

# Processes within External Relations

Economic and International Affairs  
Scrutiny Panel

7th October 2020

S.R.4/2020



States of Jersey  
States Assembly



États de Jersey  
Assemblée des États



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## 1. Executive Summary

The Panel has reviewed the various key processes within External Relations and specifically the relationship between the States Assembly and the Department regarding the ways in which decisions relating to international affairs are made. The Minister for External Relations, alongside the Chief Minister, is responsible for the conduct of Jersey's external relations in accordance with the Common Policy.

The Panel has found that the relationship between the Assembly and external relations is unusual when compared with other Ministerial Departments. It is an executive function, but often does not take instruction from the Assembly. For example, the Common Policy is approved by the Council of Ministers and not the Assembly.

The Panel recommends that the Common Policy should be reviewed on a cyclical basis once a new Council of Ministers is formed. Once endorsed, the Panel believes that it should be debated and approved by the States Assembly which would encourage debate and discussion on external relations matters. It would also ensure that external affairs are conducted in accordance with a Common Policy which has been agreed by the Assembly as a whole, and not just by the Council of Ministers.

The Panel acknowledges that all Ministers have the autonomy to make decisions under their remit. However, the Panel has found that there are a number of decisions being made on international matters which are not subject to scrutiny but have a long-lasting effect on the island. These include memoranda of understanding, trade agreements, international conventions, arrangements and agreements.

During the Panel's review, the Minister acknowledged that sharing more information with Scrutiny, such as memoranda of understanding and agreements would strengthen decision making processes. The Panel looks forward to working with the Minister in order to consider how best to improve the provision of information to Scrutiny and States Members going forward.

## 2. Chair's Foreword

Since the role of External Relations Minister was established in 2013, the scale and importance of the work being undertaken by the Minister and the External Relations Department has only increased, with the growth itself signifying several factors: the increasing globalisation of the world's economies; the strength of Jersey's desire to integrate itself into global political and economic systems; a determination by the Government of Jersey on behalf of the States of Jersey, to develop the Island's international character.

As a small island, Jersey can choose isolation, or it can choose engagement. The story of the External Relations Department is very much about the latter.

Even before the UK decided to leave the EU, the Island's government was aware that decisions being taken on the international stage were having significant impacts on Jersey, particularly in terms of the finance sector. Brexit, however, acted as a catalyst for external engagement and has not only made demands on the Department's resources but has led to a new set of decisions being made by third countries that have direct and indirect effects on the island.

As a result, the Council of Ministers has signed Jersey up to a variety of international arrangements, some with the endorsement of the States Assembly (Vienna Convention) and some without (extension of the UK's membership of the WTO to Jersey). It was in noticing a disparity between the democratic engagement involved in the making of these decisions that the Panel decided to undertake this review.

I hope islanders will agree that the resulting report is an excellent example of Scrutiny acting as a critical friend of government. We have set about our work with the intention of helping the Department build stronger relationships with islanders and the Assembly, and we believe this review achieves that.

Each of our recommendations is aimed at increasing accountability and public engagement. We believe that this will enable the Minister and the Department to undertake their work in the knowledge that the Assembly and the public have a clear understanding of their aims and therefore, will be better able to support them.



**Deputy Kirsten Morel**  
**Chair, Economic and International Affairs Panel**

### 3. Key Findings

**KEY FINDING 1:** There are a number of groups and bodies which advise, guide and direct the External Relations Department. Not all meetings are minuted and none are made public. The Department has advised that it will share minutes where they are available with the Panel on a confidential basis.

**KEY FINDING 2:** External Relations is governed by the Common Policy which does not require States Assembly approval. It was agreed by the Council of Ministers in 2012 and endorsed in 2015. The policy has not been published since 2015, despite there being a new Council of Ministers in 2018.

**KEY FINDING 3:** Within External Relations, there are a number of decision-making processes which require formal approval by the States Assembly. There are also less formal ways in which decisions can be made, for example memoranda of understanding, international conventions, arrangements and agreements.

**KEY FINDING 4:** Since the Panel announced its review, the Minister for External Relations has stated that he is planning to introduce a new process whereby decisions relating to free trade agreements are laid before the States Assembly. This would provide States Members with an opportunity to call-in the decision for formal States approval. The Panel believes that this will provide more checks and balances around decisions which have the potential to place long-lasting obligations on Jersey.

**KEY FINDING 5:** There are a number of international instruments that have been extended to Jersey, but which may not be subject to formal compliance procedures, including the five-yearly update process which appears to lack formality. As a result, some agreements and extensions may be made without governance procedures in place to ensure the terms of those agreements are adhered to or monitored.

**KEY FINDING 6:** The Minister for External Relations (and any Minister) makes decisions under affirmative and negative procedures. For example, legislation laid under the affirmative procedure must be actively approved by the States Assembly (laws and amendments). Any legislation laid under the negative procedure becomes law on the day the Minister signs it (Ministerial Orders) and automatically remains law unless a motion to reject it is agreed by the Assembly.

**KEY FINDING 7:** The functions of the Chief Minister include the conduct of external relations in accordance with the Common Policy agreed by the Council of Ministers. In that regard, the Chief Minister and the Minister for External Relations hold concurrent responsibilities for the conduct of external relations. Whether external relations matters are conducted by the Chief Minister or the Minister for External Relations, they are conducted in accordance with the Common Policy.

**KEY FINDING 8:** In terms of autonomy, the Minister for External Relations is able to act independently when meeting representatives of foreign Governments. The issues discussed, however, will often be raised on behalf of other Ministers or the Council of Ministers.

**KEY FINDING 9:** Although Scrutiny is briefed and informed of some external affairs matters, some decisions are made without any processes in place to inform Scrutiny. Since the Panel raised this with the Minister, he has committed to sharing future MoUs and agreements with Scrutiny.

**KEY FINDING 10:** There is a dedicated area on External Relations on the gov.je website. Although information is provided on the site, there is no consistency as to what is published, and some areas are out of date. This could lead to a misconception from the public about the levels of activity within the Department. It can also lead to disengagement from the public by the Department.

**KEY FINDING 11:** A previous Scrutiny report recommended that an annual report on external relations matters be published by the Minister. This was accepted at the time, but only one annual report has been published since the ministerial role was created.

## 4. Recommendations

**RECOMMENDATION 1:** The Common Policy should be reviewed when a new Council of Ministers is established. Once endorsed, the Common Policy should be debated and approved by the States Assembly. This would ensure that Jersey's external affairs are conducted in accordance with a Common Policy which has been agreed by the Assembly as a whole, and not just by the Council of Ministers.

**RECOMMENDATION 2:** The Minister for External Relations should ensure that the new process whereby decisions relating to free trade agreements are laid before the States Assembly is introduced before the end of 2020.

**RECOMMENDATION 3:** The Minister for External Relations should introduce a process by which the Department tracks and monitors departmental reviews of compliance with international agreements and conventions. This would reduce the risk of being unintentionally outside compliance of an agreement. A formal process should be introduced before the end of Q1 2021.

**RECOMMENDATION 4:** The Minister for External Relations and Scrutiny should introduce a formal engagement and disclosure process which includes set timelines and covers the full range of instruments, agreements, conventions, arrangements and MoUs to which the Minister signs up. A discussion with the Minister on this matter should take place in Q4 2020.

**RECOMMENDATION 5:** The Minister for External Relations should ensure that an Officer is designated responsibility for maintaining the Department's page on the website and that those pages are maintained in an up to date and informative fashion.

**RECOMMENDATION 6:** The Minister for External Relations should ensure that the Department formulates a code of conduct for public engagement which indicates the appropriate level of information to be published and the timeframes within which it should be published. A copy of the code should be introduced before the end of Q1 2021 and provided to Scrutiny for feedback prior to it being approved.

**RECOMMENDATION 7:** In addition to the current methods of public engagement, the Minister for External Relations should publish an annual report, at the end of every year, on the work of the Department, visits undertaken during the year and any key decisions made on international affairs matters.

## 5. Introduction

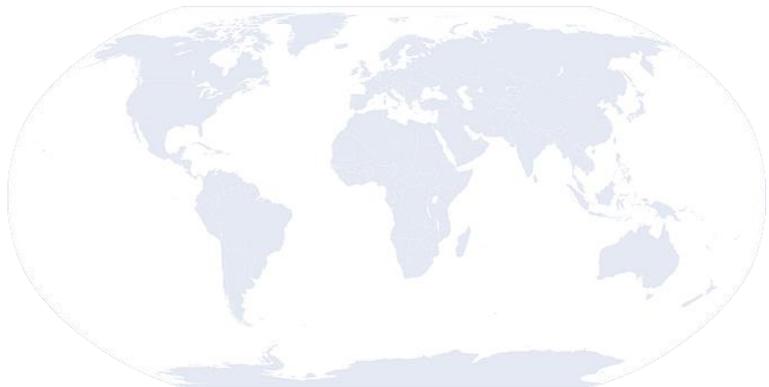
In 2013, the States Assembly approved the creation of a Minister for External Relations by adopting the “States of Jersey (Minister for External Relations) (Jersey) Regulations 2013” ([P.67/2013](#)). During that time, the Council of Ministers concluded<sup>1</sup> that establishing this new Ministerial post would provide:

- a) enhanced delivery of the Common Policy for External Relations as reflected in the Strategic Plan;
- b) coordinated assistance for those Ministers with a significant international aspect to their portfolios;
- c) the ability to offer to other jurisdictions a single, recognisable representative at Ministerial level, thereby maximising opportunities for the development of external relations.

An election for the role was held at a subsequent States sitting, and Senator Sir Philip Bailhache was elected as Jersey’s first Minister for External Relations. The Minister for External Relations remained part of the Chief Minister’s Department and now sits within the Office of the Chief Executive.

### Scrutiny Review

The Economic and International Affairs Scrutiny Panel has reviewed the various processes within the External Relations Department, specifically to explore the relationship between the States Assembly and the Department in making decisions.



