

States of Jersey
States Assembly



États de Jersey
Assemblée des États

Corporate Services Scrutiny Panel

Minister for
External Relations



Presented to the States on 13th June 2013

S.R.9/2013

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1. EXECUTIVE SUMMARY

- 1.1 The Chief Minister has proposed the creation of a Minister for External Relations. The new Minister would share responsibility for external relations with the Chief Minister and discharge the functions under 25 specified pieces of legislation and would be a corporation sole under Article 26 of the *States of Jersey Law 2005*.
- 1.2 The Chief Minister is politically responsible for external relations although, since January 2011, that responsibility had been delegated to an Assistant Minister. Other Ministers are also involved, particularly the Ministers for Treasury and Resources and for Economic Development. The Chief Minister and his Assistant Minister are supported in their work by the International Affairs Section. The Bailiff and His Excellency the Lieutenant Governor are also involved in external relations but have no political responsibilities. They work with the Chief Minister in receiving an increasing number of distinguished visitors to the Island. The Bailiff can also offer constitutional advice to Ministers whilst His Excellency deals with Crown appointments and is a point of contact between the Island's authorities and the UK Government.
- 1.3 External relations are undertaken in accordance with the common policy of the Council of Ministers. We recognise that the current Council was the first to publish such a policy. However, we have also noted that there is no requirement for the policy to be debated by the States Assembly. We have recommended that the *States of Jersey Law 2005* be amended to ensure that future Councils are obliged to seek States approval of their policy.
- 1.4 In recent times, a Financial Services and External Relations Advisory Group (FERAG) has been established to co-ordinate matters. This is a welcome move but there needs to be requisite transparency regarding the undertaking of external relations and we have therefore recommended that an annual report be presented to the Assembly about the work undertaken. The budget underpinning the International Affairs Section of the Chief Minister's Department has grown from £393,765 in 2008 to £920,700 in 2013 and will grow further to £1,699,600 in 2015. This budget does not include resources which other departments, both ministerial and non-ministerial, may devote to the work on the Island's external relations. Given that a number of departments are involved in external relations, we have also recommended that there be an audit to establish the true costs.
- 1.5 The Island's external relations are undertaken within the context of its constitutional position. It is not recognised internationally as a sovereign State but as a territory for which the UK is responsible. The UK Government has recognised that Jersey has a separate international identity and has supported the use of entrustments as a means by which the Island might

represent its own interests on the international stage. There have been significant developments recently in Jersey's international identity and the Panel accepts there is a need for the Island to be well-represented externally. We have noted, however, that the other Crown Dependencies have yet to create a Minister for External Relations. We were informed that the establishment of a Minister for External Relations is not connected to a decision about Jersey seeking independence from the UK.

- 1.6 A number of reasons have been given for the creation of the new Minister. We were informed that it is the international norm for external relations to be shared by the 'head of government' and a minister for external relations and that the creation of such a Minister in Jersey would offer other jurisdictions a single, recognisable representative at Ministerial level; an Assistant Minister reportedly does not have sufficient status. We were also advised that it would improve accountability, would enhance delivery of the common policy and would help to co-ordinate assistance for all Ministers involved in external relations.
- 1.7 Given FERAG was created specifically as a co-ordinating body, it would seem the Council of Ministers has already addressed the need for better co-ordination and it is therefore difficult to see how the creation of a Minister for External Relations would in itself enhance the position. Our primary conclusion on this matter, however, is that it is difficult to see the immediate need for creating a new Minister when the Island can already be represented overseas at Ministerial level, most particularly by the Chief Minister.
- 1.8 Importantly, the Regulations, if approved, would apply to future Chief Ministers who might wish to take sole responsibility for external relations, rather than share it with another Minister.
- 1.9 We were advised that creating a new Minister would not lead to any changes in the current undertaking of external relations. However, we remain concerned that the new post could impact upon the Bailiff's role. We were also advised that the proposals would be cost neutral as it would simply amount to replacing an Assistant Minister with a Minister. However, consideration needs to be given to the impact on other areas of the public administration, not simply Ministerial Departments, and we have therefore recommended the undertaking of an Impact Assessment. Furthermore, whilst no further resources might be required during the current MTFP period, external relations are a growth area and there is no guarantee that further resources might not be requested subsequently.
- 1.10 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. However, the fact that responsibility would be shared between the new Minister and the Chief Minister could in fact blur the lines of accountability.

1.11 Finally, we have found that creating a new Minister could compound current problems with Ministerial Government as it would merely establish another Minister as a corporation sole over which the Chief Minister would have limited influence. Proposals for the new Minister have been pursued notwithstanding work being undertaken elsewhere on the composition of the States Assembly and the Machinery of Government. The question must therefore be asked of whether this is the right time to seek the appointment of a new Minister when more wide-reaching discussions about the size of the Assembly and the Machinery of Government are already expected. We have therefore recommended that the proposals for a Minister for External Relations are not debated until those discussions have taken place and wider issues regarding the Machinery of Government have been addressed.

2. CHAIRMAN'S FOREWORD

- 2.1 The Corporate Services Scrutiny Panel has recommended that proposals to create a Minister for External Relations should not be debated by the States Assembly until wider issues regarding the Machinery of Government have been addressed.
- 2.2 In the review we also noted that the Island is not yet able to decide major international treaties on its own behalf. It is still necessary to obtain the consent of the UK government. We are able to deal with lesser treaties on our own recognisance, a process known as entrustment, but major issues require agreement by London.
- 2.3 We have also discussed the rank of foreign representatives visiting the Island. These are either Ambassadors or High Commissioners. Although we have been visited by Heads of State, the only ones which we can recall within the last 20 years are the President of Rwanda and Her Majesty the Queen.
- 2.4 The evidence is that, generally, small states such as Jersey do not move to appoint Foreign Ministers until they actually achieve independence. In Guernsey, for example, the Chief Minister retains control of foreign affairs whilst in the Isle of Man there is a Minister for Culture and External Affairs. It has been suggested that the title of Minister would enable better contacts to be made in the Far East, which is felt to be very status conscious.
- 2.5 We were pleased to note that the Council of Ministers had developed a common policy on external relations but consider that, such is the growth in its importance, it would be more appropriate for the policy to be debated by the States.
- 2.6 The Panel has concluded that, whilst Jersey's external relations are a growth area, it is difficult to see the immediate need for the new Minister as the Chief Minister is currently solely responsible and would appear to have sufficient status to represent the Island overseas. Furthermore, the Panel has found that the creation of the new Minister could compound wider difficulties with Ministerial Government in that adoption of the proposals would create a new Minister who would be a corporation sole and over whom there would therefore be limits to the Chief Minister's influence. Such a situation, in the Panel's view, could blur lines of accountability for external relations rather than improve them, as has been suggested.
- 2.7 However, whatever the merits of creating a Minister for External Relations may be, it must be recognised that the States Assembly is soon to embark on broader discussions regarding the composition of the Assembly and the Machinery of Government – for example, whether to accept the results of the recent referendum and move to a States Assembly of 42 Members. We believe it would be best for those broader questions to be resolved first,

before the Assembly is asked to consider the establishment of a Minister for External Relations.

- 2.8 This has been a short, tightly focussed report. I am grateful to the members of the Panel for their input, particularly my indefatigable Vice-Chairman.

A handwritten signature in black ink, appearing to read 'Sarah Ferguson', with a stylized flourish at the end.

Senator Sarah Ferguson

Chairman – Corporate Services Scrutiny Panel

3. KEY FINDINGS AND RECOMMENDATIONS

Key Findings

- 3.1 The Chief Minister is politically responsible for external relations although other Ministers are involved, particularly the Ministers for Treasury and Resources and for Economic Development. (5.10)
- 3.2 External relations are undertaken in accordance with the common policy of the Council of Ministers. In November 2012, the current Council became the first to publish a discrete policy on external relations. The *States of Jersey Law 2005* places no obligation on the Council to lodge its common policy for debate by the States Assembly. (5.13)
- 3.3 The establishment of the Financial Services and External Relations Advisory Group (FERAG) in 2011 as a means of ensuring co-ordinated development and delivery of policy is to be welcomed. There needs to be requisite transparency regarding FERAG's work. (5.16)
- 3.4 The Bailiff and His Excellency the Lieutenant Governor have no political responsibility in respect of external relations but work closely with the Chief Minister in receiving an increasing number of distinguished visitors to the Island. The Bailiff can also offer constitutional advice to Ministers whilst His Excellency deals with Crown appointments and is a point of contact between the Island's authorities and the UK Government. (5.22)
- 3.5 The Island's external relations are undertaken within the context of its constitutional position as a Crown Dependency. Jersey is not recognised internationally as a sovereign State but as a territory for which the UK is responsible. However, the UK Government has recognised that the Island has an international identity which is different from that of the UK and has supported the use of entrustments as a means by which the Island might represent its own interests on the international stage. (5.25)
- 3.6 The Minister for External Relations would be subject to the provisions of the *States of Jersey Law 2005* and the *Standing Orders of the States of Jersey* like any other Minister. The Minister would be a corporation sole under Article 26 of the Law. (6.4)
- 3.7 A number of reasons have been given for establishing a Minister for External Relations: (i) it is the international norm for external relations to be shared by the 'head of government' and a minister for external relations; (ii) it would improve accountability to the Council of Ministers, the States Assembly and provide clarity for islanders; (iii) it would enhance delivery of the common policy for external relations; (iv) it would help to co-ordinate assistance for other Ministers with a significant international aspect to their portfolios; and (v) it would offer other jurisdictions a single, recognisable representative at Ministerial level. (7.4)

- 3.8 Recent years have seen significant developments in Jersey's international identity and there is a need for the Island to be well-represented externally. (7.10)
- 3.9 Given FERAG was created to co-ordinate the Island's external relations, it is difficult to see how the creation of a Minister for External Relations would in itself enhance current co-ordination and delivery of policy. (7.13)
- 3.10 The other Crown Dependencies have yet to create a Minister for External Relations. (7.18)
- 3.11 We were informed that an Assistant Minister did not have sufficient status to undertake external relations effectively on behalf of the Island. However, the Island is already represented externally by the Chief Minister and other Ministers and the immediate need for a new Minister is not therefore apparent. (7.26)
- 3.12 The budget underpinning the International Affairs Section of the Chief Minister's Department has grown from £393,765 in 2008 to £920,700 in 2013 and will grow further to £1,699,600 in 2015. Meanwhile, the size of the Section has grown from 2 FTE to 6 FTE and is due to increase to 7 FTE. This budget does not include resources which other departments, both ministerial and non-ministerial, may devote to the work on the Island's external relations. (8.6)
- 3.13 The Panel was informed that the establishment of a Minister for External Relations is not connected to a decision about Jersey seeking independence from the UK. (8.11)
- 3.14 Jersey's external relations are a growth area. There would not appear to be any guarantee that further resources will not be requested for the subsequent MTFP period of 2016 to 2018. (8.13)
- 3.15 When considering the appointment of new Ministers, consideration needs to be given not only to the resource requirements of Ministerial Departments, but also to any consequential impact on other areas of public administration. (8.15)
- 3.16 Although the Panel was advised that the creation of a Minister for External Relations would not lead to any changes in the current undertaking of external relations, the Panel remains concerned that the creation of a new Minister could impact upon the Bailiff's role. (8.20)
- 3.17 The Regulations, if approved, would not simply apply to how 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. (8.30)

