).

g) What do the Territories need to do to get ready for extension?

If any of the Territories 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 normal method for a Territory 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 is content that, in its view, the domestic legislation/provisions set out in the table are sufficient for the territory 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 sent to the department.

Please contact OTD if an example is required.

The lead OGD needs to satisfy itself that the evidence provided by the Territory in the transposition table (and any accompanying letter) is in accordance with the provisions in the treaty; sufficient for the UK to assert that the Territory is ready to have the treaty extended to it. The OGD needs to go back to the Territory if it is not satisfied.

It is for the relevant department to decide whether it should carry out a detailed review or be content just to undertake a quality assurance check that the Territory's legislation broadly meets the requirements of the International Instrument in question. Any such checks should be reasonable and pragmatic and take into account the circumstances of the particular Territory. A Territory's implementing provisions need not be identical to those of the UK and a Territory may not need all of the provisions that exist in the UK if they are not relevant.

h) How to Deal with Responses and Queries from the Territories

Contact details of officials at the lead OGD should be provided and also an email account to collate all responses established. The lead OGD should be the first point of contact for Overseas Territories. The officials in that Department should then refer any questions of substance to the lead FCO Department, Treaty Section, Legal Advisers and SCS in OTD, as necessary.

It is the responsibility of the lead OGD to ensure that all other relevant FCO Departments and the Overseas Territories are aware of the progress of the extension and any issues that have been raised. At the end of the timeframe for consultation the lead OGD should inform the lead FCO Department and SCS in OTD (and EU-M for Gibraltar, and EU-M and MOD for Cyprus SBAs) on the outcome of the consultation. This may involve chasing Territories for responses or nil responses.

i) Are Reservations acceptable?

An Overseas Territory may, when requesting the extension of a treaty, formulate a reservation. These can take into account points such as religious beliefs, capacity constraints, or Territory-specific laws. However, a reservation cannot be made if:

- a) the reservation is prohibited by the treaty;
- b) the treaty provides that only specified reservations, which do not include the proposed reservation in question, may be made; or
- c) in cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

A reservation must be formulated in writing and indicate the reasons why it is being formulated. The lead OGD needs to consider, with FCO OTD, whether the reservation is justified and is likely to be accepted by the relevant treaty body. If the OGD does not think the reservation is justified, they need to go back to the Territory and explain why.

Where the UK has told the OTs about reservations that it proposes to put forward, the Territories need to confirm that they wish to be covered by the same reservations.

j) Extending a treaty to the Overseas Territories

The process for accepting the extension of a treaty to an Overseas Territory should be provided in the consultation document or accompanying letter. **Overseas Territories should formally request extension by authoritative notification** (for example, a signed letter from the Governor) to be addressed to the lead OGD, copied to OTD, FCO, stating that;

- a) the Territory requests extension of the agreement to it; and that
- b) sufficient laws and policies are in place in the Territory to enable the Territory to implement and comply with its obligations under the agreement, identifying such laws and policies.

Once the lead department is satisfied that the International Instrument can be extended to the Overseas Territory they should inform the lead FCO Department and/or OTD. The lead FCO Department will then draw up a diplomatic note. Please contact OTD if an example is required. FCO Treaty Section will advise on the correct form in each case.

k) Summary of steps required

- OGD drafts consultation paper and clears it with FCO (lead functional department and OTD)
- OGD sends consultation paper to OT Governors' offices, copying in FCO
- OTs inform OGD whether they wish to be included in UK's ratification; if they do, OTs need to include transposition table and any proposed reservations
- OGD considers applications from OTs, consulting with FCO where necessary, and informs OTs of the outcome
- Once OTs are ready, they send formal request to lead OGD
- OGD informs FCO (lead Department; OTD; Treaty section) once they are content for OT(s) to have the treaty extended to them
- FCO sends notification to Treaty body of intention to extend ratification to OT(s)
- Treaty body informs FCO whether this is acceptable
- FCO informs OGD and relevant OT(s)

2. Extending Treaties to the Overseas Territories after the point of UK ratification

It is not always possible to include the Overseas Territories 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 Overseas Territory does not have the necessary legislation in force to support extension at the point of UK ratification. Rather than the Overseas Territories 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.

