
STATES OF JERSEY



PROCESSES WITHIN EXTERNAL RELATIONS (S.R.4/2020): RESPONSE OF THE MINISTER FOR EXTERNAL RELATIONS AND FINANCIAL SERVICES

**Presented to the States on 12th March 2021
by the Minister for External Relations and Financial Services**

STATES GREFFE

**PROCESSES WITHIN EXTERNAL RELATIONS (S.R.4/2020): RESPONSE
OF THE MINISTER FOR EXTERNAL RELATIONS AND FINANCIAL
SERVICES**

Ministerial Response to:	S.R.4/2020
Ministerial Response required by:	18th November 2020
Review title:	Processes Within External Relations
Scrutiny Panel:	Economic and International Affairs Scrutiny Panel

INTRODUCTION

I am grateful to the Panel for undertaking the first full review of the operation of the Ministry for External Relations since its inception in 2013. The resulting recommendations and findings have given an opportunity for reflection on the workings of the Ministry both within Government, and with respect to our engagement with Scrutiny, the States Assembly, and the public.

I believe the Ministry has an excellent record of service to the Island, and it is one of which we are rightly proud. Since 2013, we have demonstrably and significantly enhanced Jersey's profile in the UK, Europe, and our priority global markets. Through our bi-lateral relations, and engagements in various multi-lateral fora, we have regularly and successfully promoted and defended the Island's constitutional, cultural, and economic interests. Credit is due equally to my predecessor, former Senator Sir Philip Bailhache, for his work between 2013 and 2018.

Jersey is engaged across the globe with more countries and international organisations than ever before in our Island's history. Crucially, these links ensure we can deliver prosperity at home – through attracting business, creating jobs, delivering shared growth with our partners, and generating people-to-people cultural links.

The work of the Ministry to continually improve understanding of the positive role Jersey plays in the international order as a small Island democracy is ongoing and will only increase in the years to come. The success of our permanent offices in London, Brussels and Caen shows the benefits of an 'on the ground' presence in developing relations and promoting Jersey's interests. We should be prepared to further resource and develop our network of representative offices in the years to come.

Working with the Bailiwick of Guernsey, we must continue to present a united Channel Island front wherever possible, especially in defending our constitutional and economic interests, which so regularly overlap. We should also be proud of Jersey's position within the British family. Jersey's status as a Crown Dependency unquestionably and

overwhelmingly reflects our best interests, both politically and economically, and it is a status we should continue to nurture, value and embrace.

The Panel's review has provided a timely and key opportunity to ensure that this crucial work involves States Members and the public to the greatest extent possible, so that we can confidently engage on the international stage in a manner which we know has the continued support and approval of the community we serve.

FINDINGS

	Findings	Comments
1	There are a number of groups and bodies which advise, guide and direct the External Relations Department. Not all meetings are minuted and none are made public. The Department has advised that it will share minutes where they are available with the Panel on a confidential basis	<p>It is correct that a number of groups advise, oversee, guide and direct the work of External Relations.</p> <p>The Minister for External Relations, in conjunction with the Chief Minister, provides regular updates on external relations activity to the Council of Ministers, ensuring all Ministerial colleagues are sighted and can inform the approach taken to relevant areas of international engagement.</p> <p>Other key Ministerial groups providing direction and guidance to external relations activity include the International Advisory Group (IAG) and the Brexit Ministerial Group (BMG). As the Panel's report confirms, minutes are taken of these Ministerial meetings and are now being shared with the Panel on a confidential basis.</p> <p>Where there are officer level working groups, these feed up into the work of Ministerial groups. Officer groups report into Ministerial meetings and the issues discussed are therefore also covered by the relevant Ministerial meetings and recorded in those minutes accordingly.</p>
2	External Relations is governed by the Common Policy which does not require States Assembly approval. It was agreed by the Council of Ministers in 2012 and endorsed in 2015. The policy has not been published since 2015, despite there being a new Council of Ministers in 2018	<p>Article 18(2)(c) of the States of Jersey Law 2005 states that a function of the Council of Ministers is to discuss and agree their common policy regarding external relations.</p> <p>The Common Policy was most recently published in 2015 and remains published on the States Assembly website as Government policy. The current Council of Ministers continue to work</p>