- 3.18 Creating a new Minister could compound current problems with Ministerial Government as, unless and until these matters are addressed, it would merely establish another Minister as corporation sole over which the Chief Minister has limited influence. (8.40)
- 3.19 The Council of Ministers has agreed to pursue the creation of a new Minister notwithstanding work being undertaken elsewhere on the composition of the States Assembly and the Machinery of Government. Reducing the size of the Assembly would undoubtedly impact upon the Machinery of Government, the number of Ministers and the specified portfolios those Ministers should hold. As PPC has indicated, this raises the question of whether this is the right time to seek the appointment of a new Minister when more wide-reaching discussions about the size of the Assembly and the Machinery of Government are already expected. (8.41)

Recommendations

- 3.20 The Chief Minister should bring forward an amendment to the *States of Jersey Law 2005* to oblige future Councils of Ministers to lodge their common policy on external relations for debate by the States Assembly within four months of their appointment. (5.14)
- 3.21 The Chief Minister should ensure that a report is presented annually to the Assembly on the work undertaken on external relations. (5.17)
- 3.22 The Chief Minister should implement an audit of all the resources devoted to the Island's external relations in order that the true costs of that function may be better understood. (8.7)
- 3.23 Prior to the debate on the draft Regulations, the Chief Minister should ensure that the States Assembly is provided with an Impact Assessment of establishing a Minister for External Relations. (8.16)
- 3.24 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. (8.42)

4. INTRODUCTION

- 4.1 In March 2013, the Chief Minister published draft Regulations which, if approved, will see the creation of a Minister for External Relations. The new Minister would undertake Jersey's external relations "*concurrently*" with the Chief Minister and the Chief Minister's responsibilities under 25 enactments would be transferred to the new Minister.
- 4.2 The Corporate Services Scrutiny Panel was first informed of the Chief Minister's proposals in May 2012. Due to other review commitments, it was not possible to consider the Regulations at that time. We are therefore grateful to the Chief Minister for providing sufficient time for the Regulations to be reviewed and for presenting the draft Regulations as a report to the States Assembly in the first instance as this allowed us to undertake our review in the public domain without any hindrance. The draft Regulations were subsequently lodged for debate on 4th June 2013.
- 4.3 There was no doubt that the proposals should be subjected to some review as their adoption would see the creation of the first new Minister since the advent of Ministerial Government in December 2005. The proposals raised a number of questions. We invited submissions from the public and from identified key stakeholders and we held a public hearing with the Chief Minister. A list of the evidence we have considered has been appended to this report.
- 4.4 A copy of our Terms of Reference has also been appended. There were two important, underlying questions to be considered. First, what need is there for a Minister for External Relations? And, secondly, what impact would the creation of the new Ministerial post have? We shall address both questions in this report.
- 4.5 In doing so, we shall be mindful of developments in respect of the composition of the States Assembly and of the Machinery of Government. Whilst overarching questions relating to these matters do not generally fall within our remit, they are pertinent to the subject of creating a new Minister and we shall therefore touch upon such questions as they relate to the proposals we examined.
- 4.6 We shall begin our report, however, with a brief summary of the parties involved in Jersey's external relations and of the Chief Minister's proposals.

5. CURRENT ARRANGEMENTS

5.1 It is not simply the Chief Minister who is involved in Jersey's external relations. In order to understand the potential impact of establishing a Minister for External Relations, we believe it necessary to understand how external relations are currently undertaken and we have therefore described below the various parties involved. In considering this matter, we have taken 'external relations' to mean the Island's relationships with other jurisdictions, whether sovereign States, other dependencies, devolved jurisdictions or multi-national organisations.

Chief Minister

5.2 Under the *States of Jersey Law 2005*, one of the Chief Minister's functions is to conduct external relations "*in accordance with the common policy agreed by the Council of Ministers.*"¹ He is therefore politically responsible for external relations, a position which has existed since the introduction of Ministerial Government and which seemingly stems from a recommendation of the 'Clothier Review' that "*the responsibility for external relations should be in the province of the Chief Minister and his or her Department.*"²

5.3 Research undertaken in 2008 by the Constitution Review Group suggests that this is not unusual; the Group reported that "*the conduct of foreign affairs usually has its genesis in the Prime Minister's Department.*"³

5.4 In recent years, Chief Ministers have delegated political responsibility for external relations to an Assistant Chief Minister and those Assistant Chief Ministers have often been styled as Jersey's 'Foreign Minister'. The Chief Minister advised us that "*generally day-to-day meetings outside of Jersey are undertaken by the Assistant Minister.*" However, on occasion and when required, the Chief Minister also travels overseas.⁴

5.5 The Chief Minister and Assistant Chief Minister are supported by the International Affairs Section. A discrete part of the Chief Minister's Department, the Section currently has 6 Full Time Equivalent (FTE) members of staff and, for 2013, a budget of £920,700. It is led by the Director of International Affairs, who has been accounting officer for the Section since May 2011.⁵

5.6 The Section engages with the United Kingdom (UK), overseas governments and international organisations such as the European Union (EU) and the Organisation for

¹ Article 18(3)(b), *States of Jersey Law 2005*

² *Report of the Review Panel on the Machinery of Government in Jersey* (December 2000), page 22

³ *Second Interim Report of the Constitution Review Group* (R.64/2008), paragraph 35

⁴ Senator I.J. Gorst, Chief Minister, Transcript, 15th April 2013, page 2

⁵ Mr T. Walker, Director of International Affairs, Written Submission, 2nd May 2013

Economic Co-Operation and Development (OECD). It co-ordinates with other Departments in Jersey in the delivery of policy objectives and participates in international forums such as the British-Irish Council and the OECD Global Forum. The Section deals with Jersey's international treaty obligations and negotiates treaties on tax and other matters.⁶

Other Ministers

- 5.7 Other Ministers are involved in external relations as part of their Ministerial portfolio, particularly the Ministers for Treasury and Resources and for Economic Development.
- 5.8 We were advised that the contribution of the Minister for Treasury and Resources relates to “*protecting Jersey’s fiscal autonomy, promoting Jersey’s international identity and good reputation, and in promoting growth and safeguarding our competitive position.*” As examples, the Minister informed us of the work he had undertaken with counterparts in Guernsey; Ministers from the UK Treasury; and in the development of Tax Information Exchange Agreements (TIEAs) with G20, OECD and EU member states.⁷
- 5.9 With regard to the Minister for Economic Development, we were advised that he had taken part in, and led, a number of political and trade delegations to the UK, Middle East and Far East to assist in “*actively encouraging export trade development and inward investment by new businesses from around the world.*” The Minister had liaised with the UK Government on specific issues such as e-gaming.⁸

KEY FINDING

5.10 The Chief Minister is politically responsible for external relations although other Ministers are involved, particularly the Ministers for Treasury and Resources and for Economic Development.

Council of Ministers

- 5.11 Under the *States of Jersey Law 2005*, the Council of Ministers is obliged to agree “*their common policy regarding external relations.*”⁹ The current policy was presented to the States in November 2012 as R.140/2012. Its presentation represented the first occasion on which a Council of Ministers had published a discrete common policy on external relations. The current policy refers to a number of key developments in the Island’s constitutional

⁶ Chief Minister’s Department Business Plan 2013, page 8

⁷ Senator P.F.C. Ozouf, Minister for Treasury and Resources, Written Submission, 28th March 2013

⁸ Senator A.J.H. Maclean, Minister for Economic Development, Written Submission, 5th April 2013

⁹ Article 18(2)(c), *States of Jersey Law 2005*

history and international identity before establishing a number of principles and (on the basis of those principles) policies which will be pursued by the Council.

- 5.12 We noted during our review that the *States of Jersey Law 2005* places no obligation on the Council of Ministers to lodge its common policy for debate and approval by the States Assembly. We questioned the Chief Minister on this point and were advised that he saw “*no need at this time for any States debate on it*” and that States Members had had, or would have, opportunities to influence external relations policy, for instance in the debate on the Medium Term Financial Plan (MTFP).¹⁰

KEY FINDING

5.13 External relations are undertaken in accordance with the common policy of the Council of Ministers. In November 2012, the current Council became the first to publish a discrete policy on external relations. The *States of Jersey Law 2005* places no obligation on the Council to lodge its common policy for debate by the States Assembly.

RECOMMENDATION

5.14 The Chief Minister should bring forward an amendment to the *States of Jersey Law 2005* to oblige future Councils of Ministers to lodge their common policy on external relations for debate by the States Assembly within four months of their appointment.

FERAG

- 5.15 In May 2011, the Council of Ministers established the External Relations Advisory Group. The next Council agreed in October 2012 that financial services should be added to the Group’s remit and the Financial Services and External Relations Advisory Group (FERAG) was thereby created. FERAG meets on a monthly basis and its purpose is “*to ensure that the Chief Minister, Ministers and Assistant Ministers with significant financial services and / or external relations responsibilities can receive co-ordinated advice.*”¹¹ The membership of FERAG is:

1. Chief Minister
2. Deputy Chief Minister
3. Minister for Treasury and Resources
4. Minister for Economic Development

¹⁰ Chief Minister, Transcript, page 9

¹¹ Chief Minister, Written Submission, 8th April 2013

5. Assistant Chief Minister with responsibility for External Relations
6. Assistant Minister for Treasury and Resources
7. HM Attorney General
8. Director of International Affairs
9. International Affairs Advisor
10. Treasurer of the States
11. Director of Tax Policy
12. Director of Financial Services
13. Chief Officer – Economic Development

Other Ministers or officers are invited to attend as appropriate.¹²

KEY FINDING

5.16 The establishment of the Financial Services and External Relations Advisory Group (FERAG) in 2011 as a means of ensuring co-ordinated development and delivery of policy is to be welcomed. There needs to be requisite transparency regarding FERAG's work.

RECOMMENDATION

5.17 The Chief Minister should ensure that a report is presented annually to the Assembly on the work undertaken on external relations.

