



Policy & Resources
Committee

Sir Charles Frossard House
La Charroterie
St Peter Port
GY1 1FH
+44 (0) 1481 717000
www.gov.gg

Presiding Officer
The Royal Court
St Peter Port
Guernsey
GY1 2PB

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13 March 2020

Dear Sir

Letter of Comment – Requête by Deputy Merrett and others – P.2020/18 – Extension to the Bailiwick of the UK-US Extradition Treaty of 2003 and changes to the processes relating to the approval of international instruments

The Policy & Resources Committee (‘the Committee’) has responsibilities for considering, co-ordinating and requesting the extension of international agreements (treaties and conventions) to Guernsey – it also co-ordinates such requests on behalf of the Bailiwick. The Committee has this responsibility through its own mandate and Resolutions of the States in 1987¹ (‘the 1987 Resolutions’) (as referred to in the Requête, paragraph 4).

The Committee’s mandate includes responsibilities for leadership and co-ordination of the work of the States and for external relations and international and constitutional affairs, including “executing and requesting the extension of international agreements to which the Island is invited to acquiesce”.

One of the priority policy areas in the ‘Future Guernsey Plan’ is in relation to international standards. It comes under the theme Our Place in the World, for which one of the outcomes is ‘Mature international identity’. The Committee leads on this policy area and works with all Principal Committees in relation to their own mandated responsibilities. The Committee “has a role in helping Principal Committees manage international relationships and helping ensure the Island maintains its international standing by meeting its obligations.”²

This letter of comment is therefore a response under the Committee’s own mandate, and has appended to it a letter from the Committee *for* Home Affairs, received in response to consultation in accordance with Rule 28 in respect of Proposition 1. Given the distinct matters represented by the two Propositions, this letter of comment addresses the two main elements of the Requête separately.

First Proposition: UK-US Extradition Treaty of 2003

The 1987 Resolutions work effectively in terms of which international agreements are extended to Guernsey/the Bailiwick and which are referred to the States of Deliberation. There has not previously been an issue raised as to the effectiveness of the process. The Committee is not aware of any significant international agreement having been extended to Guernsey/the Bailiwick without the States being both aware of it and content with it.

Any possible extension of the UK-US Extradition Treaty to Guernsey/the Bailiwick would be considered by the Committee *for* Home Affairs (CfHA), as the Committee with mandated responsibility for crime prevention, law enforcement and justice policy.

The provisions of the UK-US Extradition Treaty of 2003 ('UK-US Extradition Treaty') are perceived by some to be controversial in nature. Indeed, some members of the Assembly raised concerns about the extension of the treaty in debate on the Extradition (Bailiwick of Guernsey) Law, 2019 in September 2019³.

The Policy & Resources Committee is of the opinion that the UK-US Extradition Treaty would engage the provisions of the 1987 Resolutions at least to the extent that it involves questions of human rights and fundamental freedoms. In particular, extradition engages or potentially engages a number of Articles of the ECHR including Article 2 (right to life). However, in that regard, it should be noted that extradition from Guernsey to American States, where the death penalty exists, is already possible under the existing regime further to the 1972 UK/US Treaty (which still applies in relation to the Bailiwick) and 1989 Extradition Act as applicable in the Bailiwick. The only protection against the death penalty under the existing regime is a discretion under the 1989 Act to refuse extradition if a person could be subject to the death penalty. While in practice this has meant that extradition to the USA under the 1989 Act has only been granted where there is an undertaking that the death penalty will not be applied, as a matter of law there is nothing under the current regime to prevent a person being extradited to face the death penalty.

Under the new Extradition Law, based on the UK 2003 Extradition Act⁴ ("the 2003 Act") and as approved by the States at their meeting in September 2019, this is no longer possible as there is a legal obligation, not just a discretion, to refuse extradition unless a written assurance has been received by Her Majesty's Procureur that the death penalty will not be imposed and the Procureur considers that assurance adequate. Therefore, the protections against the death penalty that are applicable with regard to the 2003 Treaty, if extended, will be stronger than are available under the current Bailiwick regime when the new Extradition Law comes into force.