	Findings	Comments
		<p>towards the aims and principles of the Common Policy.</p> <p>It is, however, agreed that each new Council of Ministers should discuss and publish its Common Policy, even if this is unamended from that of the previous Government. This will be actioned following the formation of the new Administration in 2022.</p>
3	<p>Within External Relations, there are a number of decision-making processes which require formal approval by the States Assembly. There are also less formal ways in which decisions can be made, for example memoranda of understanding, international conventions, arrangements and agreements.</p>	<p>Agreed. It should also be noted that this is a position which is replicated across Government and across all jurisdictions globally. It reflects the fact that different instruments have different status in international and domestic law. For example, a non-binding MoU on non-mandatory cooperation between jurisdictions is quite different to a Tax Information Exchange Agreement which imposes obligations on the sharing of confidential information between jurisdictions. A “one size fits all” approach is inappropriate for dealing with the broad range of instruments that External Relations is involved in negotiating on behalf of the Government of Jersey.</p>
4	<p>Since the Panel announced its review, the Minister for External Relations has stated that he is planning to introduce a new process whereby decisions relating to free trade agreements are laid before the States Assembly. This would provide States Members with an opportunity to call-in the decision for formal States approval. The Panel believes that this will provide more checks and balances around decisions which have the potential to place long-lasting obligations on Jersey.</p>	<p>Agreed and confirmed. The proposed parliamentary process (achieved through an amendment to Standing Orders) would relate to all international agreements. The Assembly would be formally notified of agreements which a Minister intends to enter into on Jersey’s behalf (which isn’t the case at present) and, within 21 days of notification, a Member would be able to lodge a proposition requesting that the States debate whether the Minister should take the intended action. It should be clarified that amendments couldn’t be made to the text of an agreement – the process would be similar to that which is available to Members for the annulling of an Order.</p> <p>The option would be available to a Minister to call a States debate themselves in lieu of following the 21-day notice period. Where a Minister finds themselves in a situation where they are unable to either follow the 21-day notice period or call a States debate, there would be requirements for a report to be presented to the States and a statement</p>

	Findings	Comments
		<p>made by the Minister at the next sitting to explain the reasons why.</p> <p>A similar notification procedure will also be included for scenarios where a Minister is intending to withdraw Jersey from an international agreement.</p> <p>Advance notice to scrutiny prior to the States being notified in either respect (entering into or withdrawing from an agreement) is built into the Standing Order process.</p>
5	<p>There are a number of international instruments that have been extended to Jersey, but which may not be subject to formal compliance procedures, including the five-yearly update process which appears to lack formality. As a result, some agreements and extensions may be made without governance procedures in place to ensure the terms of those agreements are adhered to or monitored</p>	<p>It is correct to say that at present, a number of departments do not monitor their compliance with treaties relevant to their policy area, especially if they were signed up to over 5 years ago.</p> <p>It's not the case though that we would miss obligations to report. The UK is the state party and therefore responsible for any reporting obligations to the depository. Therefore, when there are reporting requirements the UK makes contact with officials in Jersey, including through the Head of International Compliance if they do not have a relevant departmental contact.</p>
6	<p>The Minister for External Relations (and any Minister) makes decisions under affirmative and negative procedures. For example, legislation laid under the affirmative procedure must be actively approved by the States Assembly (laws and amendments). Any legislation laid under the negative procedure becomes law on the day the Minister signs it (Ministerial Orders) and automatically remains law unless a motion to reject it is agreed by the Assembly.</p>	<p>This is correct and, it should be noted, applies to all Ministers across the Government.</p>
7	<p>The functions of the Chief Minister include the conduct of external relations in accordance with the Common Policy agreed by the Council of Ministers. In that regard, the Chief Minister and the Minister for External</p>	<p>Agreed and correct.</p>

	Findings	Comments
	Relations hold concurrent responsibilities for the conduct of external relations. Whether external relations matters are conducted by the Chief Minister or the Minister for External Relations, they are conducted in accordance with the Common Policy.	
8	In terms of autonomy, the Minister for External Relations is able to act independently when meeting representatives of foreign Governments. The issues discussed, however, will often be raised on behalf of other Ministers or the Council of Ministers	<p>The Minister for External Relations cannot act independently when meeting representatives of foreign Governments.</p> <p>The Minister must always act in accordance with the legislative and policy functions of the office, and in accordance with the Common Policy for External Relations when representing Jersey in meetings with representatives of foreign Governments. It should be kept in mind that all Ministers are corporations sole, and a Minister therefore cannot in practice act independently outside of the remit of their office or agreed Government policy.</p> <p>The Minister for External Relations will indeed raise issues on behalf of other Ministers, or the Council of Ministers, and in doing so will act in accordance with the agreed Government position in respect of the issue at hand.</p>
9	Although Scrutiny is briefed and informed of some external affairs matters, some decisions are made without any processes in place to inform Scrutiny. Since the Panel raised this with the Minister, he has committed to sharing future MoUs and agreements with Scrutiny.	<p>External Relations have made, and continue to make, extensive efforts to ensure Scrutiny, and indeed all States Members, are proactively kept regularly informed of its work, including on policy, legislation, and topical matters. This has included through States Assembly reports, public scrutiny hearings, private scrutiny briefings, sessions with all States Members and regular written Brexit updates.</p> <p>More recently, the Minister has agreed to provide the minutes of the Brexit Ministerial Group and International Advisory Group meetings to the Panel in confidence.</p> <p>As part of enhancing this work, the Minister has agreed to ensure the Panel are given prior notice of any arrangements or agreements which it is</p>