Other States Members

5.18 Other States Members can be involved in external relations in a wider sense through membership of such bodies as the Commonwealth Parliamentary Association, the Assemblée Parlementaire de la Francophonie or the British-Irish Council. This is recognised in the common policy for external relations (R.140/2012) in which the Council of Ministers commits to *“build on the current, active participation in the Commonwealth, through the Secretariat, Law Association, Parliamentary Association and other Commonwealth bodies;”* and to *“support the work of Members of the States Assembly with the Assemblée Parlementaire de la Francophonie and the British-Irish Parliamentary Assembly.”*¹³

¹² Ibid

¹³ External Relations: Common Policy (R.140/2012)

Bailiff

5.19 The Bailiff has no political responsibility in respect of external relations. In a more general sense, however, the Bailiff's role as civic head of the Island means he has a role in "*the hosting of dinners for distinguished visitors such as ambassadors*", the number of which visits we were advised had increased in recent years. The Bailiff is therefore responsible for meeting all incoming diplomats / external senior representatives, explaining the constitutional position, commenting on Jersey's autonomy, and hosting a dinner in honour of the distinguished visitor which includes delivering the key note speech of the entire programme that goes with these visits. There is a great deal of co-operation and consultation between the Bailiff's Chambers, the Chief Minister's Department and Government House in supporting such visits. Furthermore, as 'guardian of the constitution', the Bailiff "*is in a position to tender advice to Ministers where there is a constitutional implication to any course of action which is proposed*" although the role is advisory "*and any decision is ultimately for political decision.*" The Bailiff is also involved in the Official Channel of Communication used for official correspondence between the Crown and Jersey.

Lieutenant Governor

5.20 Similarly, His Excellency the Lieutenant Governor has no political responsibility in respect of Jersey's external relations but plays a vital role in a wider sense. We were advised that the Office of the Lieutenant Governor supports work in respect of visits to Jersey by senior representatives of other countries and that His Excellency and his wife (when the visitor is accompanied by his wife) can spend more time with the distinguished visitor than almost anyone else involved in a particular visit. In that regard "*the coordination of visits to the Island is shared: political visits (the majority) are led by the Chief Minister's Office, civic visits by the Bailiff's Chambers and Royal visits by the Office of the Lieutenant Governor.*"¹⁴ We were informed that the number of visits has increased in recent years, as have the expectations for such visits. A considerable amount of planning and work is therefore required on the part of the three departments involved, as they collaborate to make the best use of resources available: whichever department leads on the arrangements for a particular visit receives considerable support and assistance from the other two departments.

5.21 His Excellency is also the Queen's personal representative in the Island and therefore "*deals with certain Crown appointments and [...] the Lord Chancellor and Secretary of State for Justice.*" He also has a "*supporting role*" in respect of the Island's relations with the UK and acts as a point of contact between the Island's authorities and the UK Government, as

¹⁴ His Excellency the Lieutenant Governor, Written Submission, 4th April 2013

required, in order to “*facilitate mutual understanding.*”¹⁵ This was reflected in testimony from the Assistant Chief Minister that “*the Lieutenant Governor plays a very useful role in interpreting the United Kingdom Government to the Government of Jersey and conversely interpreting the Government of Jersey to the Government of the United Kingdom.*”¹⁶

KEY FINDING

5.22 The Bailiff and His Excellency the Lieutenant Governor have no political responsibility in respect of external relations but work closely with the Chief Minister in receiving an increasing number of distinguished visitors to the Island. The Bailiff can also offer constitutional advice to Ministers whilst His Excellency deals with Crown appointments and is a point of contact between the Island’s authorities and the UK Government.

HM Attorney General

5.23 HM Attorney General also has no political responsibility in respect of external relations and has no formal role in that regard. He does, however, often have direct contact with other jurisdictions in the areas of mutual legal assistance and other aspects of law enforcement, participating in Commonwealth and other international conferences and forums. Within the common policy for external relations (R.140/2012), the Council of Ministers has committed to “*support the Law Officers’ Department in the provision of Mutual Legal Assistance to other countries and in the lawful recovery and return and/or sharing of forfeited or confiscated assets, where reciprocal agreements exist.*”¹⁷ As already noted, HM Attorney General is a member of FERAG.

Constitutional Position

5.24 The Island’s external relations are undertaken within the context of its constitutional position as a Crown Dependency. In that regard, we have appended to our report a fact sheet produced by the UK Ministry of Justice which explains the UK’s relationship with the Crown Dependencies (Jersey, Guernsey and the Isle of Man) and the Islands’ international personalities. The Island has “*rights of self-government and judicial independence*” and a degree of autonomy. However, “*the Crown Dependencies are not recognised internationally as sovereign States in their own right but as territories for which the United Kingdom is*

¹⁵ Ibid

¹⁶ Assistant Chief Minister, Transcript, page 4

¹⁷ *External Relations: Common Policy (R.140/2012)*

responsible".¹⁸ We have noted in that regard that the UK Government (in its 2010 response to the Justice Select Committee's report on the Crown Dependencies) stated that "*the Crown Dependencies are not sovereign States and cannot represent themselves; the UK Government represents the Crown Dependencies internationally.*" The UK Government also noted that "*it should be recognised that the Crown Dependencies do have an international identity which is different from that of the United Kingdom*", and that "*the United Kingdom supports the use of entrustments as a way to enable the Crown Dependencies to represent their own interests on the international stage.*"¹⁹ This reflected the position established in 2007 with the *Framework for Developing the International Identity of Jersey*, in which the constitutional relationship was clarified and recognition was given to the fact that Jersey has a separate international identity to the UK.²⁰

KEY FINDING

5.25 The Island's external relations are undertaken within the context of its constitutional position as a Crown Dependency. Jersey is not recognised internationally as a sovereign State but as a territory for which the UK is responsible. However, the UK Government has recognised that the Island has an international identity which is different from that of the UK and has supported the use of entrustments as a means by which the Island might represent its own interests on the international stage.

¹⁸ *Fact sheet on the UK's relationship with the Crown Dependencies*, Ministry of Justice
¹⁹ *Government Response to the Justice Select Committee's Report: Crown Dependencies* (November 2010), Pages 13 to 14

²⁰ *Framework for Developing the International Identity of Jersey* (1st May 2007)

6. THE PROPOSALS

- 6.1 Article 29 of the *States of Jersey Law 2005* allows for the States to adopt Regulations which “*establish and abolish Ministers*” and for the Assembly to adopt Regulations which “*direct that the functions exercisable by any Minister shall be or shall cease to be exercisable concurrently with another Minister.*”²¹ It is under this Article that the Chief Minister is proposing to create a Minister for External Relations who would share responsibility for external relations with the Chief Minister.
- 6.2 The Chief Minister is also proposing that his responsibilities under 25 specified enactments are transferred to the Minister for External Relations. These enactments include the *European Communities Legislation (Implementation) (Jersey) Law 1996*, the *Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 2008* and a number of items involving restrictive measures or sanctions against identified countries.
- 6.3 Once established, the new Minister would be subject to the provisions of the *States of Jersey Law 2005* and the *Standing Orders of the States of Jersey* as all other Ministers already are. The Minister would therefore be a corporation sole under Article 26 of the Law and would be elected by the States Assembly in accordance with Standing Orders.

KEY FINDING

6.4 The Minister for External Relations would be subject to the provisions of the *States of Jersey Law 2005* and the *Standing Orders of the States of Jersey* like any other Minister. The Minister would be a corporation sole under Article 26 of the Law.

- 6.5 Plans for the creation of a Minister for External Relations date from at least January 2011. It was at that time that the first Assistant Chief Minister with responsibility for External Relations was appointed. In the Ministerial Decision confirming that appointment, it was stated that the move was intended to be an interim measure and that the Chief Minister would “*consider putting forward a proposition for a new ministerial post at a later date.*”²²
- 6.6 The Council of Ministers agreed in May 2011 to establish a Minister for External Relations with effect from 2012.²³ We have noted the comments of the previous Chief Minister, Mr T.A. Le Sueur, that “*it was my conscious decision to make [then Senator F.E. Cohen] an Assistant Minister rather than propose to the States the creation of a new Ministerial post.*”²⁴

²¹ Article 29(2), *States of Jersey Law 2005*

²² *Appointment of Assistant Chief Minister with responsibility for External Affairs* (13th January 2011), MD-C-2011-0001

²³ Minute B4, Council of Ministers, 12th May 2011

²⁴ Mr T.A. Le Sueur, Written Submission, 25th March 2013

In retrospect, the previous Chief Minister appeared to have reservations regarding the proposal to establish a Minister, rather than an Assistant Minister, for External Relations.

- 6.7 Further work was undertaken on Regulations and a draft had been prepared by at least May 2012 (when we first received a copy). On 10th July 2012, the Chief Minister advised the States Assembly that “*the office of Assistant Minister for External Relations should be made into a ministerial office*” but that the Council of Ministers had yet to consider it.²⁵
- 6.8 The Council discussed proposals for a new Minister in December 2012 when it affirmed the decision made in 2011 by its predecessor and agreed to seek States Assembly approval for the creation of the new Ministerial post.²⁶ The draft Regulations were subsequently presented as a report to the States Assembly in March 2013 (as R.18/2013).
- 6.9 It must be noted that, during 2011 and 2012, other discussions were also taking place in respect of the composition of the States Assembly and the Machinery of Government. For instance, the Electoral Commission was established; undertook its work; and the referendum resulting from that work has recently been held. Secondly, there have been suggestions that the ‘Troy Rule’ (whereby the number of Ministers and Assistant Ministers is limited to ensure a majority of non-Executive States Members in the Assembly) should be re-considered. Indeed, the Privileges and Procedures Committee (PPC) established a Sub-Committee to consider questions regarding the Machinery of Government and the Sub-Committee has recently published an interim report (presented as R.39/2013). Finally, there have been suggestions that other new Ministers should be established, for example a Minister for Justice or a Minister for Children.
- 6.10 Given that plans for a Minister for External Relations were being developed in such circumstances, we were keen to know what consultation had taken place with the PPC as one of PPC’s Terms of Reference is “*to keep under review the composition, the practices and the procedures of the States as Jersey’s legislature and bring forward for approval by the States amendments to the Law and Standing Orders as considered appropriate.*”²⁷ We understand that the Chief Minister wrote to PPC in February 2013 to provide an update on progress and to agree to attend a future meeting of the Committee to discuss the proposals. There was no further consultation by the Chief Minister with PPC about a Minister for External Relations until 25th April 2013, when the Chief Minister and PPC met to discuss the proposals. We received a written submission from PPC during our review which we shall consider in due course.

