

STATES OF JERSEY

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INTERNATIONAL CONVENTIONS AND AGREEMENTS: PROGRESS REPORT FOR PERIOD 1ST OCTOBER 2006 TO 30TH SEPTEMBER 2007

**Presented to the States on 31st January 2008
by the Chief Minister**

STATES GREFFE

INTERNATIONAL CONVENTIONS AND AGREEMENTS: PROGRESS REPORT FOR PERIOD 1ST OCTOBER 2006 TO 30TH SEPTEMBER 2007

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**INTERNATIONAL CONVENTIONS AND AGREEMENTS: PROGRESS REPORT FOR PERIOD 1ST
OCTOBER 2006 TO 30TH SEPTEMBER 2007**

This report contains a list of international treaties, conventions and agreements that have been referred formally to the Island Authorities during the period of 1st October 2006 to 30th September 2007.

PART ONE:

REPORTS SUBMITTED ON INTERNATIONAL TREATIES, CONVENTIONS AND AGREEMENTS

1.1 International Labour Organisation – Article 22 Reports

Jersey is included in the ratification of a number of Conventions under the auspices of the International Labour Organisation (ILO). Each year, the United Kingdom is required under Article 22 of the ILC Constitution to submit reports on the application of various ratified Conventions which have been extended to Jersey.

During this period the government of Jersey has provided reports on the following conventions.

Article 22 Reports

Employment and Labour Conventions

- - 1. Minimum Age (Industry) Convention 1919 (No. 5)
 - 2. Minimum Age (Agriculture) Convention 1921 (No. 10)
 - 3. Forced Labour Convention 1903 (No. 29)
 - 4. Protection against Accidents (Dockers) (Revised) Convention 1932 (No. 32)
 - 5. Labour Inspection Convention 1947 (No. 81)
 - 6. Migration for Employment Convention (Revised) 1949 (No. 97)
 - 7. Minimum Wage Fixing Machinery (Agriculture) Convention 1951 (No. 99)
 - 8. Abolition of Forced Labour Convention 1957 (No. 105)

1.2 Agreement on the Conservation of Bats in Europe ('Eurobats')

Purpose

The Agreement was set up under the [Convention on the Conservation of Migratory Species of Wild Animals](#), which recognises that endangered migratory-species can be properly protected only if activities are carried out over the entire migratory range of the species.

The Bat Agreement aims to protect all [45 species](#) of bats identified in Europe, through legislation, education, conservation measures and international co-operation.

Action

The Government of Jersey submitted its Report for 2006, prepared by the Environment Department.

1.3 International Covenant on Economic, Social and Cultural Rights

Purpose

This Covenant spells out the economic, social and cultural rights enumerated in the Universal Declaration on Human Rights. The ICESCR includes the right to work, to just and favourable conditions of work, to form and join trade unions, to family life, to an adequate standard of living, to the highest attainable standard of health, to education, and to take part in cultural life. It prohibits all forms of discrimination in the enjoyment of these rights, including on the basis of sex, and requires that countries ensure the equal rights of women and men.

All States parties are obliged to submit regular reports on how the rights are being implemented.

Action

Jersey submitted its [fifth periodic report of the United Kingdom for inclusion in their report to the United Nations on progress against the International Covenant on Economic, Social and Cultural Rights](#). The Report was formally approved by the Chief Minister, presented to the States and published on the States Greffe website.

1.4 Agreement on the Conservation of Small Cetaceans of the Baltic, North East Atlantic, Irish and North Seas (ASCOBANS)

Purpose

Since migrating cetaceans (dolphins, whales etc.) regularly cross national boundaries, their effective protection can only be achieved by international cooperation. The aim of the Agreement is to promote close cooperation amongst Parties with a view to achieving and maintaining a favourable conservation status for small cetaceans.

Action

The Government of Jersey submitted their annual contribution to the ASCOBANS Report for 2006.

1.5 Convention on the conservation of European wildlife and natural habitats, 1979 – Biennial Report

Purpose

The Convention on the conservation of European wildlife and natural habitats, 1979, is intended to promote cooperation between the signatory States in order to conserve wild flora and fauna and their natural habitats and to protect endangered migratory species.

Action

The Convention permits derogations providing that there is no other satisfactory option and that the exception will not be detrimental to the survival of the population concerned. Jersey has filed a biennial report on derogations applicable in the Island.

PART TWO:

NEW MATTERS REFERRED TO THE ISLAND AUTHORITIES

2.1 Protocol additional to the Geneva Conventions of 12 August 1949, relating to the adoption of an additional emblem (Protocol III)

Purpose

The Protocol recognizes an additional distinctive emblem in addition to, and for the same purposes as, the distinctive emblems of the Geneva Conventions. This additional distinctive emblem is composed of a red frame in the shape of a square on edge on a white ground.