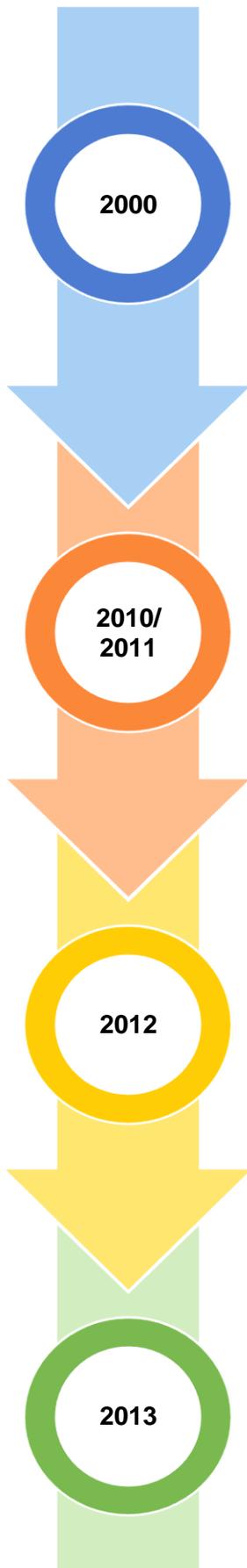
The Panel chose to undertake this review into the decision-making processes and the manner in which the States Assembly considers decisions regarding external relations matters, because it had observed that such decisions often have a long-lasting effect on islanders and the island but do not always appear to receive much scrutiny outside of the Council of Ministers.

The Panel’s report begins with a brief history of the origins of the role of Minister for External Relations, before describing the key responsibilities of the Department and its budget. The Panel then provides its analysis of the various processes within external relations including the way in which decisions are made and the impact they have on the Island’s laws, policies and relationships with other jurisdictions.

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<sup>1</sup> Council of Ministers paper, 7th December 2012

## 6. History: origins of the role



In 2000, the [Clothier review](#) recommended that the Chief Minister should be responsible for external relations. After the changes to the machinery of Government were introduced, there followed a period of approximately five years during which the Chief Minister delegated responsibility for external affairs to his Assistant Ministers.

In 2010, the then Chief Minister, Senator Le Sueur, appointed Senator Cohen as Assistant Chief Minister with responsibility for external affairs. The reason given was that, following [changes](#) at the Ministry of Justice in the UK, it was necessary to increase external engagement and provide sufficient assistance to the Chief Minister and Deputy Chief Minister in developing the Island's external relations. This was described as an interim measure whilst the Chief Minister considered whether to put forward a proposition to establish an "International Relations" Minister.

In 2011, the Council of Ministers endorsed a proposal to establish an office of Minister with responsibility for UK and International Relations. At the same time, the Council of Ministers also approved the establishment of the Financial Services and External Relations Group (FERAG) to assist with the co-ordination of external relations (this has recently been replaced with the International Advisory Group).

During a States sitting in 2012, the then Chief Minister (Senator Gorst) [advised](#) the Assembly of his belief that a Minister for External Relations should be established. In the same year, the Chief Ministers of Jersey and Guernsey discussed the need for improved co-ordination of external relations policy. This led to the Council of Ministers agreeing a framework of the Common Policy for External Relations (the first Common Policy ([R.140/2012](#)) was presented to the States by the Council of Ministers at the end of 2012).

In December 2012, the Council of Ministers agreed to proceed with plans to create a Minister for External Relations. In March 2013, the Chief Minister presented [draft Regulations](#) for the creation of a Minister for External Relations as a report to the States so that a previous Corporate Services Scrutiny Panel had time to conduct a review. In June 2013, the Panel presented its report ([S.R.9/2013](#)).

In 2013, the [Regulations](#) were lodged and debated by the Assembly. The States approved the creation of a Minister for External Relations and Senator Bailhache was elected to the role.

Scrutiny of the External Relations Minister was originally assigned to the Corporate Services Panel, however, due to the high workload, external relations (and international development) was assigned to the Economic and International Affairs Panel in 2019 (via an amendment to Standing Orders).

A detailed timeline can be found in appendix 1.

## 7. The External Relations Department

### Overview

The External Relations Department comes under the Office of the Chief Executive. The [Department](#) manages Jersey's external relationships with other countries and regional organisations, including constitutional, political, economic, cultural and environmental links. It aims to raise Jersey's international identity and external influence. In supporting the Minister, the Department's main responsibilities include:

- managing Jersey's external relationships with other countries;
- leading on Jersey's response to the UK's decision to leave the EU;
- working with States Departments on external policy such as international conventions and agreements;
- co-ordinating with other Departments on policy matters that have international implications;
- helping maintain Jersey's official links with the UK Government as a Crown Dependency;
- co-ordinating Jersey's role in the British-Irish Council.



The Panel held a Public Hearing with the Minister for External Relations on 3rd July 2020. During the hearing, the Panel asked the Minister for his views on the evolution of the role over time, particularly as in his previous role as Chief Minister, he had championed the establishment of the post:

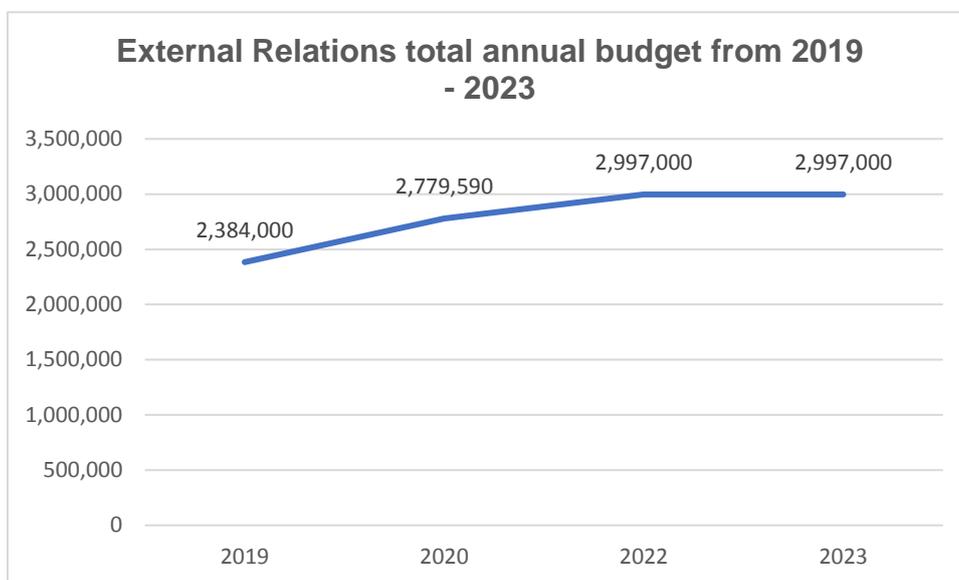
#### **The Minister for External Relations:**

*I have to go back to when Senator Le Sueur created the post of Assistant Minister. I argued very strongly around the Council of Ministers' table then that it is a really important job and we needed to be strong in creating a ministry. It was something that I had intended to do. Of course, Senator Bailhache and I fought a senatorial election together, we both stood for the office of Chief Minister and after that election we sat down and had a frank discussion about what each of us wanted during the course of that term of the Council of Ministers. I said that I was expecting to create this office, Senator Bailhache said he would like to be the first Minister for External Relations, so he became the Assistant Minister and he did an excellent job in building relationships in London around the embassies and further afield. We did not, of course, know at that point that Brexit was going to come upon us, that we were going to have very narrow majorities in the U.K. parliament, face the challenges that we faced from the E.U. code of conduct group and so, in hindsight, it was a very good decision. It was the right decision in my view, even if all these things had not happened because back in 2007, when Senator Walker signed the framework agreement about allowing Jersey and the other Crown Dependencies to develop their international personality the reality is that the Chief Minister is not able to give as much time*

*always to international matters as they might want because there is always a domestic issue arising. Therefore, the creation of the office, I think, has served us well<sup>2</sup>.*

## Resources

The graph below shows the total budget allocation to External Relations for the years 2019 – 2023 which has remained largely the same:



The Panel was advised that the budgets for 2021 – 2023 are indicative only, as growth has only been agreed in principle and that more work will be undertaken to review the growth allocations as part of the 2021 to 2024 Government (Recovery) Plan. It should also be noted that the figures within the graph show the total budget for External Relations split into base budget<sup>3</sup> and additional budget.

### How investment is spent

The Operational Business [Plan](#) provides further information on the activities set out in the Government Plan. In relation to External Relations, it describes how the additional investment to the department will be used, explaining that it will ensure the Government of Jersey is sufficiently resourced to achieve economic, political and constitutional outcomes from its international engagement. Specifically, it will:

- Respond to the challenges of Brexit and put the foundations in place to manage the risks – and opportunities – arising from the UK emerging as an independent trading nation, and to build Jersey's potential as a trading partner in its own right.

### What is the External Relations budget used for?

Investment within the External Relations Department is used to ensure that the Government of Jersey is resourced to achieve **economic, political and constitutional** outcomes from its international engagement.

<sup>2</sup> [Public Hearing](#) with the Minister for External Relations, 3rd July 2020, p.11