²⁵ Chief Minister, The Official Record, 10th July 2012

²⁶ Minute B1, Council of Ministers, 7th December 2012

²⁷ Standing Order 128(a), *Standing Orders of the States of Jersey*

7. THE NEED FOR A NEW MINISTER

7.1 In this chapter, we shall consider what need there may be for a Minister for External Relations. One of the primary aims of our review was to understand why the Chief Minister has proposed the establishment of the new Minister and why current arrangements (where he is solely responsible and delegates responsibility to an Assistant Chief Minister) need to be changed.

The Chief Minister's Rationale

7.2 A number of reasons have been given for why a Minister for External Relations should be established:

- a) It is the international norm for external relations to be shared by the 'head of government' and a minister for external relations, a norm to which Jersey does not currently adhere;
- b) It would improve accountability to the Council of Ministers, the States Assembly and would provide additional clarity for islanders in holding their Government to account in the increasingly important area of UK and international relations;
- c) It would enhance delivery of the common policy for external relations;
- d) It would help to co-ordinate assistance for other Ministers with a significant international aspect to their portfolios (e.g. the Minister for Economic Development and the Minister for Treasury and Resources); and
- e) It would offer other jurisdictions a single, recognisable representative at Ministerial level. This would be important for dealing with those jurisdictions, such as China and India, which are "*very status conscious*."²⁸

7.3 This rationale is underpinned by a view that Jersey's international identity is developing and its external relations are of growing importance.

KEY FINDING

7.4 A number of reasons have been given for establishing a Minister for External Relations: (i) it is the international norm for external relations to be shared by the 'head of government' and a minister for external relations; (ii) it would improve accountability to the Council of Ministers, the States Assembly and provide clarity for islanders; (iii) it would enhance delivery of the common policy for external relations;

²⁸ *Minister for External Relations* (7th December 2012), Council of Ministers Report, page 2

(iv) it would help to co-ordinate assistance for other Ministers with a significant international aspect to their portfolios; and (v) it would offer other jurisdictions a single, recognisable representative at Ministerial level.

Jersey's Developing International Identity

- 7.5 In terms of Jersey's international identity and external relations, there have been some significant developments in recent years. On 1st May 2007, for example, Jersey and the UK signed the *Framework for Developing the International Identity of Jersey* in which it was acknowledged that the Island's international interests might differ to those of the UK and the UK undertook to support the principle of Jersey's development of its own identity.²⁹
- 7.6 In 2010, following an enquiry by the Justice Select Committee into the Crown Dependencies, the UK Government (whilst stating that the UK represents Jersey internationally, as it is not a sovereign State) supported the establishment of the Channel Islands Brussels Office and the use of entrustments by which the Island could enter into agreements with other jurisdictions.³⁰ The Select Committee's enquiry also led to an acknowledgment that the Ministry of Justice could no longer play as large a role as it had previously in serving as intermediary between Jersey's Government and other UK Government departments. Jersey has therefore had to establish more direct relations with individual UK departments and has had to take more responsibility for itself in those relations. Furthermore, in recent years, the Island has seen a number of TIEAs and Double Taxation Agreements (DTAs) signed with other jurisdictions and in 2012, as part of the MTFP, the States Assembly approved funding for the establishment of a London Representative Office.
- 7.7 The Chief Minister confirmed that increasing demands on the Island were behind the plans for a Minister for External Relations. He stated that the Island could no longer take the approach of 'keeping its head down' as it may once have done adding, "*we know that people can criticise us, can misunderstand us, and to some extent we are not always represented because of resource issues by the United Kingdom. We therefore have to stand up, correct those misconceptions and help people to understand how Jersey operates, what Jersey does, and represent ourselves.*"³¹
- 7.8 Other correspondents agreed with that sentiment. Of the submissions we received from members of the public, several were supportive of the proposed approach and spoke of the need for Jersey to be able to promote its interests on the global stage. For instance, Sir

²⁹ *Framework for Developing the International Identity of Jersey*

³⁰ *Government Response to the Justice Select Committee's Report: Crown Dependencies* (November 2010)

³¹ Chief Minister, Transcript, page 6

Nigel Broomfield advised us that “*the most effective way of developing relationships and explaining your interests is by doing it yourself, in this case for Jersey to act independently*” and that “*it is essential for our future success that Jersey should have intergovernmental relations with a range of countries like India and China and areas like the Middle East where a governmental framework and relationship can make a substantial contribution.*”³²

- 7.9 Jersey’s international identity has therefore grown in recent times and there is a need for the Island to be well-represented externally. It could be argued, however, that this situation in itself does not necessarily justify the proposal to replace current arrangements with the establishment of a Minister for External Relations.

KEY FINDING

7.10 Recent years have seen significant developments in Jersey’s international identity and there is a need for the Island to be well-represented externally.

Co-ordination of External Relations Policy

- 7.11 Part of the rationale underlying the proposals states that the appointment of a Minister for External Relations would assist in co-ordinating the work of those parties involved in the undertaking of external relations (e.g. the Chief Minister, the Minister for Economic Development and the Minister for Treasury and Resources).
- 7.12 With a number of parties involved in the Island’s external relations, it would be sensible to ensure that there was co-ordination in order that there was consistency in policy development and implementation. This will no doubt be helped with the agreement of a common policy by the Council of Ministers, something we note had not occurred before November 2012. However, the Council has already created FERAG to co-ordinate the Island’s external relations and, in some respects, therefore already taken action to ensure co-ordinated delivery of external relations policy. It is therefore somewhat difficult to see what the creation of a Minister for External Relations would add in terms of co-ordinating policy, given that the Chief Minister and Assistant Chief Minister with responsibility for External Relations already sit on FERAG.

KEY FINDING

7.13 Given FERAG was created to co-ordinate the Island’s external relations, it is difficult to see how the creation of a Minister for External Relations would in itself enhance current co-ordination and delivery of policy.

³² Sir Nigel Broomfield, Written Submission, 1st April 2013

The International Norm and a Single, Recognisable Figure

- 7.14 Perhaps the most important aspect of the Chief Minister's rationale, however, was the need for Jersey to reflect the international norm and for there to be a single, recognisable figure with whom other jurisdictions could correspond.
- 7.15 We were advised that the international norm is for foreign affairs "*to be the shared responsibility of the Head of Government and the Minister for Foreign Affairs [...]. This international norm ensures that responsibility for foreign affairs, as with domestic affairs, rests ultimately with the Head of Government, whilst also ensuring that there is someone within the Executive Government who has both the necessary seniority and capacity to engage routinely with other countries.*"³³
- 7.16 The Chief Minister reiterated this point in his written submission:
- "There is an expectation overseas that, alongside the Head of Government (Chief Minister), finance minister (Minister for Treasury and Resources) and trade minister (Minister for Economic Development), the Government will include within its cabinet (Council of Ministers) the important role of Minister for Foreign Affairs. At present, this is a significant gap in our government and one which should be filled if we are to be able to engage with other governments around the world on equal terms."*³⁴
- 7.17 A number of smaller jurisdictions have governmental structures that reflect this description, including Monaco, Singapore, Liechtenstein, Malta and Andorra although in some instances this only occurred once the jurisdiction had achieved independence (e.g. Malta in 1964 and Singapore in 1965). The other Crown Dependencies have not yet taken the decision to create a distinct Minister for External Relations, however. In the Isle of Man, one of the functions of the Council of Ministers is external relations and the External Relations Division sits within the Chief Secretary's Office.³⁵ In Guernsey, it is one of the mandates of the Policy Council "*to advise the States on matters relating to the Island's constitutional position including its relationships with the United Kingdom, European Union and other Crown Dependencies, international relations and matters relating to the Parishes and other Islands of the Bailiwick.*"³⁶ The Chief Minister suggested that, nevertheless, the other Crown Dependencies were developing their external relations functions, thereby raising the possibility that they would potentially propose the introduction of a Minister in due course.³⁷

³³ Minister for External Relations (7th December 2012), page 2

³⁴ Chief Minister, Written Submission

³⁵ www.gov.im/cso/externalrelations

³⁶ www.gov.gg

³⁷ Chief Minister, Transcript, page 5

KEY FINDING**7.18 The other Crown Dependencies have yet to create a Minister for External Relations.**

7.19 It does therefore appear that the international norm to have a Minister for External Relations or Foreign Affairs acting alongside other Ministers is adhered to more consistently by nations and jurisdictions that have achieved the status of sovereign States. However, we were advised that certain non-sovereign jurisdictions have established such posts and that, for example, Scotland has a Cabinet Secretary for Culture and External Affairs supported by a Directorate for European and External Affairs. According to the rationale underlying the Chief Minister's proposals, Jersey would have a Minister for External Relations who would be the single, recognisable representative at Ministerial level "*who has both the necessary seniority and capacity to engage routinely with other countries.*"³⁸

7.20 The Assistant Chief Minister advised us of the need for someone of a certain position or standing to represent the Island in order to enhance Jersey's external relations:

"The conduct of external affairs, the conduct of foreign affairs, is really quite hierarchical and although hierarchy may not matter quite so much in Europe or in the United Kingdom, in some parts of the world, particularly in the Gulf and in the Far East, it makes a great deal of difference as to the doors which a visiting dignitary is able to open what position he or she occupies."

The Assistant Chief Minister spoke of instances when there had been concern that his position as an Assistant Minister might cause difficulties in 'opening doors'.³⁹ We were advised that this would be addressed if Jersey were instead represented by a Minister.

7.21 It would appear that the provision of a politician of a certain status is not required by all jurisdictions including other crown dependencies and we therefore questioned the Chief Minister on whether a new Minister was being proposed for the sake of the Island's relationships with a few jurisdictions. The Chief Minister highlighted that jurisdictions with more hierarchical tendencies were becoming more important globally and that Jersey would need to have strong relationships with such jurisdictions.⁴⁰ The Assistant Chief Minister subsequently added:

"It is not just a question of title. It is also a question of being seen, and this applies as much in Europe as it does to other parts of the world. Being seen that Jersey is attaching a greater importance than it did in the past to the conduct of foreign relations, and that is important with Germany and with France and with other European countries as well. If we take

³⁸ Minister for External Relations (7th December 2012), page 2

³⁹ Assistant Chief Minister, Transcript, page 18

⁴⁰ Chief Minister, Transcript, page 20

ourselves seriously in wanting to project our international identity for the benefit of the Island, then we have to be seen to be taking foreign affairs seriously."⁴¹

7.22 One of the primary arguments behind the proposals does therefore appear to be that appointing a Minister for External Relations would demonstrate the Island's commitment to external relations and would ensure that the Island was represented by someone of an appropriate status. This raises the question of why a new Minister is required when the Chief Minister is currently responsible for external relations and is the head of government: does he not occupy a position of appropriate status to be able to undertake the Island's external relations?