Where an Overseas Territory wishes to have a treaty extended at a date subsequent to UK ratification/accession Territories should make a request together with details of any implementing legislation in place, along the lines set out in 1 g) and i) above. Extension is subject to legal advisers and officials in the relevant UK Government department agreeing that the Territory is able

adequately to implement the treaty. Once this is confirmed, FCO Treaty Section will prepare an extension Note, which is sent to the depositary and, subject to the terms of the specific treaty, it will be extended. Where a Territory will need to introduce new legislation to give effect to a treaty, it is recommended that they begin the process well in advance of the expected date at which the extension is required and share any drafts with the relevant Departments at an early stage. This will ensure that there is enough time to resolve any technical or legal issues that may delay extension.

When extending a treaty to an Overseas Territory and subject to its terms, any reservation or declarations made on UK ratification will apply to the Territory, unless otherwise specified in the notifications to the depositary.

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.

Process: an Overseas Territory requests extension

If an Overseas Territory decides it wants to request the extension of a treaty they are responsible for initiating requests through the Governor. **The Territory must write directly to the lead UK Government department (OGD) which has responsibility for the International Instrument under discussion** (OTD will be able to advise them which OGD leads on which treaty if not known).

The request should set 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 an Overseas Territory, **the department should provide any information it may have on how the UK complies with the provisions of the International Instrument in question.**

The Overseas Territory needs to be able to demonstrate that the necessary domestic provisions are in place to support extension of the International Instrument. **The standard method for an Overseas Territory to demonstrate its compliance with an International Instrument will be through a transposition table /compliance matrix, as in 1g) above.** Extension requests are best supported by a compliance/transposition table regardless if they are made at the time of the UK's ratification or subsequently.

OTD should be copied into the extension request. Where appropriate, the request should also identify any reservations or derogations which the Territory wishes to be entered on its behalf.

Lead department review

On receipt of the request, the lead Government Department should satisfy itself that the Territory has the necessary domestic provisions in place to support the request by considering the detailed transposition table and any proposed reservations. Further details are set out in sections 1 g) – i) above. The OGD should complete this step within **four weeks** of receiving the request. If the department considers it necessary to query an aspect of the request, then any such request for clarification should be put in writing, submitted to the Territory and copied to OTD.

If the lead department fails to decide what steps it intends to take within the timescale set down, the relevant Territory should contact OTD, FCO, asking for their assistance to resolve the issue.

The Territories are entirely separate jurisdictions and departments should not treat them as a “package”. If one or two of the Territories 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.

Once the lead Government department is content for an International Instrument to be extended to a Territory, it should inform the Territory who will then ask the Governor to forward the formal request for extension. The request should be copied to the Territory Government concerned.

FCO draft Instrument of extension

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 lead OGD team and SCS copied in to any related exchanges. When the instrument is submitted to the treaty body, the FCO will provide a copy to the Overseas Territory 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 lead OGD for extension of the relevant Instrument.

Summary of steps required

- OT informs OGD that they wish to have treaty extended to them
- (if necessary) OGD sends requirements to the OT, eg the original consultation paper
- OT sends transposition table and any proposed reservations to OGD for consideration
- OGD considers applications from OT, consulting with FCO where necessary, and informs OT of the outcome
- Once OT is ready, they send formal request to lead OGD
- OGD informs FCO (lead Department; OTD; Treaty section) once they are content for OT(s) to have the treaty extended to them
- FCO sends notification to Treaty body of intention to extend ratification to OT(s)
- Treaty body informs FCO whether this is acceptable
- FCO informs OGD and relevant OT(s)

Further Guidance: there is a section on territorial extension of treaties in the treaties guidance document on the GOV.uk website: <https://www.gov.uk/uk-treaties> .

Information on the application of existing treaties to the OTs can be found using the “UK Treaties Online” database which is linked to the aforementioned treaties guidance: <http://treaties.fco.gov.uk/treaties/treaty.htm;jsessionid=6B192E65754667AE6B3A8619950C88EA>

The FCO Treaty Section will assist with information enquiries where necessary (email treatypublicenquiries@fco.gov.uk).