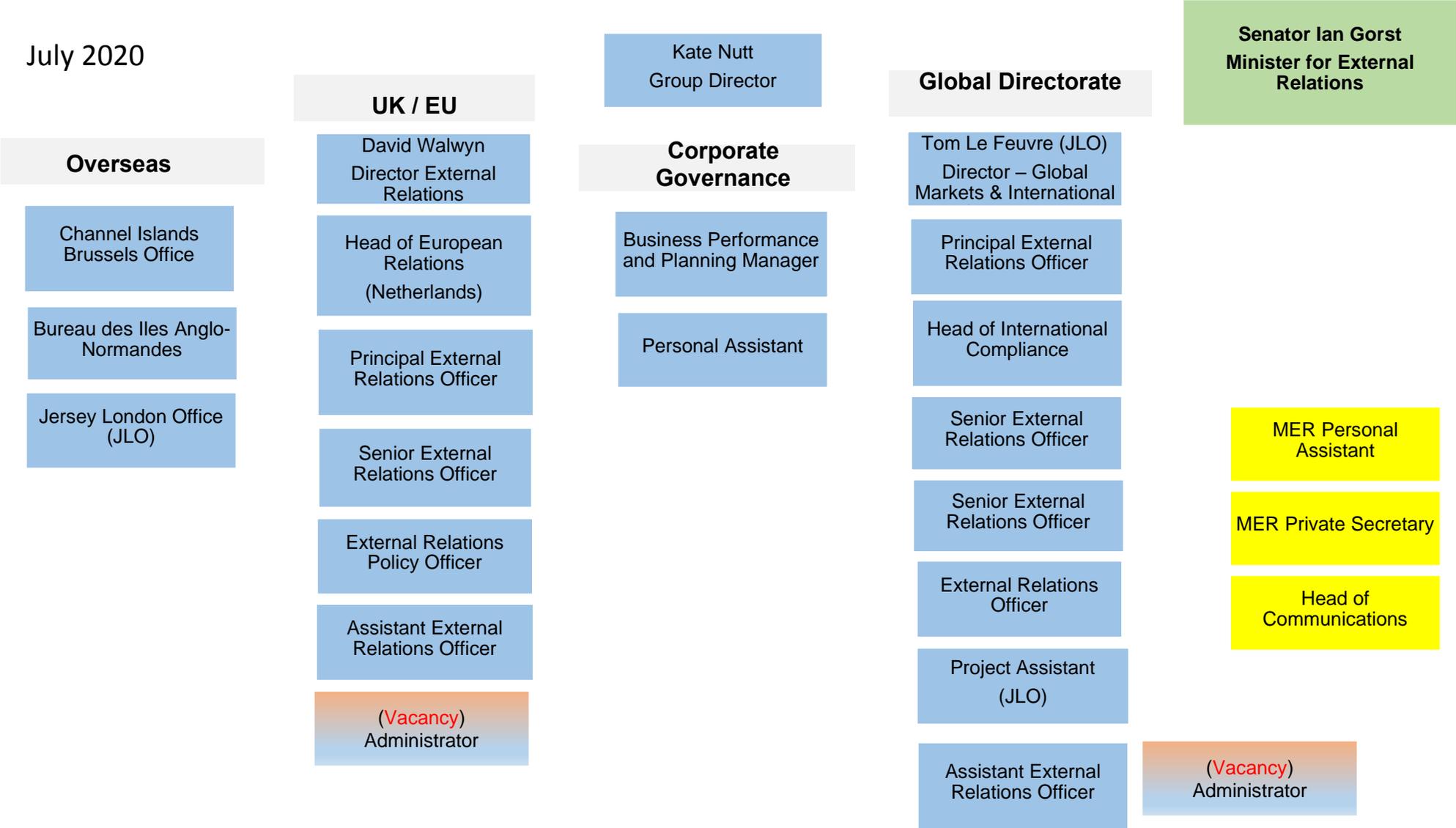
<sup>3</sup> External Relation will likely spend less in 2021 than the budget figure shown

- Support the Jersey Settlement Scheme Project and Jersey Customs and Immigration Service to manage the introduction of new regimes for both Customs and Immigration, with money allocated to the Justice and Home Affairs Department.
- Build links and increase awareness of Jersey with key stakeholders in both the UK, Brussels and EU Member States, responding effectively to emerging policy and regulation with the potential to impact the Island's constitution and economy.
- Deliver the Government's Global Markets Strategy, building Jersey's trade links with markets outside the UK and EU by increasing Jersey's Government to Government relationships and access to decision-makers.
- Reinforce Jersey's global reputation as a responsible international finance centre.
- Respond to the potential extension of the UK's membership of the World Trade Organisation to Jersey.

# Constitution and Governance

## Organisation Chart

July 2020



## External Relations: Groups

There are a number of groups that work in conjunction with the External Relations Department:

- **International Advisory Group:** This group was created by the Chief Minister to comprise Ministers and Officers and is chaired by the Minister for External Relations:

<b>Ministers</b>
Chief Minister; Minister for External Relations (Chair); Minister for Treasury and Resources; Minister for Economic Development, Tourism, Sport and Culture.
<b>Officers</b>
Chief Executive and Head of the Public Sector; Director General, States Treasury and Exchequer; Group Director, External Relations; Group Director, Financial Services and Digital Economy; Group Director, Economy and Partnerships; Comptroller of Taxes, Treasury and Resources; Director – Global Markets and International Agreements, External Relations; Director – UK and EU, External Relations; Adviser – International Affairs (this role was carried out by the late Colin Powell); HM Attorney General <sup>4</sup>

Its purpose is to:

- Consider matters relating to the Common Policy (explained in the section below)
- Provide coordinated, timely and well-informed advice on foreign policy, international trade, international tax and financial services matters to the Chief Minister, the Minister for External Relations, the Minister for Treasury and Resources and the Minister for Economic Development, Tourism Sport and Culture.

Its accountabilities are:

- Seek to ensure the co-ordinated consideration of Ministerial advice on foreign policy, international aspects of economic policy including financial services, and international tax;
- Have full regard for the need to safeguard Jersey's unique constitutional position and oversee and advise on the development of the Island's relationships with the UK in matters of trade, financial services, international tax and all other aspects of both domestic and foreign policy;
- Oversee and advise on the development of the Island's relationships with EU Member States and with Global Markets in matters of trade, financial services, international tax and all other aspects of both domestic and foreign policy;
- Oversee and advise on the development of the Island's relationships with multilateral organisations such as the OECD, IMF / World Bank, Commonwealth, FATF / MONEYVAL and the EU;

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<sup>4</sup> The Panel was advised that the Terms of Reference for the IAG will be amended shortly to reflect the revised attendance

- Make recommendations for inclusion in the Government Plan 2020-2023;
- Make recommendations for legislation in relevant areas.

Minutes are taken at each meeting of the IAG. The Terms of Reference explain that minutes will not be made public in circumstances where a Freedom of Information exemption applies. The Panel has been unable to find any publicly available minutes of IAG meetings, although notes that these are shared in confidence with the Panel.

- **Brexit Ministerial Group:** This group comprises<sup>5</sup> of Ministers and Officers and is chaired by the Chief Minister.

Political oversight	Officer Group
Chief Minister (Chairman)	Head of Service, External Relations
Minister for External Relations	Director, External Relations
Minister for Home Affairs	Head of Brexit Coordination (UK + EU), External Relations
Minister for the Environment	Chief Officer Community and Constitutional Affairs
Minister for Economic Development Tourism, Sports and Culture	Director, Constitutional Affairs
Minister for Treasury and Resources;	Assistant Director, EDTSC
Assistant Chief Minister, Social Inclusion and Population	Director, Rural Economy
Assistant Minister for Home Affairs	Director, Environment
	Treasurer of the States
	Director Financial Services
	International Affairs Adviser

Its purpose is to:

- consider matters relating to the UK's exit from the European Union in order to ensure that the Chief Minister, the Minister for External Relations (who have concurrent statutory responsibility for the conduct of the Island's external relations) and other Ministers with significant interests in Brexit, including trade relations, financial services, and constitutional matters, receive co-ordinated advice.

Specifically,

1. To ensure co-ordinated consideration of the potential implications of the UK's decision to withdraw from the European Union;
2. In conjunction with IAG, to ensure a coordinated, whole-government policy response;
3. To make recommendations for funding requirements;
4. To oversee the Island's negotiations with the UK;
5. To oversee the Island's developing relations with Europe and the rest of the World in matters of trade, international relations and all other aspects of foreign policy related to Jersey's response to the UK's decision to withdraw from the European Union.

The Panel understands that minutes are taken at each meeting, however, these are not published. The Panel notes that it receives copies of the minutes, in confidence.

<sup>5</sup> The Panel was advised that the Group's attendee list will be updated at the next BMG meeting in September

- **Jersey-UK Partnership and Trade Group:** This group comprises representatives from External Relations, Treasury and Resources, Jersey Customs and Immigration Services, Law Officers' Department, Infrastructure, Housing and Environment, and the Financial Services Unit. It is chaired by either the Director or Group Director of External Relations. Its purpose is covered by a number of themes, as follows:
  - Theme 1: Jersey and its future customs relationship with the UK
  - Theme 2: Jersey's membership and representation at the World Trade Organisation
  - Theme 3: Jersey's future trade policy

The Panel was advised that minutes are taken at each meeting, but these are working level meetings of Government Officials only. The issues discussed during the meetings are shared with the BMG. The Department also clarified that the Minister does not receive copies of these minutes .

- **Brexit Clearing House:** This sits above three Cluster Working Groups (Goods and Borders, Services and Digital and Immigration and Security). It is responsible for:
  - Consideration of key operational/technical issues emerging from Cluster Working Groups.
  - Problem solving and making recommendations in response to cross-cutting issues that emerge from each of the Working Groups or from issues identified in discussions with the UK Government.
  - Consideration of disputes (including escalation to the Brexit Strategic Group if required) where a common position or recommendation from the Cluster Working Groups cannot be reached.

The Panel was advised that minutes are not taken at each meeting.

**KEY FINDING 1:** There are a number of groups and bodies which advise, guide and direct the External Relations Department. Not all meetings are minuted and none are made public. The Department has advised that it will share minutes where they are available with the Panel on a confidential basis.

## Common Policy

External Relations is governed by a Common Policy, which was agreed by the Council of Ministers in 2012 and endorsed in 2015. It means that the conduct of external relations must be undertaken in accordance with the policy, whether it is being implemented by the Chief Minister, the Minister for External Relations or any other Minister.

The [Regulations](#) which established the external relations ministerial role explains that the Minister's position would enhance the delivery of the Common Policy and would help co-ordinate assistance to other Ministers who had a significant international aspect to their respective portfolios. For example, the Minister for International Development.

The Common Policy covers the historical, political and constitutional context for Jersey's external relations. The policy sets out six principles:

1. Protect Jersey's unique constitution, and its domestic and fiscal autonomy;
2. Promote Jersey's international identity and good reputation as a responsible and democratic country committed to the rule of law, international standards, and respect for internationally recognised human and labour rights;
3. Serve Jersey's best economic interests by promoting a strong, open, diversified and innovative economy, safeguarding its competitive position and promoting growth through trade and inward investment;
4. Promote Jersey's national and cultural identity abroad;
5. Join with others in supporting respect for human rights, sustainable development and poverty reduction in developing countries through positive engagement including aid, trade, technical assistance and knowledge transfer;
6. Abide by internationally agreed standards of environmental stewardship.