7.23 This was a matter raised by the previous Chief Minister in his written submission:

*"Whilst on the one hand the status of a full Ministerial post would give the incumbent greater status than that of an Assistant Minister (an important distinction in certain parts of the world) it can be argued that where major political presence is seen as important then nobody less than the Chief Minister (when considering a small jurisdiction such as ours) should fulfil that function."*⁴²

7.24 This was a point we put to the Chief Minister, who responded in the following terms:

*"It is impossible for a Chief Minister to get to London and around Europe at the frequency which is today required of any modern jurisdiction. Therefore, one needs to have a senior Minister associate undertaking those pieces of work."*⁴³

7.25 The Chief Minister also advised us that the Chief Minister would still be involved in external relations and required to represent the Island elsewhere when appropriate and when required. The proposals are seemingly therefore intended to address the 'day-to-day' undertaking of external relations which are currently the function of the Assistant Chief Minister: ensuring those duties were carried out by a Minister would mean other jurisdictions were interacting with someone of higher status. However, the Chief Minister's comments (and the fact that an Assistant Chief Minister has been delegated responsibility for external relations in recent times) also highlight another reason for bringing forward the proposals: with the number of responsibilities the Chief Minister has, he is currently unable to perform fully his functions in respect of external relations.

KEY FINDING

7.26 We were informed that an Assistant Minister did not have sufficient status to undertake external relations effectively on behalf of the Island. However, the Island is

⁴¹ Assistant Chief Minister, Transcript, page 21

⁴² Mr T.A. Le Sueur, Written Submission, 25th March 2013

⁴³ Chief Minister, Transcript, page 14

already represented externally by the Chief Minister and other Ministers and the immediate need for a new Minister is not therefore apparent.

Other Options

7.27 The Chief Minister has proposed that a Minister for External Relations be established as a means of addressing the issues which have been identified. However, we asked whether there were any alternatives to that structure which could be implemented and were advised as follows:

“In western democracies the post of Minister for Foreign Affairs is held by a democratically elected representative of the people. The western democratic norm is for this post to be filled by a member of the Government who is part of the cabinet. There are a range of other diplomatic posts, such as Ambassador or Special Envoy, which are often filled by either civil servants or political appointments depending on the system of government, but this is not the western democratic norm for the post of Minister for Foreign Affairs. Therefore, the Council [of Ministers] did not give any substantive consideration to following a path that would sit outside this norm given the likely reputational implications of doing so.”⁴⁴

7.28 We have noted, however, that the representatives of other jurisdictions who come to the Island on official visits are often not Ministers themselves but appear more frequently to be ambassadors. This appeared to suggest that Jersey might therefore be taking a different step in appointing a Minister when other countries did not despatch Ministers to represent them in the Island. We discussed this with the Chief Minister and Assistant Chief Minister and the Assistant Chief Minister stated that *“the fact that we do not get many Ministers coming to Jersey, apart from United Kingdom Ministers, I do not think is significant because the representative of a foreign country outside that country is the ambassador to the Court of St. James and we fall within the ambit of the United Kingdom for constitutional purposes and, therefore, it is right that the ambassador for that country, who is the highest representative, if you like, of that country in the United Kingdom, should pay us a visit.”* Some heads of state had visited the Island on occasion, however.⁴⁵

7.29 Our discussions about a possible Minister for External Relations did focus more on the need for a suitable representative of the Island overseas rather than on what happens when representatives of other jurisdictions come to Jersey. It would appear that proposals for a new Minister stem more from the former than the latter.

⁴⁴ Chief Minister, Written Submission

⁴⁵ Assistant Chief Minister, Transcript, page 21

8. THE POTENTIAL IMPACT OF A NEW MINISTER

8.1 There were two areas we considered in terms of the impact that the appointment of a Minister for External Relations might have. First, we looked at what impact the appointment would have on how the Island's external relations are currently managed. Secondly, we considered the impact that the appointment would have in terms of ministerial accountability and, more broadly, the Machinery of Government.

External Relations

8.2 The potential resource implications of creating a new Minister were of concern to some correspondents from whom we received a submission. One correspondent indicated that there should be no new Minister as "*we have enough bureaucracy in the States without establishing another department.*"⁴⁶ The Minister for Economic Development acknowledged the existence of such concerns in his own written submission:

*"It is possible that at a time when public opinion is strongly in favour of reducing the scale of government and reforming the public sector that this proposal will not be fully understood. However, provided costs are carefully controlled in the future the role itself offers an opportunity for the Island to represent itself more effectively on the international stage."*⁴⁷

8.3 The advice we consistently received (both from the Chief Minister and Minister for Treasury and Resources) was that the measure would be "*cost neutral*": the Minister for External Relations would remain part of the Chief Minister's Department and "*the maintenance of the existing staffing arrangements will ensure there is a proper structure to support the Chief Minister, Minister for External Relations and Assistant Chief Minister.*"⁴⁸ The Minister for Treasury and Resources informed us that "*creating this role has no direct resource implications, as a post of Assistant Minister would simply be replaced by a post of Minister, but such a change would deliver an essential improvement to the ability of the government to represent the best interest of the island overseas.*"⁴⁹

8.4 The message was therefore that the International Affairs Section, which supports the work of the Chief Minister and Assistant Chief Minister, would not grow as a result of the new Minister's appointment and that there would be no new Department. We undertook some research into the budget and manpower resources of the Section and have appended to our report the results of that research. They show that the budget underpinning the International

⁴⁶ Written Submission 2.1, 26th March 2013

⁴⁷ Minister for Economic Development, Written Submission

⁴⁸ *Minister for External Relations* (7th December 2012), page 4

⁴⁹ Minister for Treasury and Resources, Written Submission

Affairs Section grew from £393,765 in 2008 to £1,154,100 in 2011 and now, in 2013, stands at £920,700. It will grow further to £1,699,600 in 2015. Meanwhile, the size of the Section has grown from 2 FTE to 6 FTE and is due to increase to 7 FTE. These increases have been provided for in the Chief Minister's Department's cash limits as approved by the States Assembly through the adoption of Annual Business Plans and, since the change to a three-year financial planning cycle, the MTFP. The current budget incorporates staff costs of approximately £480,000 and non-staff costs of approximately £440,000, with non-staff costs covering office expenses, operational expenses, expert advice and grants to bodies such as the Channel Islands Brussels Office, Bureau de Jersey and the Alliance Française. This budget does not include any resources which Departments such as Economic Department or Treasury and Resources may devote to the work undertaken by their respective Ministers on the Island's external relations or indeed the resources of the Bailiff's Chambers and the Office of the Lieutenant Governor in the work they undertake.

- 8.5 It can therefore be seen that the Section has grown in recent years. As the Council of Ministers was advised when considering proposals for a Minister for External Relations in December 2012, "*the external relations function has been funded for a number of years from non-recurring sources, such as under-spends and fiscal stimulus. The Medium Term Financial Plan 2013-2015 includes changes to fund more of external relations from recurring funds from 2014 onwards to reflect that this is now an established section with the Chief Minister's Department.*"⁵⁰

KEY FINDING

- 8.6 The budget underpinning the International Affairs Section of the Chief Minister's Department has grown from £393,765 in 2008 to £920,700 in 2013 and will grow further to £1,699,600 in 2015. Meanwhile, the size of the Section has grown from 2 FTE to 6 FTE and is due to increase to 7 FTE. This budget does not include resources which other departments, both ministerial and non-ministerial, may devote to the work on the Island's external relations.**

RECOMMENDATION

- 8.7 The Chief Minister should implement an audit of all the resources devoted to the Island's external relations in order that the true costs of that function may be better understood.**

- 8.8 We were advised that the Section has therefore been placed on a sound financial footing and no further funding requests are anticipated within the current MTFP period, even if a new Minister is created. It could be argued, however, that the Section has been enhanced in

⁵⁰ *Minister for External Relations (7th December 2012)*, page 4

recent years and that, whilst it is true to say the creation of a Minister for External Relations will not lead to increased resources, it is because that increase in resources has already occurred. Concerns about the creation of a new Department are therefore somewhat too late as the Department has effectively already been created and the only effect of appointing a Minister for External Relations would be to ensure that the political structure mirrored the operational one.

- 8.9 In that regard, we have noted the findings of the Constitution Review Group in its Second Interim Report published in June 2008.⁵¹ In the report, the Group considered the implications if Jersey were ever to seek independence and outlined the processes it believed the Island would need to follow in the event that such an occurrence came to pass. One section of the Group's report related to International Relations. The Group concluded that a 'foreign office' would be required with some 20 individuals, a third of whom would be based in Jersey (the remainder being based in offices elsewhere such as London, Brussels and New York). At the time, the International Affairs Section within the Chief Minister's Department comprised one individual and the Group therefore recommended that "*a section exclusively dedicated to international affairs should also be established within the Chief Minister's Department as the nucleus of a future foreign office. If established, it should be staffed by two or three full-time senior officials and a number of talented graduates who could be offered training in the skills of diplomacy and international affairs.*"⁵² This is what appears to have happened.
- 8.10 It was stated to us, however, that the establishment of a Minister for External Relations was not connected in any way to a decision about independence.⁵³ The common policy of the Council of Ministers states that "*it is not Government policy to seek independence from the United Kingdom, but rather to ensure that Jersey is prepared if it were in the best interests of Islanders to do so.*"⁵⁴

KEY FINDING

8.11 The Panel was informed that the establishment of a Minister for External Relations is not connected to a decision about Jersey seeking independence from the UK.

- 8.12 The message was therefore that the creation of a Minister would be cost neutral. However, we were also advised that Jersey's international identity is developing and that the Island's external relations are a growth area (in that Jersey has been required to take on more responsibility for its external relations and those demands are likely to increase). We

⁵¹ The Group comprised the Bailiff, HM Attorney General, the Chief Executive, the Director of International Finance, the International Affairs Advisor and the International Relations Officer.

⁵² *Second Interim Report of the Constitution Review Group*, paragraph 53

⁵³ Chief Minister, Transcript, page 5

⁵⁴ *External Relations: Common Policy* (R.140/2012)

questioned the Chief Minister on whether it was indeed likely that there would be no further requests for funding. The Chief Minister advised us:

*“As you know, the Medium Term Financial Plan put in place monies for the international section of the department and it is proposed that they will work within those budgets as agreed by the States. Any Minister after that who is seeking to ask for growth monies, although I am sure that would not be the current Assistant Minister, will have to make a very, very strong case indeed.”*⁵⁵

The Chief Minister also confirmed that, notwithstanding the findings in 2008 of the Constitution Review Group, there were no plans to establish a Washington or New York office along the lines of the Channel Islands Brussels Office or the London Representative Office.⁵⁶ Statements relating to future resource requirements apply to the period of the current MTFP, however, and would not appear to guarantee that further resources will not be requested during the subsequent MTFP period of 2016 to 2018.