Action

The government of Jersey advised the UK that they would be grateful if the United Kingdom government could keep them informed on the passage of their proposed primary legislation to give effect to Protocol III, so they can consider, at the relevant time, the extension of the legislation to Jersey by Order in Council.

2.2 Accession of Romania and the Republic of Bulgaria to the European Union

Purpose

On 1st January 2007, Romania and the Republic of Bulgaria became members of the European Union. It was necessary to amend the European Communities (Jersey) Law 1973 to give effect in Jersey to the 2005 Accession Treaty and the enlargement of the EU, so that the provisions of Protocol 3 to the UK Act of Accession would apply in relation to the expanded Union.

Action

The States enacted the European Communities (Accessions) (Jersey) Regulations 2006 on 6th December 2006, which came into force on 13th December 2006.

2.3 Taxation of Savings Agreements with Romania and the Republic of Bulgaria

Purpose

The purpose is to bring into effect Agreements with Bulgaria and Romania such that individuals resident in those countries would become subject to the same arrangements for exchange of information or retention tax as those currently applied to relevant individuals resident in the other 25 EU Member States.

Actions

On 16th January 2007, the States agreed to ratification of the Agreements with Bulgaria and Romania on the Taxation of Savings Income.

2.4 The European Convention on the Suppression of Terrorism 1977 and connected international anti-terrorism conventions – Amending Protocol

Purpose

The purpose of the 1977 Convention is to assist the suppression of terrorism by supplementing and, where

necessary, modifying existing extradition and mutual assistance arrangements concluded between member States of the Council of Europe, including the European Convention on Extradition 1957 and its Additional Protocols 1975 and 1978, and the European Convention on Mutual Assistance in Criminal Matters 1959 and its Additional Protocols 1978 and 2001, in that it seeks to overcome the difficulties which may arise in the case of extradition or mutual assistance concerning persons accused or convicted of acts of terrorism.

The UK strongly supports the Convention as part of the international effort to counter international terrorism and supported the development of the Amending Protocol to update the original 1977 Convention. The Convention as amended will only enter into force after all Parties to the 1977 Convention have expressed their consent to be bound by it. There is no provision for the original Convention to remain in force for any Party once the Protocol has entered into force.

Action

The UK government has asked the government of Jersey to consider whether it wishes the UK Government to extend to it the application of the 1977 Convention as amended by the Amending Protocol; whether it wishes the UK to extend to it the application of any of the connected international counter-terrorism treaties; and how it intends to implement the amended Convention and connected treaties.

This requires a detailed consideration of the existing law, and the Law Officers are currently examining the implications.

2.5 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims

Purpose

The right of ship-owners or charterers to limit their liability for the payment of damages is determined by reference to the Convention on Limitation of Liability for Maritime Claims 1976. However, the Convention requires that they establish limitation funds for the benefit of those to whom they are liable.

In 1996 it was recognised there was a need to update the 1976 Convention limits by means of a Protocol.

Action

The UK government has asked whether the government of Jersey wishes the 1996 Protocol to the Convention to be extended to the Bailiwick.

Jersey has indicated it would like the 1996 Protocol to be extended to the Island, but implementing legislation is not yet in place. When the Shipping (Jersey) Law 2002 has been amended to reflect the changes introduced by the 1996 Protocol, notification will be provided to enable the 1976 Convention to be denounced on behalf of the Island and the extension of the 1996 Protocol to the Island.

Consideration is also being given to the reservations that accompanied the UK's ratification of the 1996 Protocol to ascertain whether any reservations should be entered on behalf of the Island.

2.6 International Labour Organisation Conventions on Equal Remuneration (No. 100), Discrimination (Employment and Occupation) (No. 111), Minimum Age (No. 138) and Worst Form of Child Labour (No. 182)

The government of Jersey has been asked by the Joint International Team of the Department for Work and Pensions to consider the potential extension of the above ILO fundamental conventions to the Bailiwick.

The Island Authorities have confirmed that consideration will be given to extension of these core

conventions in due course. This will require a detailed comparison of the conventions against domestic law and practices which it is hoped might be carried out in 2008.

PART THREE:

MATTERS REFERRED TO IN EARLIER REPORTS – LATEST DEVELOPMENTS

3.1 International Health Regulations (IHR) 2005: revised Protocol on notification of public health events of international concern

The government of Jersey received correspondence from the UK Department of Health regarding the International Health Regulations (IHR) 2005: Protocol on: A) Articles 6-12 of the IHR 2005; and B) the UK's National IHR Focal Point.

