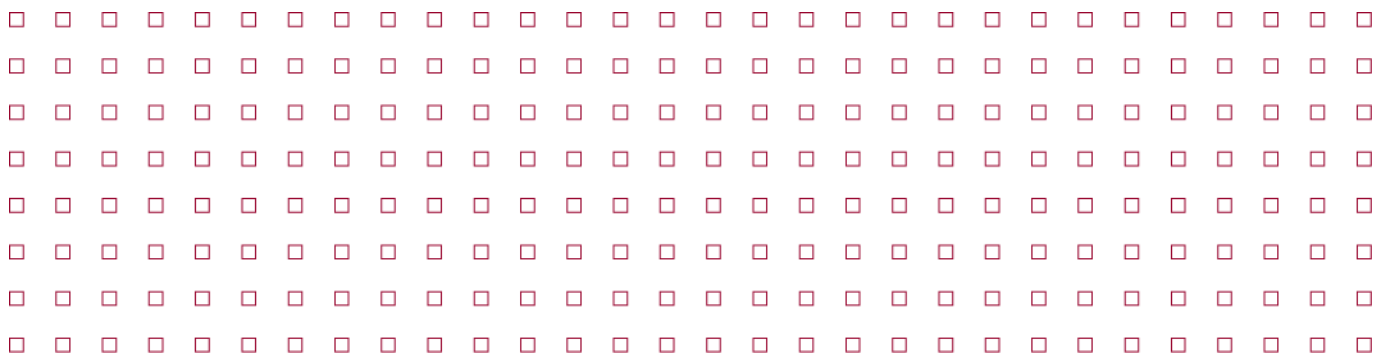




Ministry of
JUSTICE

A New Approach to the British Overseas Territories

Justice assistance engagement plan





Ministry of
JUSTICE

A New Approach to the British Overseas Territories

Justice assistance engagement plan

**This information is available on the Ministry of Justice website:
www.justice.gov.uk**

© Crown copyright 2012
Produced by the Ministry of Justice

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or email: psi@nationalarchives.gsi.gov.uk

Where we have identified any third party copyright material you will need to obtain permission from the copyright holders concerned.

Point of contact in the Ministry of Justice: Cathryn.hannah@justice.gsi.gov.uk

Alternative format versions of this report are available on request from 020 3334 4235 or Selma.fisher@justice.gsi.gov.uk

Contents

Introduction: British Overseas Territories and the role of the Ministry of Justice	3
Key challenges and current and proposed activities	5
Professional criminal prosecutors	5
Sentencing powers	5
Prison facilities and rehabilitation services	6
Court administration	7
Prison inspections	7
Establishing a virtual network of experts	8
Facilitating “twinning” between OTs and MoJ organisations	9
Developing options for officials from the OTs to take up work placements with MoJ agencies	9
Working with the FCO to establish New Governor Justice training programmes ahead of deployment to the OTs	9
Six monthly Justice and Home Affairs briefings for Governors	10
Collating and working with accurate statistics and information	10
Linking the Crown Dependencies and the OTs	10
Exploring options for the transfer of high risk prisoners to the UK mainland	11
Helping facilitate work with protected witnesses	11
Working with the Territories to expand the use of conditional discharges and community sentencing	12
Bribery and corruption	12
Alternatives to Court – Mediation and Alternative Dispute Resolution (ADR)	13
Proposed engagement over the next five years	14
The next six months	14
The next 18 months	14
The next 5 years	15

Introduction: British Overseas Territories and the role of the Ministry of Justice

There are 14 British Overseas Territories. The Territories have a unique relationship with the United Kingdom. They are constitutionally separate from the UK.

Each Territory has its own Constitution and its own Government and has its own local laws. As a matter of constitutional law the UK Parliament has unlimited power to legislate for the Territories. Territory Constitutions set out the powers and responsibilities of the institutions of government, which for most Territories include a Governor or Commissioner, an elected legislature and Ministers. Governors or Commissioners are appointed by Her Majesty The Queen.

All UK government Departments have a stake in some aspects of life in the territories and all are required to take the lead in their areas of expertise, ranging from protecting bio-diversity to civil aviation and combating drug crime to their involvement in the Olympic Games.