KEY FINDING

8.13 Jersey’s external relations are a growth area. There would not appear to be any guarantee that further resources will not be requested for the subsequent MTFP period of 2016 to 2018.

8.14 We would highlight that, even if there are no resource implications for the Chief Minister’s Department, there may well be some implications elsewhere. We envisage that the new Minister would fall within our remit, in terms of Scrutiny, and it would therefore lead to slight increases in expenditure with the need to hold Quarterly Public Hearings et al. PPC also highlighted this in its written submission when indicating that *“thought will also need to be given to the corresponding scrutiny function”* when considering changes to ministerial portfolios.⁵⁷ When considering the appointment of new Ministers, consideration therefore needs to be given not only to the resource requirements of that Minister’s Department, but also of any consequential impact on other areas of the public administration.

KEY FINDING

8.15 When considering the appointment of new Ministers, consideration needs to be given not only to the resource requirements of Ministerial Departments, but also to any consequential impact on other areas of public administration.

⁵⁵ Chief Minister, Transcript, page 22

⁵⁶ Ibid, page 24

⁵⁷ Connétable A.S. Crowcroft, Chairman – Privileges and Procedures Committee, Written Submission, 7th May 2013

RECOMMENDATION**8.16 Prior to the debate on the draft Regulations, the Chief Minister should ensure that the States Assembly is provided with an Impact Assessment of establishing a Minister for External Relations.**

8.17 Beyond the question of resources we were advised that the creation of a Minister for External Relations would not lead to any changes in the undertaking of external relations. The Minister for Economic Development, the Minister for Treasury and Resources and HM Attorney General all advised us that the appointment would not impact upon their role in respect of external relations. The Bailiff made a similar comment, although the appointment of a Minister might mean that the Bailiff's constitutional advice "*might in future be tendered to that Minister rather than to the Chief Minister.*"⁵⁸ Sir Nigel Broomfield concurred that the appointment would not in itself have a great impact.⁵⁹ The Assistant Chief Minister, meanwhile, advised that there was no intention to alter the roles played by His Excellency the Lieutenant Governor and the Bailiff in terms of receiving visiting dignitaries such as ambassadors and high commissioners. For example, the Official Channel of Correspondence with the Crown would remain unaffected.⁶⁰

8.18 The Chief Minister would see some slight changes from the fact that his responsibility for 25 enactments would be transferred to the Minister for External Relations. As the Chief Minister explained, "*there are many small decisions, particularly around sanctions, that find their way up to requiring my decision which does not really need the Chief Minister's decision but will be quite adequately and ably be able to be administered by the new Minister for External Relations.*" The Chief Minister would still be required, on occasion and when appropriate, to travel overseas and to undertake external relations himself. However, the bulk of day-to-day external relations would be undertaken by the Minister for External Relations – the work currently undertaken by the Assistant Chief Minister.⁶¹

8.19 That would relate to political responsibilities, however. We envisage that there are risks within the proposals that the creation of a new Minister could impact upon the roles of those parties involved in the Island's external relations at a non-political level. Particularly in respect of visits to the Island of representatives from other jurisdictions, the creation of a new Minister could impact upon the Bailiff's civic role in receiving such representatives; it would add another person to the 'line up' which meets visitors to the Island and thereby create the context for confusion or dispute (whether wittingly or not) over which party takes precedence.

⁵⁸ Bailiff, Written Submission

⁵⁹ Sir Nigel Broomfield, Written Submission

⁶⁰ Chief Minister, Transcript, page 16

⁶¹ Chief Minister, Transcript, page 2

KEY FINDING

8.20 Although the Panel was advised that the creation of a Minister for External Relations would not lead to any changes in the current undertaking of external relations, the Panel remains concerned that the creation of a new Minister could impact upon the Bailiff's role.

Ministerial Accountability

8.21 The proposals state that the creation of a Minister for External Relations would ensure clearer lines of accountability for the undertaking of the Island's external relations. It has been suggested to us that the measure would ensure "*clear accountability for external relations within the executive, alongside the common policy for external relations adopted by the Council, which can be properly scrutinised.*"⁶²

8.22 In his written submission, the Chief Minister explained how this was intended to be the case:

*"The creation of a Minister for External Relations to replace an Assistant Minister with these responsibilities would improve accountability in a number of ways. There would be enhanced accountability to the Council of Ministers as a Minister would be in attendance at each Council meeting to account for their actions in a way that is not necessarily the case with an Assistant Minister. There would be improved accountability to the States Assembly as a Minister would be voted into office by Members and would be required to regularly answer questions in the Assembly and appear before Scrutiny as is the case with other Ministers. Most importantly, the creation of a Minister with these responsibilities would provide additional clarity for Islanders in holding their Government to account in the increasingly important area of UK and international relations."*⁶³

8.23 The Minister for External Relations would indeed be subject to Standing Orders in the way that all Ministers are and therefore could indeed be subjected to questioning in the Assembly. And, as we have noted, we expect that greater scrutiny would occur with the appointment of a Minister. However, under the Regulations the Minister for External Relations would share responsibility for external relations "*concurrently*" with the Chief Minister. This raises the question of how accountability can be improved if a matter falls within the purview of two individuals. This was a point raised by the former Chief Minister, Mr T.A. Le Sueur:

⁶² *Minister for External Relations* (7th December 2012), page 4
⁶³ Chief Minister, Written Submission

*“Items (d) and (e) of [the Panel’s] terms of reference are interesting in that (d) talks about shared responsibilities, whilst (e) talks about Ministerial accountability. It is hard to see how these two subjects can sit comfortably together.”*⁶⁴

8.24 This raises the issues of how the Chief Minister and Minister for External Relations would work together; who would take precedence; and how any potential disputes between the two would be resolved. Sir Nigel Broomfield advised that some tension or conflict was likely to occur:

*“In all governments of which I have had experience there has always been a certain tension between the Prime Minister and the Minister for Foreign Affairs. This is inevitable since many international negotiations and agreements are conducted and signed by the Prime Minister / Chief Minister with the Foreign Minister leading on the preparatory negotiations. It is not a field where formal delineation of responsibilities is likely to prove effective. The only workable solution, in my experience, is for both the Foreign Minister and the Prime Minister to have a close working relationship combined with an understanding that headlines and photographs in the press are not the real evidence of an effective foreign policy.”*⁶⁵

8.25 Both the Chief Minister and Assistant Chief Minister did not envisage any problems, with the Chief Minister advising that *“the Assistant Minister and myself have a good working relationship. We, as you would expect, as in common with other Ministers, discuss issues robustly because we are both keen to defend Jersey’s interests.”*⁶⁶

8.26 However, the Regulations, if approved, will not simply apply to how this Chief Minister and his Minister for External Relations would operate; it will apply to all Chief Ministers and Ministers for External Relations. We therefore enquired how any conflicts between the Chief Minister and the Minister for External Relations would be resolved and were informed to the following effect:

*“As the senior of the two Ministerial offices, it is expected that ultimate responsibility and authority rests with the Chief Minister, just as ultimate responsibility rests with the Prime Minister in the UK even though responsibility for foreign affairs is shared concurrently with the Foreign Secretary. Whether conducted by the Chief Minister or the Minister for External Relations, external relations are to be conducted in accordance with the common policy agreed by the Council [of Ministers].”*⁶⁷

8.27 The following advice was also provided:

⁶⁴ Mr T.A. Le Sueur, Written Submission

⁶⁵ Sir Nigel Broomfield, Written Submission

⁶⁶ Chief Minister, Transcript, page 8

⁶⁷ Minister for External Relations (7th December 2012), page 3

*“If there was a policy dispute between the Chief Minister and the Minister for External Relations, for example regarding a proposed change of external relations policy, then the matter would be referred back to the Council to agree their common policy as required by the States of Jersey Law 2005. If there was a dispute between the Chief Minister and the Minister for External Relations with regards to the implementation of the agreed policy, for example regarding the relative prioritisation of resources, then they would first seek to resolve this matter within the Chief Minister’s Department, drawing on advice from senior officials, failing which, the matter would be referred back to the Council.”*⁶⁸

8.28 We also enquired what would happen (given that the Chief Minister would maintain some responsibility for external relations) if a subsequent Chief Minister wished to undertake external relations alone, without the assistance of a Minister for External Relations as future Chief Ministers might have different priorities to the current incumbent of the office. The Chief Minister spoke again about the demands on the Chief Minister and the fact that this was unlikely to be feasible:

*“I do not believe that the volume of work which now requires to be undertaken is going to reduce. It is only going to increase and that cannot be undertaken by one Chief Minister. Perhaps it could in the past, as we said earlier in our conversation, but I do not believe it can today and that is only going to be increasingly the case.”*⁶⁹

8.29 Although in some respects accountability for external relations would be improved by the creation of a Minister for External Relations, it must be recognised that there would be a risk of disagreement between the Chief Minister and Minister for External Relations.

KEY FINDING

8.30 The Regulations, if approved, would not simply apply to how 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.

⁶⁸ Chief Minister, Written Submission

⁶⁹ Chief Minister, Transcript, page 14

Machinery of Government

- 8.31 The relationship between Chief Minister and Minister for External Relations (and the sharing of responsibility for external relations) needs to be considered within the context of the current Machinery of Government.
- 8.32 Under current arrangements, the Chief Minister does not have total control over the appointment and dismissal of Ministers; that is in the hands of the States Assembly. Furthermore, under the *States of Jersey Law 2005*, the Minister for External Relations would be a corporation sole (as is the case for each Minister) and would have the power to enter into agreements et al. There may therefore be limits within the current Machinery of Government as to how much control or influence a Chief Minister could exert over a Minister for External Relations, if a situation were to arise (whereas the appointment and dismissal of an Assistant Chief Minister, to which responsibility for external relations has been delegated, are within the purview of the Chief Minister without recourse to the Assembly and the Chief Minister could therefore be seen to exert more influence). The former Chief Minister indicated there could be issues:

*“Whilst the wording of Draft Regulation 3 does indeed state that the Minister for External Relations shall, concurrently with the Chief Minister, discharge the functions described in Article 18(3)(b) of the Principal Law, I do not see that necessarily working so easily in practice, when each Minister is still a Corporation Sole and the Council of Ministers is not bound by a policy of collective responsibility. Whilst it may at present be the norm for States Members to endorse most of the Chief Minister’s nominees in their posts, this may not always be the case.”*⁷⁰

The former Chief Minister also indicated that *“it is not just the situation in relation to External Relations which is imperfect; it is the whole structure of the Council of Ministers which has been unsatisfactory ever since there were certain amendments to the original proposals put forward in 2005.”* He stated he would have preferred *“to see this subject resolved within a better Constitutional framework, and that, of course, is a much more substantial exercise.”*⁷¹

- 8.33 The current Chief Minister also acknowledged that there were wider problems with the Machinery of Government that he was endeavouring to address beyond whether a Minister for External Relations should be appointed. He stated:

“Let us be quite clear, I have been in this office now for probably 15 months and it has become apparent to me throughout those 15 months – and I have said it on more than one occasion – that our current system does not work in Jersey’s best interest. You can sit across the table and ask me a question the premise of which is that I am the Prime Minister

⁷⁰ Mr T.A. Le Sueur, Written Submission
⁷¹ Ibid

of Jersey. I am not. I currently under the Law am the Chairman and that is the power I have over the Council of Ministers.”⁷²

If that is the case, creating a new Minister could be seen to compound the problem as it will only establish another Minister over which the Chief Minister has limited influence – in this instance, a Minister with whom the Chief Minister would share responsibility for certain functions.