The Government of Jersey confirmed that they were content with the proposed revisions.

3.2 Optional Protocol to the UN Convention Against Torture and other Cruel, Inhuman and Degrading Treatment

The government of Jersey has been asked to advise on its latest position regarding the above Optional Protocol.

The Government of Jersey confirmed that whilst they are supportive of the Optional Protocol, they did not wish to have the Protocol extended to Jersey. The reason was that there would be significant resource consequences, practical difficulties and constitutional issues arising were the Optional Protocol to be extended.

3.3 International Convention for the Suppression of the Financing of Terrorism 1999

In 2003 the Island Authorities requested the extension of the United Kingdom's ratification of the above Convention. Subsequently, in 2003, it was confirmed that the Terrorism (Jersey) Law 2002 had come into force, together with subordinate legislation enabling the enforcement in Jersey of external restraint and forfeiture orders on terrorist property, to implement the Convention.

In April 2007 it came to light that the requested ratification had not taken place because of a query that the Foreign and Commonwealth Office had with the Isle of Man's request for ratification. However, the advice received was that ratification would be progressed on behalf of Jersey as a matter of urgency.

The Jersey government has pressed for confirmation that the requested ratification has been finalised.

3.4 International Labour Organisation Conventions on Freedom of Association and Protection of the Right to Organise, 1948 (No. 87), and the Right to Organise and Collective Bargaining, 1949 (No. 98).

In June 2007 the International Labour Organisation Committee on Freedom of Association considered a complaint against the Government of the United Kingdom concerning Jersey presented by the Transport and General Workers' Union. The Committee requested that it be kept informed of developments following its consideration of the matter.

The Government of Jersey has submitted a report to the United Kingdom Government and requested that the content should be forwarded to the Committee on Freedom of Association for their information.

3.5 Tax information exchange agreement between Jersey and the United States of America

The States, on 22nd October 2002, unanimously endorsed the Agreement for the Exchange of Information relating to taxes between the Government of the USA and the States of Jersey. For the Agreement, signed in Washington DC on 4th November 2002, to come fully into effect in respect of civil as well as criminal tax matters, as from 1st January 2006, Regulations needed to be made. On 7th July 2004 the States adopted the [Taxation \(Implementation\) \(Jersey\) Law 2004](#) which Law enables the States to make Regulations implementing Agreements with, and obligations owed to, the Governments of other countries and territories regarding or relating to taxation.

On 16th May 2006 the States made the [Taxation \(United States of America\) \(Jersey\) Regulations 2006](#) which enabled the Tax Information Exchange Agreement with the United States to be brought fully into force with effect from 23rd May 2006.

3.6 Tax information exchange agreement between Jersey and the Netherlands

The States in February 2002 entered into a political commitment to comply with the OECD's principles on transparency and information exchange on tax matters through the negotiation of tax information exchange agreements with the OECD Member States.

In accordance with that political commitment, on 20th June 2007 Jersey and the Netherlands signed a [bilateral agreement](#) to exchange information for tax purposes. To bring the agreement into force the States will be asked to ratify the agreement following which Regulations will be presented to the States for approval.

In association with the tax information exchange agreement, Jersey and the Netherlands also signed an agreement relating to mutual agreement procedures relating to transfer pricing and the application of the Dutch participation exemption and a memorandum of understanding.

PART FOUR:

MATTERS WHERE A DECISION REGARDING A CONVENTION HAS BEEN MADE BY THE ISLAND AUTHORITIES

4.1 EUCARIS Treaty

Purpose

The European Vehicle and Driving Licence Information System (EUCARIS) is a communications network which allows participating countries to exchange data relating to motor vehicles and driving licences.

Action

The Department for Constitutional Affairs wrote to Jersey in December 2006, further to previous correspondence regarding the EUCARIS Treaty.

The Government of Jersey advised that its position remained as previously, that is that the Government of Jersey does not wish the Treaty to be ratified on the Island's behalf at this time.

4.2 Council of Europe Convention on Corruption 1999 and the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions, 1997.

Purpose

(a) Council of Europe Convention on Corruption 1999

The Criminal Law Convention on Corruption aims at the co-ordinated criminalisation of a large number of corrupt practices. It also provides for complementary criminal law measures and for improved international co-operation in the prosecution of corruption offences. The Convention's implementation is monitored by the "Group of States against Corruption – GRECO".

Overall, the Convention is broader in focus than the OECD anti-bribery Convention.