The Common Policy was published as a report to the States in both 2012 and 2015 by the Council of Ministers. The Panel notes that the policy has not been published since 2015, despite there being a new Council of Ministers in 2018. The Panel asked the Minister about the policy and why it had not been published since 2015:

**The Minister for External Relations:**

*The common policy that you are referring to was re-approved by the current Council of Ministers and remained as is and so that is the common policy that the Chief Minister and I work to currently. Could we make that clearer in the public domain? Perhaps we could but it is still the one that we are working to and it is up to date.*

**Deputy K.F. Morel:**

*But that is exactly the point, we are not simply labelling it 2018 making it clear that this is the most current document, 2015 now being 5 years ago and counting. I can imagine, certainly for me as a member of the public, it has caused me confusion to understand is this the latest version? For instance, that document refers to external relations being about providing aid and so that is now part of the Minister for International Development's portfolio. I do not know whether it should be part of the common policy because most people would see that as referring to external relations. But, yes, do you not think it would be a good idea that every time a new Government comes in that they at least re-date that document and put it front and centre on their page on the website?*

**The Minister for External Relations:**

*No, I do not disagree with that. The document that is in the public domain, the current one, is still the one that both myself and the Chief Minister work to and you touched on a good point. It is also in relation to the one that the newly formed Minister for International Development and her team work to as well. But updating the date and making it clearer that it is still the current one, I do not disagree with you<sup>6</sup>.*

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<sup>6</sup> [Public Hearing](#) with the Minister for External Relations, 3rd July 2020, p.27

Currently, the Common Policy is agreed by the Council of Ministers and is not formally approved by the States Assembly. The Panel asked for the Minister's views on this and whether the Assembly should give its formal approval of the policy:

**The Minister for External Relations:**

*I do not necessarily agree with that. I think that in common with every other Government around the world external relations or foreign affairs is a function of the Executive, as we said right at the start, and the Head of State. It is appropriate that the Executive is the one that makes the decision. What Senator Bailhache did, however, the first time the Council of Ministers approved a common policy was to have an in-committee debate and I can see that there would be some value in doing that every time a Council of Ministers had agreed its common policy.*

**Deputy K.F. Morel:**

*I suppose one of the problems that Islanders may have in understanding that perspective is that in most other kind of democratic jurisdictions that are driven by party politics, while the Executive will decide upon the foreign policy that would ordinarily be written into the manifestos at the point of election. It is good that so far we have not changed our policy very much but if the next Minister for External Relations decided to change that policy quite a lot, or the next Chief Minister, they may not advise the Assembly that that is what they were going to do and so there would be no approval of intentionally quite a dramatic change in policy. Do you see that as being one of the problems about not having a formal approval by the States?*

**The Minister for External Relations:**

*No, because I think there are other parliamentary mechanisms that should a future Council of Ministers - and it is a Council of Ministers' policy and they are obliged to publish it - veer away from what the broad view of the Assembly was, then I have no doubt that the Assembly or a Back-Bencher would lodge a proposition to seek to have it changed<sup>7</sup>.*

**KEY FINDING 2:** External Relations is governed by the Common Policy which does not require States Assembly approval. It was agreed by the Council of Ministers in 2012 and endorsed in 2015. The policy has not been published since 2015, despite there being a new Council of Ministers in 2018.

**RECOMMENDATION 1:** The Common Policy should be reviewed when a new Council of Ministers is established. Once endorsed, the Common Policy should be debated and approved by the States Assembly. This would ensure that Jersey's external affairs is conducted in accordance with a Common Policy which has been agreed by the Assembly as a whole, and not just by the Council of Ministers

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<sup>7</sup> [Public Hearing](#) with the Minister for External Relations, 3rd July 2020, p.27

## 8. Decision-making processes

The Panel acknowledges that all Ministers have the autonomy to make decisions under their remit. However, the Panel has reviewed the various decision-making processes within External Relations due to the types of decisions being made on international matters, which are not subject to scrutiny, but have a long-lasting effect on the Island.

This section explains the decision-making processes within External Relations, including the types of decisions being made and whether they are formally approved by the States Assembly.

### Types of formal decisions

The Minister for External Relations (and all Ministers) are able to make formal decisions in three main ways:

1. Signing a Ministerial Decision
2. Lodging a Proposition (initial decision) requiring States Assembly approval (final decision)
3. Signing a Ministerial Order

### Ministerial Decisions

Ministerial Decisions provide a record of decisions and actions and are publicly available on the Gov.je [website](#). The types of decisions formally recorded in this way include those delegating functions from a Minister to an Assistant Minister, those in which a draft proposition and report is approved for submission to the States or when a Ministerial Order is made. This is not an exhaustive list as there may be other decisions that a Department feels should be recorded by way of a formal Decision<sup>8</sup>:

### Propositions

Propositions are topics or items of proposed legislation which are brought before the States Assembly for its consideration. Members debate the proposition and make a decision by voting either for or against the proposition in question.

The Minister for External Relations<sup>9</sup> often lodges a proposition in order that the States Assembly might, by its decision, approve a recommendation by the Minister as a result of his engagement with multilateral institutions. The various multilateral institutions are listed below (further explanation of these can be found in appendix 2):

<sup>8</sup> [Codes of Conduct](#) and Practice for Ministers and Assistant Ministers

<sup>9</sup> The figures contained in the infographic include the Minister's responsibility for financial services (since June 2018)



Since 2013...

299

Ministerial Decisions

81

Propositions

182

Ministerial Orders



- European Union (33 propositions since 2013, as of February 2020)
- Council of Europe (16 propositions since 2013, as of February 2020)
- International Monetary Fund<sup>10</sup>
- World Trade Organisation (2 propositions since 2015, as of February 2020)
- Organisation for Economic Co-operation and Development (6 propositions since 2015, as of February 2020)
- OECD Global Forum on Transparency and Exchange of Information for Tax Purposes (4 propositions since 2013, as of February 2020)



The Minister also brings propositions as a result of negotiations with other jurisdictions and to enact laws, regulations and amendments.

## Ministerial Orders

[Ministerial Orders](#) form part of subordinate legislation. Legislation comes before the States Assembly in several forms – a new law, an amendment to an existing law, as a regulation, or an amendment to a regulation or as a Ministerial Order. Ministerial Orders can be made by a Minister at any time and are not required to be lodged for debate by the Assembly.



Ministerial Orders are published but are difficult to find. They are not listed on the States Assembly website or on the Gov.je website. However, every Ministerial Order is as a result of a Ministerial Decision which are all listed on the gov.je site. The Ministerial Orders themselves are only published on the Jersey Law [website](#) but they are not listed in one area on the site, so remain difficult to find<sup>11</sup>.

### Other types of decisions

In addition to the formal decision-making mechanisms listed above, the Minister for External Relations also makes decisions in a number of other, less formal, ways which include signing up to memoranda of understanding and international conventions or agreements. The Panel describes these types of decisions as less formal only in the context of whether formal approval is given by the States Assembly.

During the Public Hearing, the Minister provided the Panel with an overview of the types of agreements/decisions that External Relations authorises:

<sup>10</sup> No propositions have been lodged by the Minister for External Relations relating to the IMF, however some decisions related to the IMF were made by the Chief Minister. These decisions were made before the creation of the external relations ministerial role and before financial services had been delegated by the Chief Minister to Minister for External Relations' remit.

<sup>11</sup> The number of Orders was found by filtering a search within the Ministerial Decisions section on gov.je

**Deputy K.F. Morel:**

*I do not expect you to remember all of them, but as a general rule what are the types of agreements that you tend to enter into? As an example, just to help my question be clearer, we have bilateral investment treaties, we have double tax agreements, would you mind [providing an overview], to the best of your ability on the spot.*

**The Minister for External Relations:**

*There are double taxation agreements, there is tax information exchange agreements and they are, by far, the greatest number. You have asset sharing arrangements and agreements, which are similar but different and they are entered into by the law officers but the Minister responsible is the Minister for Treasury and Resources. We have just started entering into bilateral investment treaties, although we have not yet got any complete to be signed. You have M.o.U.s (Memorandum of Understanding), they can take two forms. Some of the asset sharing arrangements are in the form of an M.o.U. but you also have the more country to country M.o.U.s, for example, like the one we have signed with Rwanda. Then, of course, on top of all of that, which is really quite separate and is driven very much by any other Minister, is the international agreements or arrangements that we have extended to us<sup>12</sup>.*

**KEY FINDING 3:** Within External Relations, there are a number of decision-making processes which require formal approval by the States Assembly. There are also less formal ways in which decisions can be made, for example memoranda of understanding, international conventions, arrangements and agreements.

**Memoranda of Understanding**

The Minister is able to make memoranda of understanding (MoU's) which are a type of arrangement between two (bilateral) or more (multilateral) parties. There are only two publicly available MoU's on the gov.je [website](#):



[MOU](#) with Rwanda (12 May 2016) – aims to upgrade and enhance the bilateral relationship by identifying and progressing opportunities for mutual co-operation and benefit across a range of priority areas.



[MOU](#) with Kenya (11 December 2018) – aims to explore the possibility of establishing financial cooperation between the Government of Kenya and the Government of Jersey by identifying and prioritising opportunities for collaboration and benefit, including asset sharing, collaboration in tackling financial crime and increasing cross-border trade and investment through a Double Taxation Agreement.

In addition to the MoU's published on the gov.je website, the Department advised that the following MoU's have also been facilitated by External Relations:

<sup>12</sup> [Public Hearing](#) with the Minister for External Relations, 3rd July 2020, p.9

- Twinning Memorandum of Understanding Between the City of Trenton, New Jersey, United States and the Town of St. Helier, Jersey, Channel Islands
- New Jersey Big Data Alliance and Digital Jersey. Digital Innovation Alliance. Memorandum of Understanding.
- Memorandum of Understanding between China Education Association for International Exchange and Government of Jersey's Department for Children, Young People, Education & Skills
- Memorandum of Understanding between Normandy, La Manche and the Channel Islands
- Memorandum of Understanding between Digital Jersey and the Economic Development Board of Bahrain.
- Partnership agreement on cooperation between the Department of Ille-et-Vilaine the Government of Jersey and the States of Guernsey

The Panel asked why these MoUs are not published on the dedicated External Relations site on gov.je along with the MoUs with Rwanda and Kenya. The Department explained that because External Relations were responsible only for facilitating the initial discussion (with the content being a decision for the delivery partner) these MoU's are not published by External Relations but some were reported on at the time. For External Relations to publish these MoU's (or in similar future scenarios) the Department would need the permission of the relevant partners (those who will deliver the agreement). This permission is likely to be relatively simple to obtain from Jersey-based partners but would not be a given from international partners. The matter of publication of decisions is examined further in the next chapter.