The constitutional relationship with the Territories means that the UK Government does not have direct responsibility for administering public services, (except currently exceptionally in the Turks and Caicos Islands) but UK Govt Departments have a duty to promote effective, accountable and democratic Government institutions and offer advice and assistance to the OTs where needed. The Ministry of Justice relationship with the Territories is primarily focused around helping enable them to maintain fair, effective and equitable justice systems.

Of the fourteen Overseas Territories, there are three uninhabited territories. The UK's Sovereign Base Areas on Cyprus are administered by the Ministry of Defence. The remaining Territories have their own constitutions and legal systems. They appoint their own judges and prosecutors, manage their own criminal and civil justice systems and are responsible for managing their own prisons and offenders. They each have directly elected legislative assemblies responsible for administering all but a few reserved areas of government. Territory Constitutions set out the powers and responsibilities of the institutions of government, which for most Territories include a Governor or commissioner, an elected legislature and Ministers. Governors or Commissioners are appointed by Her Majesty The Queen and in general have responsibility for external affairs, defence, internal security (including the police) and the appointment, discipline and removal of public officers.

However, under International Law the Territories are part of the UK, so they are represented on international institutions, such as the UN, by the UK Government. They are therefore bound by International law, such as the implementation of sanctions, through the UK.

All of the Overseas Territories work to the principles of the European Convention on Human Rights. Residents of the Territories have a right of appeal to the ECHR and the Governments of the OTs are bound to follow the requirements of the convention. Many of the Territories also have built into their constitutions a “bill of rights” setting out the fundamental relationship between the Government and its citizens.

Key challenges and current and proposed activities

The Overseas Territories face a number of challenges to their justice systems as a result of a range of factors. These include the size of the island populations (for example, the Pitcairn Islands have a permanently resident population of around only 46) as well as the physical size of the islands. For some, the difficulty is their geographical location in proximity to other population centres (Ascension Island is 1,600km from the coast of Africa), for others, such as the Caribbean OTs, drug smuggling routes from South America into the United States and Canada, create challenges for their justice systems.

The OTs have not been able to escape the financial downturn of the last few years and many of the Territories have seen considerable impact on their economies, especially in relation to their financial services and tourism industries. This has put increased pressure on public finances, and shortage of resources for the justice sector.

This chapter sets out some of the problems faced by the OTs, and what the MoJ and partner organisations are already doing to provide justice assistance. While there are considerable similarities in terms of the issues that they face there is significant variation in the delivery of justice institutions between the Territories.

Professional criminal prosecutors

In many of the OTs there is no separation between the police service and the prosecution service. This presents many problems for the justice system in the OTs and is felt particularly acutely in the Caribbean OTs where the justice systems deal with relatively large volumes of drug and gang related crime.

The lack of a dedicated prosecution service can lead to additional problems, especially when the defendants have access to considerable financial resources. Prosecuting police officers often lack advanced legal training and do not have the skills or experience to see through successful prosecutions, especially when the defence can afford to hire specialist defence lawyers.

The Crown Prosecution Service leads on work to develop the prosecution services in the OTs and has provided assistance in a number of cases and jurisdictions.

Sentencing powers

In the UK mainland the conditional discharge is a vital tool for magistrates to allow them to take a graduated approach with first time or minor offences. For such offences, it is often counterproductive to expose the offender to the higher penalties of the criminal justice system, such as a custodial sentence,

but in many of the OTs conditional discharges are not part of the sentencing powers of the judiciary.

This leaves judges in the Territories with few options but to pass a greater penalty than might otherwise have been given in jurisdictions with a wider range of alternative sanctions, particularly for minor offences.

The use of community sentencing and restorative justice in the OTs is also limited. This is often due to the fact that the facilities do not exist to carry out community punishments. However, small communities offer unique opportunities for community sentencing to be an effective alternative to custody. Communities can see justice being carried out and offenders are seen to be paying back to their communities.

As well as allowing communities to see justice being done, benefits from a “restorative justice” approach have the potential to be felt by a wide section of the community. We are already working with the Territories on an ad hoc basis to provide advice and best practice on taking forward alternatives to custody and are developing options to amend legislation, where there is a desire in the Territories to do so.