(b) OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions, 1997

The aim of the OECD Convention is to prevent bribery in international business transactions by requiring OECD countries to criminalise the act of bribing foreign public officials. The Convention only covers the conduct of the person or enterprise offering or making the bribe and does not cover bribes paid to private persons or bribes paid to public officials for reasons other than for obtaining or retaining business or other improper advantage in international business transactions. As such, the focus of the OECD Convention is extremely narrow.

Action

The government of Jersey had previously indicated in principle their desire that the United Kingdom should extend the ratification of these Conventions to the Island once the necessary legislation was in place.

The [Corruption \(Jersey\) Law 2006](#) was adopted by the States on 25th October, 2005 and received Royal Assent on 9th May 2006. The Law came into force on 6th March 2007.

The Corruption (Jersey) Law 2006 creates new offences of corruption, abolishes the customary law offence of bribery and is designed to be the basis for the extension to Jersey of the Council of Europe Convention on Corruption 1999 and the OECD Convention on Combating Bribery of Foreign Public Officials 1997.

Recent correspondence with the Department for Constitutional Affairs has indicated that some minor amendments of the Law will need to be made before ratification of the OECD Convention can be extended, and these can readily be made by means of Regulations under the Law.

4.3 European Convention on Mutual Assistance in Criminal Matters 1959, with the Additional Protocol, 1978

Purpose

Both the Convention and the Protocol deal with policing and law enforcement issues between judicial authorities. The 1959 Convention does not apply to political offences or offences connected with political offences, or to fiscal offences. In practice the 1959 Convention works by means of “Letters Rogatory” sent by judicial authorities in the state which requests evidence (the “requesting state”) to the state which has the evidence (the “requested state”). The 1959 Convention covers physical evidence as well as appearance of natural persons.

The Protocol widens the scope of the 1959 Convention allowing it to be used for fiscal offences and makes it clear that the “double criminality” rule (requiring an offence to be punishable in both the requested and requesting state for the Convention to apply) is to be relaxed for such offences.

Action

The Government of Jersey have requested the United Kingdom to lodge an additional instrument of ratification to extend the Convention and the Additional Protocol to Jersey. The Government of Jersey confirmed that the Island has legislation which enables it to meet the obligations imposed by the Convention and the Additional Protocol.

In requesting ratification, there were a number of reservations and declarations which the Government of Jersey asked to be included.

4.4 European Convention on the Adoption of Children 1967

Purpose

The aim of this Convention is to harmonise the laws of Member States and to avoid conflict of laws where the adoption involves a transfer of the child from one State to another. It deals with the conditions for and legal consequences of an adoption.

Action

The Department for Children, Schools and Families advised that the Government of Poland proposed to maintain retroactively a reservation previously entered in respect of Article 7 of the 1967 Convention regarding the minimum age of adopters in Poland.

The Government of Jersey considered the reservation and informed the United Kingdom Government that it has no objection to the proposal.

4.5 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (Rome,

1988) and

- **Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (Rome, 1988)**

Purpose

The 1988 Convention is concerned with unlawful acts that threaten the safety of ships and the security of their passengers and crews, which stemmed from reports of crews being kidnapped, ships being hijacked, deliberately run aground, or blown up by explosives.

The Convention provides, amongst other matters, that it is an offence to seize or exercise control over a ship by force or threat of force, to endanger the safe navigation of a ship, to undertake an act of violence against a person on board, to destroy or damage a ship or its cargo, etc.

The Rome Protocol 1988 extends the provisions of the Rome Convention 1988, to offences committed on or against fixed platforms located on the continental shelf.

Action

See below.

4.6 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation 1971:

- **Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (Montreal, 1988)**

Purpose

The Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation 1971 defines a wide spectrum of unlawful acts against the safety of civil aviation and the Contracting States have undertaken to make these offences punishable by severe penalties.

The Montreal Protocol 1988 supplements the provisions of the Montreal Convention 1971, to cover acts of violence committed against persons or facilities at airports serving international civil aviation.

Action

The government of Jersey requested that the United Kingdom should lodge additional instruments of ratification with the appropriate depositaries, to extend the Rome Convention 1988, the Rome Protocol 1988 and the Montreal Protocol 1988 to Jersey.

The government of Jersey confirmed that the requirements of the Convention and Protocols were implemented by the extension of the Aviation and Maritime Security Act 1990 by Orders in Council, namely the [Aviation Security \(Jersey\) Order 1993](#) and the [Maritime Security \(Jersey\) Order 1996](#).