## International Conventions and Agreements

International conventions are treaties or agreements between countries which usually sit behind multilateral bodies, as explained earlier.

Jersey is able to enter into internationally legally binding instruments in its own right only in limited circumstances and under letters of entrustment from the UK. Therefore, for the majority of international treaties and underlying protocols that Jersey wishes to enter into, ratification is only possible if the UK is ratifying or has previously ratified a treaty or protocol, and such ratification has been extended, at the request of the Government of Jersey, to include Jersey<sup>13</sup>. Jersey has been included in the ratification of a [number](#) of international agreements, arrangements and conventions such as:

- 2002 – Jersey gave the OECD a political commitment to comply with the international standard of exchange of information for tax purposes.
- 2005 – Jersey entered into savings tax agreements with all EU members states.
- 2012 – Jersey voluntarily agrees to join with the OECD, EU, African Tax Administration Forum and other bodies to help developing countries enhance their revenue raising capacity.

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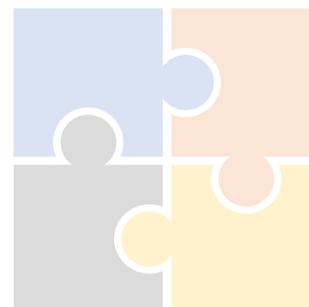
<sup>13</sup> Information accessed from Jersey Law [website](#)

- 2013 – MoU signed an agreement with the UK for a disclosure facility enabling UK residents with accounts in Jersey to regularise their tax affairs in the UK.

Jersey is also included in the ratification of a number of conventions under the auspices of the International Labour Organisation (ILO). The ILO is a United Nations agency whose mandate is to advance social and economic justice through the setting of international labour standards. For context, the Panel provides the following [example](#) below:

**Convention: United Nations Convention Against Torture**

this aims to prevent torture and cruel, inhuman degrading treatment or punishment around the world. The Convention requires states to take effective measures to prevent torture within their borders and forbids states to transport people to any country where there is reason to believe they will be tortured.



**Action:** The Government of Jersey contributes to the UK’s periodic report in respect of Jersey’s compliance with the above convention’s obligations.

**Decision making process for ratification:** The Chief Minister signed a Ministerial [Decision](#) in November 2015 to make arrangements for the UK’s ratification of the Optional Protocol to the UN Convention to be extended to Jersey once any required legislative and other administrative actions had been taken to ensure Jersey’s compliance.

As mentioned earlier, unless expressly authorised to do so by HM Government acting for the Crown through a letter of 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<sup>14</sup>. The Panel asked the Minister about the process of gaining letters of entrustment to enter into these types of agreements and conventions:

**Deputy K.F. Morel:**

*In many ways, the entire way the External Relations Department operates is under letters of entrustment from the U.K. Does the department need letters of entrustment for specific agreements that it enters into or does it have a kind of overarching letter of entrustment? How does that work? Can you ask for letters of entrustment?*

**The Minister for External Relations:**

*Yes, it is not one size fits all. We have a global letter of entrustment for tax information exchange agreements and they can include what we might refer to as mini D.T.A.s (Double Taxation Agreements) on them as well. So that is within the global entrustment. For bilateral investment treaties, we have been asking for entrustments on a case-by-case basis. When it comes to asset sharing arrangements, which are not internationally legally binding then we generally take the view that there is no need for an entrustment. If it becomes an agreement which is internationally binding or binding under international law, then the constitutional view is that there is a need for an entrustment. So there is no one size fits all. We can ask for entrustments if we wish to enter into a different sort of agreement but it is fair to say that it is not straightforward in getting that entrustment. For example, take the current fishing issue and the renegotiation of the Bay of Granville treaty. I have to be careful how I say this, but*

<sup>14</sup> [Guidance](#), How to note on dealing with requests from the Crown Dependencies to extend the UK’s ratification of international instruments.

*there is a view, which I think I share, that an entrustment for us to renegotiate that would be extremely useful and in Jersey's interest. That is not straightforward from the U.K. Government side but equally it requires an entrustment by Brussels to the French. As you can imagine, that is not straightforward either and is probably more difficult than persuading our colleagues in Westminster<sup>15</sup>.*

Taking the United Nations Convention Against Torture as an example, the Ministry of Justice in the UK requires Jersey to demonstrate that the necessary domestic provisions are in place to support an extension of the international instrument. Therefore, the Chief Minister's Decision in 2015 was the start of the process for working towards a demonstration of the fact that domestic legislation is in place before an extension is progressed.

### **World Trade Organisation: Trade Agreements**

The [WTO](#) is a global international organisation which deals with the rules of trade between nations. WTO agreements are negotiated and signed by the majority of the world's trading nations and ratified in their parliaments. The aim is to help producers of goods and services, exporters and importers conduct their business.

In October 2019 an agreement was reached with the UK over the extension to Jersey of the UK's membership of the World Trade Organisation. The Minister for External Relations issued a [statement](#) explaining that the UK Foreign Secretary had formally written to the WTO notifying them that the UK intends to extend the territorial scope of its WTO membership to Jersey.

With regards to these types of agreements, the Panel asked the Minister whether further free trade agreements would be laid before the States Assembly for approval:

#### **Deputy K.F. Morel:**

*You mentioned free trade agreements, and with regard to the U.K., or more to the point with regard to Jersey acceding to some of those free trade agreements as a possibility, would you be bringing those free trade agreements, or the chapters that we sign up to, to the States Assembly for approval? If you chose to. I know you have previously said in the Brexit Review Panel you do not feel obliged to sign up to any that are not in Jersey's interests.*

#### **The Minister for External Relations:**

*No, that is very strongly the case. I do not feel obliged and therefore I would not think that the Council of Ministers would feel obliged either. What I would like to do is be able to put this new process in place prior to signing so that they would be laid before the Assembly and they could be called in for a ratification decision if Members felt it was appropriate to do so. So we could get the new process up and running prior to those being formally signed. Obviously Scrutiny will have an important part in that and seeing those in advance of them being laid before the Assembly. So that is different from, I think, what you [are] really asking me. I would like to get that new process in place before that.*

The Minister mentioned a new process whereby the States Assembly could be provided with an opportunity to call-in the decision on free trade agreements before they are signed. The Panel

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<sup>15</sup> [Public Hearing](#) with the Minister for External Relations, 3rd July 2020, p.9

welcomes this move and believes that it would provide more checks and balances around decisions which have a long-lasting effect on Jersey<sup>16</sup>.

**KEY FINDING 4:** Since the Panel announced its review, the Minister for External Relations has stated that he is planning to introduce a new process whereby decisions relating to free trade agreements are laid before the States Assembly. This would provide States Members with an opportunity to call-in the decision for formal States approval. The Panel believes that this will provide more checks and balances around decisions which have the potential to place long-lasting obligations on Jersey.

**RECOMMENDATION 2:** The Minister for External Relations should ensure that the new process whereby decisions relating to free trade agreements are laid before the States Assembly is introduced before the end of 2020

## Compliance

Given the number and types of decisions that are made by the Minister and Department, the Panel asked the Minister whether his role included making sure agreements with other jurisdictions are adhered to:

**Deputy K.F. Morel:**

*.....recently, back last year, we signed an agreement for health care co-operation with Guernsey, that is just a Channel Islands example but other agreements too. Once inter-jurisdictional agreements are signed, particularly in terms of those sorts of M.O.U.s, do you play a role in ensuring they are adhered to in any way?*

**The Minister for External Relations:**

*The frank answer to that is no, we do not. If you take the Guernsey-Jersey health agreement other than my officials supporting the interaction between the relevant officials in both Health Departments we did not really play a role in that either. That was Minister-to-Minister dealing under the auspices of the Chief Ministers' inter-island partnership group. There is a wider issue arising from your question and that is around compliance with those international instruments that have been extended to us and who ensures we are improving our compliance with them. Broadly speaking with the high-level ones, the relevant department is required to provide I think a five-yearly update.*

[.....]

*It is up to the department that is ultimately signed up to it to ensure that they are compliant. It is an issue that I have raised with the Chief Minister and it has been slightly overcome by COVID but it is an issue that needs to be rectified<sup>17</sup>.*

**KEY FINDING 5:** There are a number of international instruments that have been extended to Jersey, but which may not be subject to formal compliance procedures, including the five-yearly update process which appears to lack formality. As a result, some agreements and extensions may

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<sup>16</sup> The Panel has been advised that an amendment to Standing Orders will be lodged for debate by the Assembly before the end of 2020

<sup>17</sup> [Public Hearing](#) with the Minister for External Relations, 3rd July 2020, p.18

be made without governance procedures in place to ensure the terms of those agreements are adhered to or monitored.

**RECOMMENDATION 3:** The Minister for External Relations should introduce a process by which the Department tracks and monitors departmental reviews of compliance with international agreements and conventions. This would reduce the risk of being unintentionally outside compliance of an agreement. A formal process should be introduced before the end of Q1 2021.

### Scrutiny of decisions

The Panel chose to undertake this review because it had observed that decisions being made by the External Relations Minister often have a long-lasting effect on islanders and the Island but do not always appear to receive much scrutiny outside of the Council of Ministers.

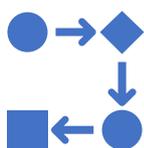
The various decisions relating to memoranda of understanding as well as international conventions and agreements are testament to this.

### Approval Process

The Panel found that there are two main types of parliamentary [procedure](#) that prescribe the form of scrutiny that legislation or a decision will receive. Any legislation/decision laid under the **affirmative** procedure must be actively approved by the States Assembly. Any legislation/decision laid under the **negative** procedure becomes law on the day the Minister signs it and automatically remains law unless a motion to reject it is agreed by the Assembly. This process is not limited to the Minister for External Relations, any Minister can make decisions under affirmative and negative procedures.