In many of the OTs there is no, or limited, capacity to deliver probation services to offenders to supervise their return into the community and monitor and support rehabilitation. MoJ and its agencies are already working with a number of the OTs to develop probation services, including the deployment of Parole Board staff to deliver training to staff from the OTs.

Prison facilities and rehabilitation services

The provision of prisons infrastructure in the OTs varies dramatically. Despite wide variations in the size of facilities (the prison on the Falkland Islands can hold 10 inmates whereas Bermuda can hold upwards of 300) there are a number of common issues that they share.

One of the main difficulties that the Territories suffer is overcrowding. Many of the prison facilities currently operate at an average of around 30% over-capacity, particularly in the Caribbean OTs where there are relatively large numbers of prosecutions for drug and gang offences.

Lack of capacity in the territories also leads to major problems when offenders receive long sentences, for example when two foreign national citizens were convicted of drug related offences in the Falkland Islands and sentenced to six years each. While this would be relatively inconsequential in a large prison system, these two prisoners occupied 20% of the Falkland Islands prison capacity for at least four years before being eligible for release.

Overcrowding of prisons can be exacerbated by the particularly high sentences passed by courts in the OTs, these coupled with a lack of non-custodial sentencing options, this can lead to significant pressure on the prison estate.

The size of the prison systems also poses additional problems for the OTs, namely the lack of services and provision for the rehabilitation of offenders. This can be problematic on many levels, from the provision of basic services to far more intensive and specialist programmes such as for sex offenders. Much of the work that is done in prisons and probation in the UK mainland simply cannot be replicated in the OTs as staff do not have the appropriate training or capacity.

Even basic provision of facilities can be challenging when Territories go through periods of having no one in custody at all, or prisons built for very small numbers of inmates. In some of the Territories, particularly in the southern oceans, prisons are extensions of police stations where there is neither the training nor the facilities for offenders to be imprisoned for significant periods of time. Provision of exercise facilities, training, rehabilitation and sometimes even in-cell sanitation can be challenging to arrange. It also places added pressure on police forces due to the need to supervise prisoners at all hours.

Often OT prisons do not have the facilities to hold high security or high risk prisoners securely or the infrastructure to provide separate facilities for women or juveniles.

The MoJ is working with the OTs to improve the prison infrastructure. There are two FCO-funded prison reform advisors working with the OTs: one covering the Caribbean OTs and Bermuda and the other covering the Southern Ocean OTs. They are employed to advise the islands on all aspects of their prisons system, advising on best practice and offering practical advice on training and development, as well as acting as a link between HMG and the OT prison services.

Court administration

Courts in the OTs often cover a wide range of cases but much smaller volumes than in equivalent courts in the UK. In some OTs, for example, the same court deals with minor offences and the most complex financial matters.

Expertise from the UK can be used to assist in the development of both staff and support systems. Support could be provided in the following areas – staff policies, expertise in training and in court processes, support in developing IT, assistance with recruitment of judiciary through the Judicial Appointments Commission website, development of court practice and procedural rules.

Prison inspections

In the UK mainland, a formal and independent inspection process to monitor standards in prisons – as with schools, hospitals and other public services – is vital to maintain high standards and ensure they are being delivered efficiently. In prisons this becomes particularly important to ensure that prisoners' rights are upheld and they are maintained in a respectful yet secure environment.

Largely due to the size of the communities in question, the OTs do not have any formal, independent, prison inspection system to support the maintenance of these standards.

As well as developing options for facilitating prison inspections on a more established basis, we will also look at the more fundamental questions, in consultation with HMIP and the Territories, over whether there should be a duty on HMIP inspectors to conduct inspections in the Overseas Territories as they do in the UK.

To date, much of the Ministry of Justice's work with the Overseas Territories has been in response to requests for assistance from either OT Governments or the FCO. This has often focused on specific, but wide ranging justice issues, from protection of vulnerable witnesses to the training of parole officers and providing advice on alternatives to custody.

To ensure longer term results in justice capacity building in the OTs, a more coordinated approach to technical assistance is needed, and a more accurate assessment of where scarce resources should be targeted. In consultation with the OT Governments, FCO, DFID, CPS and the Home Office, the Ministry of Justice will offer to assist in the development of five year justice plans for the OTs and establish clear, high level, objectives for justice assistance. This will strengthen links between MoJ officials, justice and prison advisors in the Territories and the Overseas Territories Directorate in FCO to take this work forward.