The Committee recognises that extension is likely also to be considered controversial (by some Members of the States' Assembly and/or in the wider public perception). In relation to that, the Committee is aware that the Treaty was considered to be controversial by many in the United Kingdom when first extended there. In response to this, the UK government commissioned a review of the Treaty and the 2003 Act, which recommended some changes to the 2003 Act to deal with some of the concerns that had then been raised. These changes, in particular a forum bar to extradition if it would not be in the interests of justice, i.e. where the criminal offending, evidence, victims etc are located in the UK, were subsequently implemented (and have been reflected by a corresponding bar in the

Extradition Law where the criminal offending, evidence, victims etc are located in the Bailiwick).

Nonetheless, considering that the UK-US Extradition Treaty' remains to be perceived by some as controversial in nature, and in accordance with the 1987 Resolutions, the matter of the extension shall be laid before the States by the Committee in due course.

The first Proposition in the Requête describes what would happen in practice should the CfHA seek any proposed extension of the UK-US Extradition Treaty to Guernsey/the Bailiwick. The matter would already have to be laid before the States as explained above. The authorities in Alderney and Sark would also be consulted as a matter of course. Therefore the Committee has no objection to that Proposition as it will not change the process as it applies under the 1987 Resolution.

The Committee consulted with the CfHA in accordance with Rule 28⁵. The CfHA confirmed that, whilst it is not actively considering the extension of the UK-US Extradition Treaty to Guernsey/the Bailiwick, if and when it is appropriate or required to do so, it would be normal practice for the matter to be subject to a States debate, therefore the Committee and the CfHA consider this Proposition to be unnecessary.

Second Proposition: Extension of international treaties and conventions to Guernsey or the Bailiwick of Guernsey

The UK is responsible for the Bailiwick of Guernsey's formal international relations and defence, including in respect of treaties which apply when the UK's ratification has been extended, with consent from the Bailiwick. That responsibility exists even where the Bailiwick's interests differ from those of the UK.

Whether an international agreement is extended to Guernsey is a matter upon which the Island must be consulted and is generally for the Island to decide. Typically, international agreements are agreed to and signed by the UK as a sovereign state, and may be extended so that its territorial scope includes Guernsey/the Bailiwick. The Island/s can and do acquiesce or seek for the UK to extend its own ratification of such agreements to Guernsey/the Bailiwick. The extension of an international agreement to the Island/s can happen at the time of ratification or at a later date. Usually, it is for Guernsey/the Bailiwick to enact suitable domestic legislation to enable it to meet its obligations in regard to any international agreement.

Guernsey/the Bailiwick can only negotiate and conclude an international agreement in its own right if the UK Government has issued a 'Letter of Entrustment' expressly authorising the Island/s to do. This process does not change the constitutional relationship with the Crown, and through that the UK, which remains responsible for international representation.

In 2008, the UK formally recognised, through a [signed agreement](#)⁶ with the then Chief Minister of Guernsey, the appropriateness of Guernsey having greater independence with respect to international relations, particularly where those affairs relate to matters within the domestic competence of the States. Due to these developments, a new process has been agreed with the Ministry of Justice and published in a set of 'how to notes' on the UK

government website. Consequently, the 1987 Resolutions no longer fully reflect the process by which treaties are referred to the States of Guernsey.

The Constitutional Investigation Committee (CIC) was formed in January 2014⁷, following earlier decisions of the States of Deliberation⁸, in order to investigate proposals on greater autonomy in relation to legislative process and international affairs. The CIC's [report](#)⁹ was considered by the States in January 2016. The States agreed with all of the recommendations ([Resolutions 27th January 2016](#)). The CIC was dissolved on 30 April 2016. Thereafter, the Policy Council, later the Policy & Resources Committee, was given the responsibility to progress the Resolutions relating to the CIC's work¹⁰. *Inter alia* there were objectives relating to the granting of Royal sanction; the extension of international agreements; and the entering into agreements under entrustment.