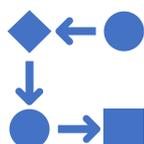
Legislation/decisions which use the affirmative procedure provide more opportunity for scrutiny compared with legislation/decisions that are laid under negative procedures. When reviewing the types of decisions made with regard to external affairs, and scrutiny of them, the affirmative and negative procedures can both apply. The Panel provides several examples of the types of decisions which require approval (affirmative) and those that do not (negative):

#### Affirmative (require States approval)



- Laws
- Regulations
- Amendments to Laws

#### Negative (do not require States approval)



- Memoranda of understanding
- Ministerial Decisions (the States may rescind a decision)
- Ministerial Orders (the States may rescind a Ministerial Order)
- International conventions and agreements

In undertaking this review, the Panel has raised concerns that a number of final decisions under the negative procedure are not subject to scrutiny. The Panel is, however, kept informed on many of the areas that come under external relations through various briefings provided by the Minister and/or Officials. For example, over the last 12 months, the Panel has been kept informed about the OECD Inclusive Framework on Base Erosion and Profit Shifting (BEPS). This project aims to address the tax challenges raised by digitalisation and has been a top priority for the OECD.

During a briefing held on 20th August, the Panel asked what decisions were likely to be taken by Jersey in respect of the project. The Minister advised that the OECD may require a high-level political commitment on the project and the timescale for any decisions could be as little as 24 hours. In that regard, the Panel asked what level of scrutiny there could be in such a short timescale. The Minister agreed that, before any decisions or commitments were made, the Panel would be informed.

**KEY FINDING 6:** The Minister for External Relations (and any Minister) makes decisions under affirmative and negative procedures. For example, legislation laid under the affirmative procedure must be actively approved by the States Assembly (laws and amendments). Any legislation laid under the negative procedure becomes law on the day the Minister signs it (Ministerial Orders) and automatically remains law unless a motion to reject it is agreed by the Assembly.

## 9. Accountability

### Ministerial Accountability

The States of Jersey [Law](#) (2005) specifies that the functions of the Chief Minister include the conduct of external relations in accordance with the Common Policy agreed by the Council of Ministers. In that regard, the Chief Minister and the Minister for External Relations hold concurrent responsibilities for the conduct of external relations. If there were a disagreement between the Chief Minister and Minister regarding the conduct of external relations, they would need to return to the Council for direction, as it is Council's policy that they are working to. Whether conducted by the Chief Minister or the Minister for External Relations, external relations matters are conducted in accordance with the Common Policy<sup>18</sup>.

The Panel asked the Minister for his thoughts on the levels of accountability, given that external relations is delivered in accordance with the Common Policy agreed by the Council of Ministers and because the role holds concurrent responsibility with the Chief Minister:

**Deputy K.F. Morel:**

*Is your primary form of accountability to the Council of Ministers and the Chief Minister or the States Assembly? Where do you see yourself being held accountable in the first place?*

**The Minister for External Relations:**

*That is a good question because the common external relations policy is decided and approved by the Council of Ministers and so in the delivery of that policy or working to that policy I am responsible to the Council of Ministers but, of course, the functions that I discharge are also functions which are dischargeable by the Chief Minister. There is also that concurrent accountability and responsibility but for any pieces of legislation being brought forward then it is absolutely in the normal way the States Assembly and, in some respects, the Scrutiny function is slightly more important for External Relations because of the nature of some of the work.*

**Deputy K.F. Morel:**

*When you talk about this concurrent responsibility, from your perspective does that give you the freedom to operate fairly autonomously, if you know what I mean, just hand in hand with the Chief Minister, irrespective of the Council of Ministers or irrespective of the States Assembly or do you think that ties you down more to how you work? What level of autonomy do you have?*

**The Minister for External Relations:**

*When you think about a Minister and an executive function you are able to perform those executive functions as described under law. So if you want to say*

### Who is accountable for external relations?

The Chief Minister and the Minister for External Relations hold concurrent responsibilities for the conduct of external relations. So, whether external relations matters are conducted by the Chief Minister or the Minister for External Relations, they are conducted in accordance with the Common Policy as agreed by the Council of Ministers.

<sup>18</sup> Council of Ministers Report, 7th December 2012

*that gives autonomy on the one hand, of course it does, but it also creates accountability to Scrutiny, to the States and to the Council of Ministers. On the one hand, you could say I am acting in an autonomous way when I have a meeting with a representative of another foreign Government but the reality is the issues I will be talking about will be on behalf of other Ministers or the Council of Ministers in order to present their concerns or the issues that might have arisen, or arising from pieces of legislation which have gone through the Assembly or decisions of the Assembly that I would be referring to. In that regard foreign affairs is of course a function of the Executive in Jersey as it is in every other country around the globe but Ministers for External Relations are really just message Ministers for other Ministers or other decisions made elsewhere<sup>19</sup>.*

**KEY FINDING 7:** The functions of the Chief Minister include the conduct of external relations in accordance with the Common Policy agreed by the Council of Ministers. In that regard, the Chief Minister and the Minister for External Relations hold concurrent responsibilities for the conduct of external relations. Whether external relations matters are conducted by the Chief Minister or the Minister for External Relations, they are conducted in accordance with the Common Policy.

**KEY FINDING 8:** In terms of autonomy, the Minister for External Relations is able to act independently when meeting representatives of foreign Governments. The issues discussed, however, will often be raised on behalf of other Ministers or the Council of Ministers.

### Interaction with the States Assembly and Scrutiny

The report has demonstrated that there are a number of decisions made by the Minister and External Relations Department which are not subject to scrutiny beyond the Council of Ministers.

The Minister has made a number of recent decisions including the extension of the UK's membership of the WTO to Jersey; the negotiation of a Bilateral Investment Treaty with the United Arab Emirates; regular matters including Tax Information Exchange Agreements and Double Taxation Agreements which have not been debated by the States Assembly.

In order to gauge political satisfaction of the decision-making processes, the Panel emailed all States Members to ask for their views. Unfortunately, the Panel did not receive any responses from States Members, however, it appreciates that it has been a busy period with responding to the Covid-19 pandemic.

In terms of Scrutiny, the Panel's experience has been that, whilst it is briefed and consulted on some external affairs matters, some decisions are made without any processes in place to inform scrutiny. For example, the extension of the UK's membership of the WTO to Jersey. Once the Panel was aware of the extension, it asked the Minister to provide it with relevant information and to be fully briefed on the matter.

As part of the new process for notifying the Assembly of legally binding international agreements, the Minister committed in future to briefing Scrutiny and sharing all relevant information with the Panel when entering into such international agreements, and that this would also be the case for MoU's:

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<sup>19</sup> [Public Hearing](#) with the Minister for External Relations, 3rd July 2020, p.4

**Deputy K.F. Morel:**

*I know you have mentioned laying matters before the States in the future, and the panel is grateful for the engagement you had with signing that W.T.O. M.O.U. with the panel, but from the perspective of just being automatic, is that something that you are willing to accept is whenever signing anything, even before it goes to the States Assembly, in the new system you have suggested it should be automatic that you bring these matters to the attention of Scrutiny?*

**The Minister for External Relations:**

*I do support the idea that they would come to Scrutiny and that we would have a proper discussion about them. I think that will be a strengthening of process.*

**KEY FINDING 9:** Although Scrutiny is briefed and informed of some external affairs matters, some decisions are made without any processes in place to inform Scrutiny. Since the Panel raised this with the Minister, he has committed to sharing future MoUs and agreements with Scrutiny.

**RECOMMENDATION 4:** The Minister for External Relations and Scrutiny should introduce a formal engagement and disclosure process which includes set timelines and covers the full range of instruments, agreements, conventions, arrangements and MoUs to which the Minister signs up. A discussion with the Minister on this matter should take place in Q4 2020.

### How decisions are publicised

Although there is a dedicated [area](#) on External Relations on the gov.je website, the Panel has found that there is no consistency as to those documents that the Department decides to publish. For example, some memoranda of understanding are published, whilst others are not. The Panel asked the Minister about this and whether there was a reason for the inconsistency:

**Deputy K.F. Morel:**

*When you look at the public-facing area of the States of Jersey website, which is about External Relations, in our view there is an inconsistency with the things that are published and the things that are not published. For example, we notice that some M.O.U.s are published, others are not. Do you think there is inconsistency about what the department decides to publish and could you give reasons why some M.O.U.s, let us say in this case, would be published and others would not?*

**The Minister for External Relations:**

*It is of course part of our overall engagement. If I am being totally honest I do not think that perhaps our bit of the website is quite as fit-for-purpose in the way that Islanders might now want to interact with us and it needs to be refreshed and updated. There are those inconsistencies that you mention. The other thing of course about the engagement of the department with the public is it is not just around agreements and Brexit and websites and things like that. There is also all of the consular engagement work that we do on behalf of Islanders as well and that of course during COVID has been quite an important part of our work. Perhaps it is an area where we have not given the attention that we should. We recognise that does need improving and updating<sup>20</sup>.*

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<sup>20</sup> [Public Hearing](#) with the Minister for External Relations, 3rd July 2020, p.25

**KEY FINDING 10:** There is a dedicated area on External Relations on the gov.je website. Although information is provided on the site, there is no consistency as to what is published, and some areas are out of date. This could lead to a misconception from the public about the levels of activity within the Department. It can also lead to disengagement from the public by the department.

**RECOMMENDATION 5:** The Minister for External Relations should ensure that an Officer is designated responsibility for maintaining the Department's page on the website and that those pages are maintained in an up to date and informative fashion.

**RECOMMENDATION 6:** The Minister for External Relations should ensure that the Department formulates a public engagement code of conduct which indicates the appropriate level of information to be published and the timeframes within which it should be published. A copy of the engagement code of conduct should be introduced before the end of Q1 2021 and provided to scrutiny for feedback prior to it being approved.

