

## 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
<a href="mailto:Billteam@gov.gg">Billteam@gov.gg</a>	<a href="mailto:T.Walker@gov.je">T.Walker@gov.je</a> <a href="mailto:R.Whitehead@gov.je">R.Whitehead@gov.je</a>	<a href="mailto:Della.Fletcher@csso.gov.im">Della.Fletcher@csso.gov.im</a> <a href="mailto:Anne.Shimmin@csso.gov.im">Anne.Shimmin@csso.gov.im</a>

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:

- 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.
- 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](mailto:crown.dependencies@justice.gsi.gov.uk)