8.34 This ‘problem’ with the current Machinery of Government is only one matter which has been raised recently in either one quarter or another. For instance, the Chief Minister has also previously spoken of his view that the ‘Troy Rule’ (whereby members of the Executive should be in the minority within the Assembly) should be revisited. In that regard, it must be noted that the appointment of a Minister for External Relations will not affect the ‘Troy Rule’ in itself. Under the *States of Jersey Law 2005*, the Executive of Ministers and Assistant Ministers cannot exceed 22 individuals in total. If the draft Regulations were approved, the number of Ministers would be raised to 11 in total and Ministers would therefore only be able to appoint 12 States Members as Assistant Ministers (compared to 13 Members at present). Taking that into account, the Minister for External Relations would be able to appoint a maximum of two Assistant Ministers (with the Chief Minister’s consent) in the way that any Minister can.

8.35 In addition to concerns or developments in respect of the Machinery of Government, there have also been developments in respect of the composition of the States Assembly. The referendum arising from the Electoral Commission has taken place and if the Assembly chooses to endorse the winning result, the Assembly will be reduced to a total of 42 Members. This would undoubtedly have an impact upon the Machinery of Government, the number of Ministers and the specified portfolios those Ministers should hold.

8.36 The Council of Ministers took these developments into account in December 2012 when considering whether to proceed with plans for Minister for External Relations, noting:

“Lastly, the Interim Report on the Reform of Jersey’s States Assembly notes that whilst the States can be reduced to 42 members, this would mean that there would need to be fewer Ministers and Assistant Ministers. Therefore, if the provisional recommendations are agreed, a more fundamental re-assessment of the numbers and composition of the Government would need to be undertaken in due course.”⁷³

The Council therefore agreed to pursue the creation of a new Minister notwithstanding the work being undertaken elsewhere on the composition of the States Assembly and the Machinery of Government.

⁷² Chief Minister, Transcript, page 11

⁷³ *Minister for External Relations* (7th December 2012), page 4

8.37 Given PPC's responsibilities in respect of the composition of the States Assembly, we sought its views on the proposal to establish a Minister for External Relations. In its submission, PPC raised the prospective changes which might imminently be discussed (and made) to the size of the States Assembly and the size of the Executive. It highlighted that consideration would need to be given to ministerial portfolios, the manner in which Ministers are appointed and the 'Troy Rule' within the underlying context of the size of the Assembly and the type of Machinery of Government that was required overall. We were advised that *"in summary, PPC's view is that the question of whether the office of Minister for External Relations should be created may to some extent have been overtaken by the issue of how our machinery of government should be adapted to fit a smaller States Assembly."*⁷⁴ This raises the question of whether this is the right time to seek the appointment of a new Minister when more wide-reaching discussions about the size of the Assembly and the Machinery of Government are already expected.

8.38 We questioned the Chief Minister on whether it would be preferable to start by addressing wider issues in respect of the Machinery of Government. He advised us that he did intend to address issues with the current Machinery of Government, but was also keen to pursue his proposals to establish a Minister for External Relations:

*"I am in the process of correcting those as well. I do not think I should wait to correct one [issue] before I start correcting another. We do not get enough done in a 3-year term as it is, but we get even less done if we just had one problem and tried to solve it and then waited and did another. There are lots and lots of issues which we are bringing forward – amendments to legislation, changes to departmental structure, changes to the way we govern – every day, all the time."*⁷⁵

8.39 In terms of wider reforms, the question is therefore whether plans for a Minister for External Relations should be put on hold and brought forward as part of a wider package of reforms; or whether the need for a Minister for External Relations is so pressing that it should be introduced sooner rather than later, even with the expectation that further amendments to the Machinery of Government are likely and may impact further upon the external relations portfolio.

KEY FINDING

8.40 Creating a new Minister could compound current problems with Ministerial Government as, unless and until these matters are addressed, it would merely establish another Minister as corporation sole over which the Chief Minister has limited influence.

⁷⁴ Chairman – Privileges and Procedures Committee, Written Submission

⁷⁵ Chief Minister, Transcript, page 13

KEY FINDING

8.41 The Council of Ministers has agreed to pursue the creation of a new Minister notwithstanding work being undertaken elsewhere on the composition of the States Assembly and the Machinery of Government. Reducing the size of the Assembly would undoubtedly impact upon the Machinery of Government, the number of Ministers and the specified portfolios those Ministers should hold. As PPC has indicated, this raises the question of whether this is the right time to seek the appointment of a new Minister when more wide-reaching discussions about the size of the Assembly and the Machinery of Government are already expected.

RECOMMENDATION

8.42 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.

9. CONCLUSION

- 9.1 External relations have been a growth area: the budget underpinning the International Affairs Section of the Chief Minister's Department has grown from £393,765 in 2008 to £920,700 in 2013 and will grow further to £1,699,600 in 2015. In recent years, there have been significant developments in Jersey's international identity as there is a need for the Island to be well-represented externally. We recognise the work that has already been undertaken in that regard: the fact that the current Council of Ministers was the first to publish a common policy on external relations and the decision to create FERAG as a co-ordinating body. Our recommendations for the common policy to be debated by the States Assembly and an annual report published on external relations will lead to greater understanding on the part of both Members and the public of what happens in this area.
- 9.2 In terms of establishing a Minister for External Relations, however, creating a situation whereby responsibility for external relations is shared between two positions could blur lines of accountability. It is also difficult to see the immediate need for creating a new Minister to replace the current Assistant Minister's position as the Island can already be represented overseas at Ministerial level. With the Chief Minister currently solely responsible for external relations, there would appear to be someone of sufficient status to represent the Island.
- 9.3 Ultimately, however, we have found that it is not yet the right time to debate the creation of a Minister for External Relations. Creating a new Minister could simply compound wider difficulties with Ministerial Government which have already been identified. Given that discussions regarding the composition of the States Assembly and the Machinery of Government are imminent, it is this Panel's view that it would therefore be preferable to await those discussions and the resultant decisions of the Assembly before proceeding to consider whether a Minister for External Relations should be established.

10. APPENDIX 1: EXTERNAL RELATIONS RESOURCES

10.1 One of the lines of enquiry we pursued during our review was what resource implications, if any, the establishment of a Minister for External Relations would have. We therefore requested information from the Chief Minister on the development in recent years of manpower and budgetary resources underpinning the External Relations function. The following table is taken from information provided to us by the Director of International Affairs and shows the development of those resources from 2008 to 2015.

Source	£	FTE	Material Changes
2015 Budget per MTFP (P.29/2012)	1,699,600	7.0	No material change
2014 Budget per MTFP (P.29/2012)	1,690,000	7.0	£600,000 – London Representative Office £420,000 – Substantiation of programme costs Additional FTE for International Advisor to the Council of Ministers
2013 Budget per MTFP (P.29/2012)	920,700	6.0	No material change
2012 Budget per Business Plan (P.123/2011)	940,800	6.0	£152,000 – Working with MoJ and UK departments Less: (£175,600) – Transfer Tax Policy team to T&R; (£211,000) – Transfer International Finance to EDD
2011 Budget per Business Plan (P.99/2010)	1,154,100	6.0	£200,000 – Finance Industry Inward investment CSR growth
2010 Budget per Business Plan (P.179/2009)	952,100	6.0	No material change. Additional post for Director of Civil Aviation (nil impact on budget)
2009 Budget per Business Plan (P.113/2008)	975,183	5.0	£400,000 – Additional funding for 3 new post plus non-pay
2008 Budget per Business Plan (P.93/2007)	393,765	2.0	Baseline budget

10.2 The Director advised us that “*the establishment of the External Relations function started with the agreement of the States Assembly in 2008 to the Annual Business Plan for 2009, which included the creation of the post of Director of International Affairs.*”⁷⁶

⁷⁶ Director of International Affairs, Written Submission

10.3 In terms of how the budget for external relations is broken down into different areas, the Director advised us that, for 2013, the budget covered the following areas:

Budget Category	MTFP – 2013
Income	£0
Staff	£476,600
Non-Staff	
Office Expenses	£9,000
Operational Expenses (Travel etc)	£35,700
Expert Advice and Professional Fees	£7,400
Grants (including Channel Islands Brussels Office, Bureau de Jersey and Alliance Française)	£392,000
Sub-Total Non-Staff	£444,100
Grant Total	£920,700

The Director indicated that the breakdown for 2013 was indicative of the breakdown for previous years.

11. APPENDIX 2: FACT SHEET ON THE UK'S RELATIONSHIP WITH THE CROWN DEPENDENCIES

The following information is taken from a fact sheet produced by the UK Ministry of Justice to describe the UK's relationship with the Crown Dependencies.

"This fact sheet is aimed at providing an introductory overview of the UK's relationship with the Crown Dependencies and the Islands' international personalities. For more detailed information on the Crown Dependencies, please see the Annexes to this document and the links to further reading at the end of this document.

1. Constitutional relationship

The Crown Dependencies are the Bailiwick of Jersey, the Bailiwick of Guernsey and the Isle of Man. Within the Bailiwick of Guernsey there are three separate jurisdictions: Guernsey (which includes the islands of Herm and Jethou); Alderney; and Sark (which includes the island of Brecqhou).

The Crown Dependencies are not part of the UK but are self-governing dependencies of the Crown. This means they have their own directly elected legislative assemblies, administrative, fiscal and legal systems and their own courts of law. The Crown Dependencies are not represented in the UK Parliament.