## Public engagement

In June 2013, a previous Corporate Services Scrutiny Panel presented its report ([S.R.9/2013](#)) on the Regulations to establish the role of External Relations Minister. The Panel's report recommended that the Chief Minister should ensure that a report is presented annually to the Assembly on the work undertaken on external relations. This was accepted by the Chief Minister, he [said](#):

*"The Chief Minister will request that the Minister for External Relations presents an annual report to the Assembly on the work undertaken by the Chief Minister and Minister for External Relations with regards to the conduct of external relations."*

The Panel notes that the work of External Relations has grown since the ministerial role was created in 2013. In that regard, the Panel believes that engaging with the public and publicising information on the key decisions made by the Minister and the Department is important. Since the role was created, only one annual report has been published which covered the period September 2013 to January 2015. The Panel asked the Minister why an annual report had not been published since 2015:

### **Deputy K.F. Morel:**

*Moving on to how External Relations engages with the public, so the Island's public specifically, you mentioned earlier on today that Senator Bailhache as Minister for External Relations published an annual report. That covered the period September 2013 to January 2015. To our knowledge there has not been an annual report since, but obviously the amount of work the External Relations Department undertakes, in my view, has only grown since then. I do not think it has ever decreased, so can you explain why an annual report is not published by your department, specifically as it was a Scrutiny recommendation in 2013?*



**The Minister for External Relations:**

*I think we feel and I certainly feel as Minister that we publish our 6-monthly Brexit report and we have been doing that all the time that I have been Minister and previously in the last couple of years that Senator Bailhache was Minister, and those reports really cover all, or the vast majority, of our work. We are included in the formal Government annual business plan publication. Perhaps we feel that the public is fed up of hearing from us, because we are always banging on about something that we are doing. We have had consultations around “Let’s talk Brexit”, “Let’s talk trade”, so I would argue that if we are moving just to an annual report we would be engaging and informing the public less<sup>21</sup>.*

The Panel accepts that a Brexit report is published on a regular basis, however, there are other matters, besides Brexit, which are undertaken by the Minister and the Department.

**KEY FINDING 11:** A previous Scrutiny report recommended that an annual report on external relations matters be published by the Minister. This was accepted at the time, but only one annual report has been published since the ministerial role was created.

**RECOMMENDATION 7:** In addition to the current methods of public engagement, the Minister for External Relations should publish an annual report, at the end of every year, on the work of the department, visits undertaken during the year and any key decisions made on international affairs matters.

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<sup>21</sup> [Public Hearing](#) with the Minister for External Relations, 3rd July 2020, p.24

## 10. Conclusion

The Panel has reviewed the various processes within the External Relations Department, specifically to explore the relationship between the States Assembly and the Department in making decisions.

The Panel believes that undertaking this review was important because various decisions are made on external affairs matters that have a long-lasting effect on the island and islanders, but which often do not receive scrutiny outside of the Council of Ministers. Therefore, the focal points of the review have been the decision-making processes and ways that the States Assembly considers decisions made on external relations matters.

The Panel has found that some decisions are made without any formal approval process by the States Assembly, for example international conventions and agreements and MoUs with other jurisdictions. The relationship between the States Assembly and external relations is unusual when compared with other Ministerial Departments in that it is an executive function, but often does not take instruction from the Assembly. The basis for this conclusion starts with the Common Policy for external relations, which is approved by the Council of Ministers and not the Assembly.

In its report, the Panel notes its efforts to gauge political satisfaction in relation to these decision-making processes. The Panel appreciates that its email to all States Members asking for their views on the matter was sent at a time when attention was focussed on the response to Covid-19 and therefore no responses to the Panel's request were received. Regardless of the reasons for the lack of response, the Panel believes that greater engagement and information by the Department would enhance political debate and discussions on external affairs matters.

The Panel welcomes the Minister's acknowledgement that sharing more information with Scrutiny such as MoUs and agreements would strengthen decision making processes. Furthermore, the Panel believes that publications such as the Brexit update report, are beneficial to both Scrutiny and the States Assembly as a whole and the Panel can see merit in something similar being published on other matters within external affairs. The Panel looks forward to working with the Minister in order to consider how best to improve the provision of information to Scrutiny and States Members.

## 11. Appendix 1: Timeline

<b>Timeline: Establishment of Minister for External Relations</b>	
<b>2000 - 2010</b>	
<b>12/12/2000</b>	<a href="#">Clothier Review</a> recommends that the Chief Minister should be responsible for External Relations.
<b>16/11/2004</b>	States adopts Draft States of Jersey Law 200- ( <a href="#">P.124/2004</a> ), as amended. This enabled the States to move to a new system of Government.
<b>04/03/2005</b>	States of Jersey Law 2005 registered by the Royal Court.
<b>03/03/2006</b>	The then Chief Minister (Senator F.H. Walker) decides to present a report setting out the responsibilities of Ministers and Assistant Ministers (see <a href="#">MD-C-2006-0009</a> ).
<b>07/03/2006</b>	Ministerial Responsibilities: Ministers and Assistant Ministers ( <a href="#">R.23/2006</a> ) presented to the States. It indicates that Assistant Minister Connétable K.P. Vibert had been given 'outward-facing' responsibilities, including international relations with France and international relations with regard to sanctions. This follows MD-C-2006-0009.
<b>20/04/2007</b>	The Chief Minister decides to sign the <a href="#">Framework for Developing the International Identity of Jersey</a> (see <a href="#">MD-C-2007-0028</a> ). This sets out a number of principles which are intended to clarify the constitutional relationship between the UK and Jersey.
<b>18/07/2007</b>	The Chief Minister decides to present a report to the States outlining changes in delegated functions for the Chief Minister and the Minister for Treasury and Resources (see <a href="#">MD-C-2007-0042</a> ).
<b>23/07/2007</b>	Ministerial Responsibilities: Chief Minister and the Minister for Treasury and Resources ( <a href="#">R.75/2007</a> ) presented to the States. The report indicates that one of the Chief Minister's Assistant Ministers (the then Deputy Ian Gorst) will become Assistant Minister for Treasury and Resources instead. It makes no difference to the delegated responsibilities in respect of external relations, which at this point was still the responsibility of Assistant Minister Connétable K.P. Vibert.
<b>23/03/2010</b>	Publication of <a href="#">Crown Dependencies</a> by the House of Commons Justice Select Committee. The Select Committee investigated the relationship between the UK and the Crown Dependencies, and the role of the Ministry of Justice in administering that relationship.
<b>11/2010</b>	Ministry of Justice <a href="#">responds</a> to the report by the Justice Select Committee. The MoJ accepted the Committee's advice that the MoJ should restrain itself from engaging in areas of work which do not directly concern its primary constitutional role. This also meant that Jersey would be responsible for direct engagement with Whitehall.
<b>2010 – 2015</b>	

<b>13/01/2011</b>	The Chief Minister (Senator T.A. Le Sueur) decides to appoint Senator F.E. Cohen as Assistant Chief Minister with responsibility for External Affairs (see <a href="#">MD-C-2011-0001</a> ). The reason given is that following changes at the Ministry of Justice, the Island will be responsible for direct engagement with Whitehall and it is therefore necessary to increase external engagement and provide sufficient assistance to the Chief Minister and Deputy Chief Minister in developing the Island's external relations. The change is described as an interim measure and the Chief Minister will consider whether to put forward a Report and Proposition for a Minister of International Relations at a later date.
<b>01/02/2011</b>	Chief Minister <a href="#">questioned</a> by Deputy R.G. Le Hérissier on the appointment process followed in respect of the Assistant Minister with responsibility for External Relations.
<b>12/05/2011</b>	The Council of Ministers endorses a proposal to establish an office of Minister with responsibility for UK and international relations.  The Council of Ministers also approves the establishment of the Financial Services and External Relations Group (FERAG) to assist the co-ordination of external relations. FERAG comprises the Chief Minister; Deputy Chief Minister; Assistant Chief Minister with responsibility for External Relations; Minister for Treasury and Resources; Minister for Economic Development; HM Attorney General; the Director of International Affairs; International Affairs Advisor; Treasurer of the States or Director of Tax Policy; and Chief Officer – Economic Development.
<b>20/05/2011</b>	Director of International Affairs appointed Accounting Officer for External Relations. (See <a href="#">Accounts for 2011</a> : this seems to have occurred when the then Chief Executive (John Richardson) took over as Acting Chief Executive upon the departure of the previous Chief Executive (Bill Ogley).
<b>11/07/2011</b>	Chief Minister decides to delegate under Article 28 of the States of Jersey Law 2005 his function in respect of external affairs to Senator F.E. Cohen (see <a href="#">MD-C-2011-0086</a> ). The Chief Minister also delegated the authority to enter into Taxation Information Exchange Agreements (TIEAs) with other jurisdictions.
<b>12/07/2011</b>	States of Jersey Law 2005: Delegation of Functions – Chief Minister to Assistant Minister with Responsibility for External Relations ( <a href="#">R.83/2011</a> ) presented to the States. This reports the delegations outlined in MD-C-2011-0086.
<b>25/11/2011</b>	Chief Minister (Senator I.J. Gorst) decides to delegate under Article 28 of the States of Jersey Law 2005 responsibility for conducting external relations to Senators P.F. Routier and Senator Sir P.M. Bailhache. The Chief Minister also delegated the authority to enter into Taxation Information Exchange Agreements (TIEAs) with other jurisdictions (to both Assistant Ministers) (see <a href="#">MD-C-2011-0142</a> ).
<b>29/11/2011</b>	States of Jersey Law 2005: Delegation of Functions – Assistant Ministers – November 2011 ( <a href="#">R.143/2011</a> ) presented to the States. This reports the delegations outlined in <a href="#">MD-C-2011-00143</a> .
<b>10/07/2012</b>	Chief Minister <a href="#">advises</a> the States Assembly of his belief that a Minister for External Relations should be established.
<b>31/07/2012</b>	Chief Ministers of Jersey and Guernsey <a href="#">discuss</a> the need for improved co-ordination of external relations policy.