	Findings	Comments
		<p>intended for Jersey to enter into and with which External Relations are the lead department. This will accordingly be covered by, and built into, the proposed parliamentary notification procedure.</p> <p>In instances where other departments are the signatories to international arrangements or agreements, External Relations will use best endeavours to ensure prior notice is given to the Panel.</p>
10	<p>There is a dedicated area on External Relations on the gov.je website. Although information is provided on the site, there is no consistency as to what is published, and some areas are out of date. This could lead to a misconception from the public about the levels of activity within the Department. It can also lead to disengagement from the public by the Department.</p>	<p>The External Relations part of the gov.je website is currently being reviewed and updated. It is recognised this should be undertaken on a more regular basis.</p>
11	<p>A previous Scrutiny report recommended that an annual report on external relations matters be published by the Minister. This was accepted at the time, but only one annual report has been published since the ministerial role was created.</p>	<p>As the Panel have recorded, a Ministerial report covering the work of the External Relations Minister from September 2013 to January 2015 was published as R.15/2015.</p> <p>The need for more regular updates on External Relations activity was recognised following the UK's vote to leave the EU in 2016, and subsequently Brexit Information reports/updates have been presented to the Assembly at 6-monthly intervals, the first in June 2016. These reports have also covered other areas of work and activity from the external relations portfolio, including the Global Markets Programme.</p> <p>It should also be noted that the Global Markets strategy was published 2017 and updated in 2019.</p> <p>In addition, External Relations has undertaken extensive work to ensure the public and business are sighted and informed of cross-government activity in relation to Brexit impacts, including ongoing two island-wide campaigns – Let's Talk Brexit (launched in 2016) and Let's Talk Trade (launched in 2019).</p>

	Findings	Comments
		Following the conclusion of the Brexit process, the Minister will return to the arrangement of presenting an annual report to the States Assembly, as set out in the response to recommendation 7.

RECOMMENDATIONS

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
1	The Common Policy should be reviewed when a new Council of Ministers is established. Once endorsed, the Common Policy should be debated and approved by the States Assembly. This would ensure that Jersey's external affairs are conducted in accordance with a Common Policy which has been agreed by the Assembly as a whole, and not just by the Council of Ministers.	ER Min	Partially Accept and Partially Reject	<p>As referenced above, it is agreed that that each new Council of Ministers should discuss and publish its Common Policy, even if this is unamended from that of the previous Government.</p> <p>Jersey is a self-governing democratic jurisdiction, but the Bailiwick is not a sovereign state and therefore cannot generally bind itself internationally without the consent of Her Majesty's Government. The conduct of foreign affairs is ultimately a prerogative of the Sovereign, exercised on the Sovereign's behalf by HM Government.</p> <p>Furthermore, the conduct of external relations by Jersey, and specifically the building of relationships between the Government of Jersey and partner governments, is evidently a day-to-day duty of the executive.</p> <p>Whilst the current arrangements for agreeing and implementing Jersey's external relations policy are therefore seen as constitutionally appropriate, the Minister recognises that some States Members who are not part of the executive may wish to have greater discussion on the development of the external relations common policy.</p>	An in-committee debate on the Common Policy to take place following the formation of a new Council of Ministers after the 2022 General Election.