4.7 Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding Supervisory Authorities and Transborder Data Flows

Purpose

With the increase in exchanges of personal data across national borders, it is necessary to ensure the effective protection of human rights and fundamental freedoms and, in particular, the right to privacy in relation to such exchanges of personal data. The Additional Protocol requires Parties to set up supervisory authorities, exercising their functions in complete independence, which are an element of the effective

protection of individuals with regard to the processing of personal data.

Action

The [Data Protection \(Jersey\) Law 2005](#) substantially came into force on 1st December 2005. This Law implements the legislative requirements necessary to satisfy the obligations of the Additional Protocol. The government of Jersey has requested that the United Kingdom's ratification of the above Additional Protocol should be extended to Jersey.

4.8 EU-Tajikistan Partnership and Co-operation Agreement

Purpose

The Partnership and Co-operation Agreement between the EU and Tajikistan covers a wide range of policy areas including political dialogue, trade in goods, business and investment legislative cooperation, economic cooperation, democracy and human rights, prevention of illegal activities, cultural cooperation and financial cooperation. The EU-Tajikistan PCA also incorporates important new areas of common interest, including weapons of mass destruction, migration and terrorism.

Action

The government of Jersey has noted that the Agreement would have only a partial impact on Jersey because the European Union clearly has no competence in respect of Jersey outside the ambit of Protocol 3.

In the circumstances, the Government of Jersey agreed to the ratification of the Agreement by the United Kingdom on behalf of the Island, but only insofar as the Agreement covers the matters which are reserved to Community competence under Protocol 3. The Government of Jersey requested the inclusion of a specific reservation to this effect in the instrument of ratification filed by the United Kingdom.

PART FIVE:

CONFIRMATION OF RATIFICATION OF MATTERS REFERRED TO IN EARLIER REPORTS

5.1 UK Ireland Social Security Convention

Purpose

The purpose of the Agreement is to give effect to the Convention on Social Security between the UK and Irish governments signed on 14th December 2004. The Convention was ratified on 3rd July 2007 (when some amendments were agreed) and entered into force on 1st October 2007.

Ratification

On 9th September 1997, the States approved in principle the inclusion of the Jersey Social Security Scheme within a proposed consolidation of the existing reciprocal social security agreements between the United Kingdom and Ireland.

To give effect to this Convention in Jersey, the Social Security (Reciprocal Agreement with Ireland) (Jersey) Act 2007 was adopted by the States on 27th September 2007.

5.2 UK Netherlands Social Security Agreement

Purpose

The Convention on Social Security between the United Kingdom and Netherlands was signed in December 2005, to allow the Netherlands to continue to export pensions to Jersey notwithstanding a change in the Netherlands Law. The States adopted the Social Security (Reciprocal Agreement with the Netherlands) (Jersey) Act 2006 on 26th September 2006, to give effect to the Agreement in Jersey.

Ratification

The Department of Work and pensions advised that the agreement was to enter into force on 1st May 2007.

5.3 Convention on Tonnage Measurement of Ships 1969

Purpose

The Convention, adopted by IMO in 1969, was the first successful attempt to introduce a universal tonnage measurement system. It provides for gross and net tonnages, both of which are calculated independently. The rules apply to all ships built on or after 18th July 1982 – the date of entry into force – while ships built before that date were allowed to retain their existing tonnage for 12 years after entry into force, or until 18th July 1994.

Ratification

The Department for Transport confirmed that the UK's ratification of the above Convention was extended to Jersey on 21st October 2005.

5.4 UK/US Extradition Treaty 2003

Purpose

The treaty will modernise and extend the arrangements for extradition between the US and the UK and for the first time allow for the extradition of individuals accused of 21st Century crimes, such as child Internet pornography, which were not extraditable offences under the previous arrangements.

The new treaty, amongst other matters, also redresses the unequal balance that existed under the terms of the 1972 Treaty, in which the UK required more from the US than they asked of the UK. The US was required to demonstrate a *prima facie* evidential case in support of extradition requests made to the UK, whereas the UK merely had to demonstrate ‘probable cause’.

Action

The UK government has informed the government of Jersey of the arrangements for ratification of the Treaty to be extended to Jersey at the request of the Island authorities. It is understood the Treaty was ratified by the UK and the USA on 26th April 2007, although the Jersey government has not yet been formally notified of the ratification.

5.5 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction

The government of Jersey has previously indicated its wish that the United Kingdom ratification of the Chemical Weapons Convention should be extended to Jersey. It is understood that UK ratification has now been extended to Jersey, on 26th October 2005, and formal confirmation is awaited.

The Island authorities have confirmed that further necessary domestic measures are included in the Customs and Excise (Import and Export Control) (Jersey) Order 2006, which came into force on 7th December 2006.