10/2012	Council of Ministers agree a framework of the Common Policy for External Relations.
19/11/2012	Chief Minister advises the Corporate Services Scrutiny Panel at a <a href="#">Quarterly Public Hearing</a> that he remains committed to establishing a Minister for External Relations and that plans are likely to be brought forward in 2013.
23/11/2012	External Relations: Common Policy ( <a href="#">R.140/2012</a> ) presented to the States.
07/12/2012	Council of Ministers agrees to proceed with plans for a Minister for External Relations.
11/03/2013	The Chief Minister presented draft Regulations for the creation of a Minister for External Relations as a report (see <a href="#">R.18/2013</a> ) so that the Corporate Services Scrutiny Panel could consider the proposals. The Regulations would then be formally lodged for consideration by the States Assembly.
31/05/2013	The Chief Minister decides to lodge the draft States of Jersey (Minister for External Relations) (Jersey) Regulations 201- (see <a href="#">MD-C-2013-0050</a> )
04/06/2013	<a href="#">Draft States of Jersey (Minister for External Relations) (Jersey) Regulations 201-</a> presented to the States (P.67/2013).
13/06/2013	<p>Corporate Services Scrutiny Panel presented its report “Minister for External Relations” <a href="#">S.R.9/2013</a>. In terms of accountability, the Panel found:</p> <ul style="list-style-type: none"> <li>• <i>The Regulations, if approved, would not simply apply to this Chief Minister and his Minister for External Relations but to all future Chief Ministers and Ministers for External Relations. Future Chief Ministers may wish to take sole responsibility for external relations. Although it has been suggested that accountability for external relations might be improved as the new Minister would be subjected to Scrutiny and questions in the States Assembly, the fact that responsibility would be shared between the new Minister and the Chief Minister could in fact blur the lines of accountability.</i></li> </ul> <p>The Panel ultimately recommended that the States Assembly should not be asked to approve proposals for a Minister for External Relations until wider issues regarding the Machinery of Government have been addressed.</p>
27/06/2013	Chief Minister <a href="#">responded</a> to the Panel’s report. The Chief Minister rejected the Panel’s recommendation that the debate should not go ahead. In his response the Chief Minister deferred the debate from 16th July to the 10th September 2013 so that any matters arising from the Referendum ( <a href="#">P.74/2013</a> Referendum on States reform: outcome) would be decided at the States sitting on 16th July and that any further consequential changes to the machinery of Government would be lodged by 10th September at the latest.
10/09/2013	<a href="#">Debate</a> on <a href="#">P.67/2013</a> “Draft States of Jersey (Minister for External Relations) (Jersey) Regulations 201-”. The Proposition was adopted by the States.
24/09/2013	Senator Philip Bailhache was <a href="#">elected</a> as the Minister for External Relations
16/01/2014	Publication of <a href="#">Crown Dependencies: developments since 2010 report</a> by House of Commons Justice Committee. The report mentioned Jersey’s appointment of its first Minister for External Relations

01/03/2014	Minister of Justice <a href="#">responds</a> to the Justice Select Committee's Report
01/01/2015	Minister for External Relations: Ministerial Report Sept 2013 – January 2015 ( <a href="#">R.15/2015</a> ) presented to the States. The report summarises key events and achievements since the External Relations Ministerial post was established on 24th September 2013.
27/07/2015	External Relations: Common Policy ( <a href="#">R.86/2015</a> ) presented to the States
<b>2016 onwards</b>	
06/12/2017	<p>The Privileges and Procedures Committee lodged "Draft Amendment (No.34) of the Standing Orders of the States of Jersey" (<a href="#">P.119/2017</a>) which, amongst other changes, proposed to bring the description of Scrutiny Panels up to date:</p> <ul style="list-style-type: none"> <li>• <b>Corporate:</b> assigned to topics of corporate services, corporate policies and treasury and resources and external relations;</li> <li>• <b>Economic:</b> assigned topics of economic development (including financial services, innovation, competition, and the digital industry), tourism, sport and culture.</li> </ul>
07/01/2019	Chief Minister decides to replace the Financial Services and External Relations Advisory Group (FERAG) with an International Advisory Group (IAG) (see <a href="#">MD-ER-2018-0040</a> )
15/01/2019	<p>The then Chairmen's Committee lodged "Draft Amendment (No.39) of the Standing orders of the States of Jersey" (<a href="#">P.4/2019</a>) which formalised remits between Corporate Services and Economic and International Affairs:</p> <ul style="list-style-type: none"> <li>• <b>Corporate:</b> assigned to topics of corporate services, corporate policies and treasury and resources;</li> <li>• <b>Economic and International Affairs:</b> assigned topics of economic development (including financial services, innovation, competition, and the digital industry), tourism, sport and culture, external relations and international relations.</li> </ul> <p>It was at this point the EIA Panel began scrutinising the Minister for External Relations.</p>

## 12. Appendix 2: Overview of multilateral institutions

### → [European Union](#)

The [EU](#) is an economic and political union between 27 European countries (the UK left the EU in 2020). The original intention of the EU (originally referred to as the European Economic Community and was established with six member countries) was to foster economic cooperation so that countries trading with one another became economically interdependent and so were more likely to avoid conflict.

The EU has since evolved into an organisation which covers a wide range of policy areas from climate, environment and health to external relations and security<sup>22</sup>. The remit of the Minister for External Relations covers all aspects of the EU.

### → [Council of Europe](#)

The [Council of Europe](#) is the continent's leading human rights organisation. It includes 47 member states and was founded on two legal instruments: the European Convention on Human Rights and the European Social Charter.

The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism ([MONEYVAL](#)) is a monitoring body of the Council of Europe. In 2011 MONEYVAL became an independent monitoring mechanism within the Council of Europe answerable directly to the Committee of Ministers<sup>23</sup>. In 2012 the Committee of Ministers adopted a resolution which allows the Crown Dependencies to participate fully in the evaluation processes of MONEYVAL and to become subject to its procedures<sup>24</sup>.

Since then, MONEYVAL reviews Jersey's compliance with international anti-money laundering and countering the financing of terrorism standard (AML/CFT) set by the Financial Action Task Force (FATF).

The FATF is an inter-governmental body established in 1989. Its objectives are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system<sup>25</sup>.

The remit of the Minister for External Relations covers all aspects of the Council of Europe, MONEYVAL and standards set by the Financial Action Task Force.

### → [International Monetary Fund](#)

The [International Monetary Fund](#) (IMF) consists of 189 countries and was created in 1945. Its primary purpose is to ensure the stability of the international monetary system. It also

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<sup>22</sup> [Channel Islands Brussels Office](#)

<sup>23</sup> [Council of Europe](#)

<sup>24</sup> [Council of Europe Portal](#)

<sup>25</sup> [Financial Action Task Force](#)

works to foster global monetary co-operation, secure financial stability, facilitate international trade, promote high employment, sustainable economic growth and reduce poverty.

As part of his role, the Minister for External Relations attends annual meetings of the World Bank and the International Monetary Fund.

### → **World Trade Organisation**

The [WTO](#) is a global international organisation which deals with the rules of trade between nations. WTO agreements are negotiated and signed by the majority of the world's trading nations and ratified in their parliaments. The aim is to help producers of goods and services, exporters and importers conduct their business.

In October 2019 an agreement was reached with the UK over the extension to Jersey of the UK's membership of the World Trade Organisation. The Minister for External Relations issued a [statement](#) explaining that the UK Foreign Secretary had formally written to the WTO notifying them that the UK intends to extend the territorial scope of its WTO membership to Jersey. The Minister said:

**Minister for External Relations:**

*“Securing WTO extension in time for Brexit ensures that Jersey companies will have access to global rules on the trade in goods, services and IP with other WTO members, including EU Member States and the majority of countries worldwide. This represents the conclusion of a political and diplomatic process to achieve extension of the UK's WTO membership that has been an objective of the Government of Jersey for over 20 years”.*

### → **Organisation for Economic Co-operation and Development (OECD)**

The [OECD](#) is an international organisation that works with Governments and policy makers to establish international norms and solutions to a range of social, economic and environmental challenges.

In 1990 the OECD Convention was extended to [Jersey](#) (and Guernsey) which is considered part of the UK for the purposes of its membership of the OECD. Therefore, OECD decisions and recommendations apply to Jersey to the same extent as they do to the UK (unless the contrary is stated in a particular case).

### → **Global Forum on Transparency and Exchange of Information for Tax Purposes**

The [Global Forum](#) is the continuation of a forum which was created in the context of the OECD's work to address the risks to tax compliance posed by non-cooperative jurisdictions. The original members of the Global Forum consisted of OECD countries and jurisdictions that had agreed to implement transparency and exchange of information for tax purposes.

The Global Forum was restructured in September 2009 in response to the G20 call to strengthen implementation of these standards. At this time, Jersey was invited to take on the role of one of four vice-chairs for a new Peer Review Group set up by the Global Forum.

## → OECD Multilateral Convention on Mutual Assistance in Tax Matters

The [Convention](#) on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988. The Convention is a multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance.

The Convention facilitates international co-operation for a better operation of national tax laws. It provides for all forms of administrative co-operation between states in the assessment and collection of taxes. This co-operation ranges from exchange of information, including automatic exchanges. Jersey [joined](#) the convention in 2013.

## → Tax information exchange agreements (TIEAs)

[TIEAs](#) help Governments to enforce domestic tax laws by allowing the opportunity to exchange relevant tax information on request. They are signed by two countries that agree to co-operate in tax matters by exchanging information. Jersey has been exchanging information with other countries using TIEAs since 2007.

Jersey's TIEAs are in line with the international standard and generally follow the OECD model agreement on Exchange of Information on Tax Matters. Agreements only come into force when the necessary parliamentary procedures have been completed in both countries.

The Gov.je [website](#) explains what a TIEA is and provides a [link](#) to a document which lists the TIEAs and Double Taxation Agreements adopted and in progress. However, the document is out of date, citing the late Colin Powell as the contact person. The website also provides a table with a list of TIEAs, the country and the agreement start date.

## → Double taxation agreements (DTAs)

[DTAs](#) protect Jersey's tax rights and guard against attempts to avoid or evade tax. They also allow Jersey to exchange information with the tax authorities of other countries. Double taxation treaties are agreements between two countries that are designed to:

- help determine the tax residency status of a person or a company
- protect against the risk of double taxation where the same income is taxable in two countries
- provide certainty of treatment for cross-border trade and investment

The Gov.je [website](#) provides a table with a list of DTAs, the country and the agreement start date.

## 13. Appendix 3: Panel Membership and Terms of Reference

### Panel Membership



Deputy Kirsten Morel (Chair)



Deputy David Johnson (Vice-Chair)



Senator Kristina Moore



Deputy Jess Perchard



Deputy Kevin Pamplin

**Panel constitution:** The Review was undertaken between January 2020 and September 2020. Deputy Perchard resigned from the Panel on 8th September and Deputy Pamplin joined the Panel on 30th June. The Panel has also recently welcomed Deputy Inna Gardiner and Deputy Steve Luce to the Panel, but they did not participate in the review.

### Terms of Reference

1. To undertake a short review of the various processes within external relations including:
  - a. The Council of Ministers' Common Policy on external relations;
  - b. To explore the lines of ministerial accountability of external relations matters;
  - c. To understand the impacts of External Relations policies and decision making on the Island's legislation and constitutional standing;
  - d. To explore decision-making processes and how the States Assembly considers decisions made on external relations matters, including impacts on the Island's laws, policies and relationships with other jurisdictions;
  - e. To explore the different outputs of external relations matters and oversight of them.





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