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
				Accordingly, the Minister would support a proposal for an in-committee debate prior to each new Council of Ministers agreeing and publishing its common policy, , so that the views of States Members can be properly taken into account before the policy is confirmed and implemented by the executive.	
2	The Minister for External Relations should ensure that the new process whereby decisions relating to free trade agreements are laid before the States Assembly is introduced before the end of 2020.	ER Min	Accept	Regrettably, due to the pressures around the negotiation and agreement of the UK-EU Trade and Co-operation Agreement, and the subsequent confirmatory period, it has not been possible to meet the requested deadline of the end of 2020. A new process to provide for the Parliamentary ratification of international agreements, through an amendment to Standing Orders, will be lodged imminently. Drafting has commenced and Scrutiny will be notified informally (in advance of lodging) in the next few weeks.	An amendment to Standing Orders to be debated before the summer recess.
3	The Minister for External Relations should introduce a process by which the Department tracks and monitors departmental reviews of compliance with international agreements and conventions. This would reduce the risk of being unintentionally outside compliance of an agreement. A formal process should be introduced before the end of Q1 2021.	ER Min	Partially Accept	External Relations monitors and tracks compliance with international agreements and arrangements for which the Minister for External Relations is the lead signatory. External Relations supports other departments in ensuring international agreements are extended to Jersey in an appropriate and timely fashion. It is, however, the responsibility of the lead policy department to ensure compliance with each agreement. The Ministry is conducting an exercise to review and list the international Treaties that have been extended to Jersey. The detail, which is being published on gov.je, will assist	Ongoing

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
				departments in ensuring they have full sight and understanding of the international agreements for which they are accountable.	
4	The Minister for External Relations and Scrutiny should introduce a formal engagement and disclosure process which includes set timelines and covers the full range of instruments, agreements, conventions, arrangements and MoUs to which the Minister signs up. A discussion with the Minister on this matter should take place in Q4 2020.	ER Min	Neither accept or reject	<p>The Minister will seek to set up a discussion with the Chair at the earliest opportunity to discuss in more detail the intention behind this proposal.</p> <p>As already referenced, External Relations have made efforts to ensure Scrutiny, and indeed all States Members, are proactively informed of its work.</p> <p>It is, at present, not clear how this proposed process could meaningfully add to the existing programmes of public and private hearings/briefings and the regular sharing of information that is already in place, and is to be enhanced as referenced in this response, including through the new Standing Order process for the ratification of international agreements.</p>	Meeting to be set up as soon as possible
5	The Minister for External Relations should ensure that an Officer is designated responsibility for maintaining the Department's page on the website and that those pages are maintained in an up to date and informative fashion.	ER Min	Accept	<p>The Minister recognises the importance of ensuring External Relations webpages are updated on a regular basis.</p> <p>An officer within the Communications team supporting the Office of the Chief Executive has been designated this responsibility.</p>	Ongoing
6	The Minister for External Relations should ensure that the Department formulates a code of conduct for	ER Min	Reject	It is not seen as appropriate for one Minister to develop a code of conduct for public engagement – any such code should be agreed, and apply, across Government.	N/A

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
	public engagement which indicates the appropriate level of information to be published and the timeframes within which it should be published. A copy of the code should be introduced before the end of Q1 2021 and provided to Scrutiny for feedback prior to it being approved			This recommendation will be referred to the Chief Minister for consideration as to whether further consideration to it should be given by the full Council of Ministers.	
7	In addition to the current methods of public engagement, the Minister for External Relations should publish an annual report, at the end of every year, on the work of the Department, visits undertaken during the year and any key decisions made on international affairs matters.	ER Min	Accept	As referenced above, the Minister will return to the arrangement of presenting an annual report to the States Assembly. This is timely as the need for the six-monthly Brexit update reports has come to an end. The Ministry commits to publishing the requested detail on its work for the preceding year, either as a standalone report or as part of the Government of Jersey's Annual Report, whichever is deemed the most appropriate.	Detail of External Relations 2021 activity to be published either as a standalone report by 31 Jan 2022, or as part of GoJ's Annual Report.

CONCLUSION

In responding to the Panel's findings, I have sought to provide additional information and context which I hope assists in enhancing knowledge of how and why the Ministry operates in the manner it does, and how we engage as part of the executive in Jersey and in accordance with international norms.

A number of changes have, or will, be enacted as a result of the Panel's recommendations – be this in terms of States Assembly engagement with the development of the common policy, the process for notifying Scrutiny and the Assembly of international agreements which Jersey intends to enter into, and the public information that is available with regard to the work of the Ministry.

I have always sought to engage openly and constructively with Scrutiny and the Assembly and hope that this report, and my response, delivers further enhancements to that end.

I re-iterate my thanks to the Panel for its work, noting in particular the role of Deputy Morel as Chair at the time of this review, and look forward to working together with the current Panel for the remainder of this parliamentary term. I also offer my apologies to the Panel, and all Members, for the late delivery of this response. No discourtesy is intended to Members and the delay in responding is regretted.