The Crown Dependencies have never been colonies of the UK. Nor are they Overseas Territories, like Gibraltar, which have a different relationship with the UK. The constitutional relationship of the Islands with the UK is through the Crown and is not enshrined in a formal constitutional document. HM Government is responsible for the defence and international relations of the Islands. The Crown, acting through the Privy Council, is ultimately responsible for ensuring their good governance.

The Queen is the Head of State of each Island and the Lieutenant-Governor for each Crown Dependency is Her Majesty's personal representative. The Lord Chancellor and Secretary of State for Justice is the Privy Counsellor with special responsibility for Island Affairs. At present, Lord McNally is the Minister responsible for the conduct of Islands' business within Whitehall.

The Ministry of Justice is responsible for managing the constitutional relationship with the Crown Dependencies, which involves a variety of different responsibilities including involvement in key Crown Appointments; working with the Palace on assessing Crown Dependencies' Coins and Stamps; and processing their legislation for Royal Assent.

However, as per the Justice Select Committee Report 2010, all UK Government Department have a responsibility to engage directly with the Crown Dependencies on their policy areas. The Annexes to this document contain information on how Government Departments should consult Crown Dependencies on relevant issues.

2. Nationality and Immigration

The British Nationality Act 1981 confers British Citizenship on all those with close connections with the UK, the Channel Islands and Isle of Man. The Islands have adopted the common format passport and the Lieutenant Governor remains the passport-issuing authority in the Islands.

Jersey, Guernsey, the Isle of Man and the Republic of Ireland, together with the UK, comprise the Common Travel Area. There is no immigration control between the UK and the Islands or between the Islands themselves. Rather, the Islands form part of the border for the British Isles as a whole.

3. Island Legislation

The Islands' legislatures make their own domestic legislation.

Principal legislation made by the Islands' legislatures requires Royal Assent or sanction. The Ministry of Justice examines such legislation to ensure that there is no conflict with international obligations (including ECHR compliance) or any fundamental constitutional principles. This enables the Lord Chancellor to advise the Privy Council whether Her Majesty in Council can be advised to make an Assenting Order, and thereby grant Royal Assent. For non-reserved Isle of Man legislation the Ministry of Justice will directly inform the Lieutenant Governor when the Lord Chancellor is content that the delegated responsibility to grant Royal Assent may be exercised.

UK legislation rarely extends to the Crown Dependencies and should not be extended without first consulting the Islands' Authorities and obtaining their consent. In instances where it does extend, it may do so either by virtue of the Act itself or by Order in Council made with their agreement under an enabling provision contained in the Act which provides for it to be extended to the Crown Dependencies. An enabling provision for an Order in Council, known as a 'permissive extent clause' (PEC), in a Bill could take the following form: "Her Majesty may by Order in Council provide for any of the provisions of this Act to extend, with or without modifications, to any of the Channel Islands or the Isle of Man". For an Act to extend otherwise than by an Order in Council is now very unusual. Departments must consult the Crown Dependencies at the earliest opportunity in the event that extension is under consideration and a PEC should not be included in a Bill without the prior agreement of the Islands.

*More detailed information on how to engage with the Crown Dependencies on UK legislation that may affect them is included in **Annex A – How to note on the extension of UK primary legislation to the Crown Dependencies.***

4. International Personality

The Crown Dependencies are not recognised internationally as sovereign States in their own right but as "territories for which the United Kingdom is responsible". As such they cannot sign up to international agreements under their own aegis but can have the UK's ratification of such instruments extended to them, unless they have been entrusted to do so, as they have been in the case of Tax Information Exchange Agreements, and other agreements relating to taxation that provide for exchange of information on tax matters, with EU Member States, including the UK, the Organisation for Economic Co-operation and Development and the G20 member countries.

However, the Crown Dependencies are developing their international identities and in 2007, the then-Secretary of State for Constitutional Affairs signed an agreement with the Chief Ministers of each of the Crown Dependencies stating that the UK would not act internationally on their behalf without prior consultation and recognising that in international matters, particularly in relation to the EU, UK and Crown Dependency interests may differ. The agreements also set out a framework for the further development of the international identities of the Crown Dependencies. Copies of the framework agreements with each Crown Dependency are available on the Crown Dependencies Governments' websites (links in section 7 below).

5. Relationship to the European Union

The Islands have a special relationship with the European Union provided under Protocol 3 to the UK's Treaty of Accession to the European Community. This relationship cannot be changed without the unanimous agreement of all the Member States of the Union. Under Protocol 3, the

Islands are part of the customs territory of the Union and therefore Union customs matters, the common customs tariff, levies, quantitative restrictions and any measures having equivalent effect apply. There is free movement of agricultural goods and derived products between the Islands and the Union. Also included are measures relating to the trade in agricultural goods and derived products with third countries.

However, other EU Rules do not apply to the Crown Dependencies. Implementation of the provisions on the free movement of persons, services and capital is therefore not required, and the Islands are not eligible for assistance from the structural funds or under the support measures for agricultural markets. EU tax instruments do not apply, nor do the developing justice and home affairs initiatives or the Schengen acquis, although the Islands support improved judicial co-operation within Europe and have also voluntarily applied for recognised equivalent status in a number of key law and policy areas.

6. Treaties and international agreements

Article 29 of the Vienna Convention on the Law of Treaties provides that “unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory”. The long-standing practice of the UK when it ratifies, accedes to, or accepts a treaty, convention or agreement is to do so on behalf of the United Kingdom of Great Britain and Northern Ireland and any of the Crown Dependencies or Overseas Territories that wish the treaty to apply to them. The UK’s ratification, accession or acceptance can also be extended at a later date.

This means that, when the UK is planning to ratify a particular convention or treaty, it should consult the Crown Dependencies about whether they wish to have it extended to them.

*More detailed information on how to engage with the Crown Dependencies on International Treaties and Agreements that may affect them is included in **Annex B – How to Note on the extension of International Instruments to the Crown Dependencies** and **Annex C – How to Note on dealing with requests from the Crown Dependencies to extend the UK’s ratification of international Instruments**.*

7. Useful links

- **Justice Select Committee Report on the Crown Dependencies (2010):** www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/56/56i.pdf
- **The Isle of Man Government:** www.gov.im
- **The States of Guernsey:** www.gov.gg
- **The States of Jersey:** www.gov.je “

12. APPENDIX 3: PANEL MEMBERSHIP, TERMS OF REFERENCE AND EVIDENCE CONSIDERED

Panel Membership and Terms of Reference

12.1 The Corporate Services Scrutiny Panel comprised the following Members:

Senator S.C. Ferguson, Chairman

Deputy J.G. Reed, Vice-Chairman

Connétable D.J. Murphy

Deputy S. Power

Deputy R.J. Rondel

12.2 The following Terms of Reference were agreed for the review:

1. To consider *Draft States of Jersey (Minister for External Relations) (Jersey) Regulations 201-*, with particular regard to the following:
 - a) The rationale for establishing a Minister for External Relations;
 - b) Other options considered by the Council of Ministers;
 - c) The responsibility and authority that would be held by the Minister for External Relations;
 - d) The relationship between the proposed Minister for External Relations and the Chief Minister, including the division and sharing of responsibilities, the potential for any conflict and how any potential conflicts would be resolved;
 - e) Ministerial accountability for the conduct of external relations;
 - f) The role and position of the Minister for External Relations in respect of the Council of Ministers and the States;
 - g) The impact that the appointment of a Minister for External Relations would have on how Jersey's external relations are currently administered and managed; and
 - h) The resource implications of the proposals and their potential impact on departmental structure.
2. To report to the States Assembly on the work undertaken.

Evidence Gathered

12.3 The following documents were considered by the Panel during its review:

- a) *Report of the Review Panel on the Machinery of Government in Jersey* (December 2000)
 - b) *Framework of Developing the International Identity of Jersey* (1st May 2007)
 - c) Part B Minutes of the Council of Ministers: Minutes B1 – 12th June 2008, Minute B4 – 12th May 2011, Minute B2 – 18th October 2012 and Minute B1 – 7th December 2012
 - d) *Second Interim Report of the Constitution Review Group* (R.64/2008), Presented to the States on 27th June 2008
 - e) *Government Response to the Justice Select Committee's Report: Crown Dependencies* (November 2010)
 - f) *Appointment of Assistant Chief Minister with Responsibility for External Affairs* (13th January 2011), MD-C-2011-0001
 - g) Question from Deputy R.G. Le Hérissier to the Chief Minister regard the appointments process for the Assistant Minister responsible for External Relations (1st February 2011)
 - h) *International Affairs Minister* (12th May 2011), Council of Ministers Report
 - i) *External Relations: Common Policy* (R.140/2012), Presented to the States on 23rd November 2012
 - j) *Chief Minister's Department International Affairs Directory*
 - k) *Minister for External Relations* (7th December 2012), Council of Ministers Report
 - l) *Chief Minister's Department Business Plan 2013*
 - m) *Draft States of Jersey (Minister for External Relations) (Jersey) Regulations 201-: Report of the Chief Minister* (R.18/2013), Presented to the States on 11th March 2013
 - n) *Fact Sheet on the UK's Relationship with the Crown Dependencies*, Ministry of Justice
- 12.4 The Panel put out a call for evidence from the public on 25th March and 3rd April 2013, to which a total of 4 written submissions were received from members of the public. The Panel also wrote directly to a number of key stakeholders, to which the following written submissions were received:
- 1. Sir Nigel Broomfield – 1st April 2013
 - 2. Mr T.A. Le Sueur – 25th March 2013
 - 3. His Excellency the Lieutenant Governor – 4th April 2013
 - 4. Senator I.J. Gorst, Chief Minister – 8th April 2013

5. Senator P.F.C. Ozouf, Minister for Treasury and Resources – 28th March 2013
6. Senator A.J.H. Maclean, Minister for Economic Development – 5th April 2013
7. Mr T.J. Le Cocq QC, HM Attorney General – 16th April 2013
8. Connétable A.S. Crowcroft, Chairman – Privileges and Procedures Committee – 7th May 2013
9. Sir Michael Birt, Bailiff of Jersey – 7th May 2013

In addition, the Director of International Affairs provided us with information on the budget and manpower resources underpinning the External Relations function in memoranda dated 2nd and 17th May 2013.

- 12.5 The Panel held a public hearing with the Chief Minister on 15th April 2013. The Chief Minister was accompanied by the Assistant Chief Minister with Responsibility for External Relations and the Director of International Affairs. A transcript of the hearing was made and is available on the Scrutiny website (www.scrutiny.gov.je).