Guernsey has developed a greater international identity in the last few decades and now enters into an increasing number of international agreements under entrustment. The States' decisions in regard to the CIC report and the Future Guernsey Plan, indicate that Guernsey would like to develop this autonomy and competence further to reflect the constitutional evolution and development of the island/s and to achieve a greater measure of international personality on the international stage.

A review of the process relating to international agreements in regard to Guernsey, as outlined in the Requête, with the ultimate intention to replace the 1987 Resolutions would appear to be appropriate in the light of recent developments outlined above. Consequently, the Committee has no objection to the second Proposition. The review and subsequent proposals would include consideration as to the extent to which it is possible or appropriate for the "approach to the adoption of international treaties and conventions in Guernsey" to have "a greater degree of democratic scrutiny and engagement by the Assembly as set out in this Requête".

The timescale indicated in the Requête, to bring back proposals by the end of 2021, seems achievable – although it should be noted that the Committee's main external relations priority in the immediate future is work focussing on the part to be played by Guernsey (and the wider Bailiwick) in any future UK-EU relationship agreement and resulting practical arrangements. The Committee will also need to take forward work on the review of the 1948 Agreement, and the financial relationship with Alderney.

As mentioned in the Requête, funding for a Treaties Officer was secured within the 2020 Budget process¹¹. Recruitment for that role has not been completed at the time of writing but is underway.

Yours faithfully



Deputy L S Trott
Vice-President
Policy & Resources Committee

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- ¹ Resolutions of 25 February 1987 relating to Article VIII of Billet d'État IV of 1987
- ² Extract from the most recent update to the Plan in June 2019 (Appendix 1(v)) [Billet d'État IX of 2019](#) and [Resolutions](#); Phase one of the Policy & Resource Plan (final with amendments following debate on 16 November 2016) ; Phase two in [Billet d'État XII of 2017](#) and [Resolutions](#)
- ³ [Article VIII of Billet d'État XVIII of 2019](#)
- ⁴ <http://www.legislation.gov.uk/ukpga/2003/41/contents>
- ⁵ Rules of Procedures for the States and their Committees
- ⁶ Framework for developing the international identity of Guernsey
<https://www.gov.gg/CHttpHandler.ashx?id=122853&p=0>
- ⁷ [Billet d'État I of 2014 \(Article V\)](#); [Resolutions, 30th January 2014](#)
- ⁸ [Billet d'État XVIII \(Volume 1\) of 2013 \(Article II\)](#); [Resolutions, 26th September 2013](#)
- ⁹ Constitutional Investigation Committee Report (Proposal to Achieve Greater Autonomy in the Legislative Process and International Affairs for Guernsey), p. 129, [Billet d'État I of 2016](#)
- ¹⁰ For one of the Resolutions resulting from the CIC's report, the States Assembly and Constitution Committee was initially responsible for progressing the work (January 2016-June 2017).
- ¹¹ [Billet d'État XXI of 2019](#) and [Resolutions](#)



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President
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2nd March 2020

Dear Deputy St Pier

Requête – P.2020/18 – Extension to the Bailiwick of the UK-US Extradition Treaty of 2003 and changes to the processes relating to the approval of international instruments

The Committee *for* Home Affairs notes the views of the requerrants but is not persuaded that the measures they propose are necessary. It would be rare for the Committee to have any international treaties that it needed extending to the Bailiwick in a short timescale, so the option of a full States debate would rarely if ever present a problem.

Nonetheless, the current system works well and there have not been any cases of which officers are aware where an international agreement has been introduced without proper consideration and support and where appropriate submission to the States Assembly.

It does seem that at a time when the States needs more than ever to be focussing on the future of the community, the economy and much more, the logic must surely be for the States to manage its debating workload rather than add to it.

At this time the Committee *for* Home Affairs is not actively considering the extension of the UK-US Extradition Treaty to Guernsey, however if and when it needs to do so it would have no objection to the matter being subject to a States debate, as would have almost certainly have happened in any event. In summary while not fundamentally opposed to the Requête the Committee simply considers it to be unnecessary.

Yours sincerely

Deputy Mary Lowe

President Committee *for* Home Affairs



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