The MoJ will coordinate justice assistance work delivered by various partners from London, working closely with justice advisors in the OTs to ensure a joined up and well-planned approach. We will also explore options to create more formal working relationships with other Government Departments to work together to deliver common objectives with the OTs..

Establishing a virtual network of experts

In May 2011, the Foreign Secretary, the Rt. Hon. William Hague MP, called for the capacity and expertise of the UK to be made available to the Governments of the OTs. The MoJ will look at options to supplement the existing network of HMG justice advisors based in the OTs by providing access to justice experts in the UK.

We will also consider creating a "virtual network" of officials at the Ministry of Justice to provide additional support. Any such network should be designed to offer additional opportunities and experience to officials in the UK mainland and in the OTs that are cost neutral and mutually beneficial.

Facilitating “twinning” between OTs and MoJ organisations

The Ministry of Justice will also explore opportunities to build on existing twinning programmes between the justice operational arms of the OTs and their counterparts in the UK and Crown Dependencies, where this is desirable and achievable.

Long term twinning of institutions would enable the support and sharing of best practice to achieve longer term continuity. Whilst options will be explored and presented on the most effective way to achieve this, we envisage that schemes are likely to work at a local level between individual prisons or probation services.

Twinning programmes should be operated on a cost neutral basis and should not place significant additional burdens on any organisation.

Developing options for officials from the OTs to take up work placements with MoJ agencies

Alongside proposals for long term twinning of organisations in the UK and the OTs, we will look at how placement opportunities might be found for OT staff to work on the UK mainland for fixed periods.

It is not uncommon for OT prison staff, probation officers or magistrates and justice officials to come to the UK to see first hand the way that institutions function on the mainland. Such placements have already achieved significant results in developing capacity and expertise in many of the OTs justice systems.

Working with the FCO to establish New Governor Justice training programmes ahead of deployment to the OTs

Incoming Governors already possess a wealth of professional experience and knowledge. The FCO is developing an enhanced briefing programme for the Governors about their powers, duties and the constitutional and social makeup of the OT they are about to deploy to.

The MoJ will develop options to work alongside the FCO, developing a justice training/briefing programme to familiarise the Governors with a solid understanding of justice best practice. It is proposed that this training programme will cover the full spectrum of justice issues including responsibilities under the ECHR as well as best practice in parole, sentencing and rehabilitation. We will also highlight best practice and policy development in the UK justice system such as the use of community sentencing and recidivism reduction programmes.

The aim is to ensure that Governors take up their postings with a better working knowledge of the justice services and institutions in the UK and the OTs, so that they may more readily identify the strengths and weaknesses of the existing systems. Where weaknesses are identified, the training programme will furnish the Governors with enough basic knowledge of justice best practice to propose and implement change.

The programme will identify the support required from the MoJ to Governors once in post, and how this can be used to best effect. This support would remain ongoing through the network of justice and prison advisors operating throughout the OTs.

Six monthly Justice and Home Affairs briefings for Governors

The MoJ will continue to work with the FCO to organise biannual Justice and Home Affairs briefings and roundtables for the Governors of the OTs. We will build on past experience, working with the Governors to deliver targeted briefings and providing expert speakers to present on specific justice issues.

These meetings offer the opportunity to share best practice on key justice policies and build links and a coordinated approach to justice issues. Past meetings have covered a wide variety of subject matter including sentencing, youth justice, establishing parole services and combating gang crime.

We will consider how these meetings can be enhanced to deliver greater benefits, in consultation with the Governors..

Collating and working with accurate statistics and information

Sustainable and effective project plans for delivering justice assistance in the OTs require accurate data to plan how best to allocate resources and where to target assistance. MoJ has already taken steps to encourage the regular collation of prisoner data from the OTs through FCO prison advisors working in the OTs. This data will inform our planning for increased engagement with the OTs.

Linking the Crown Dependencies and the OTs

The MoJ will explore ways to promote and facilitate the links between the OTs and build a network of best practice and shared expertise between the OTs and the Crown Dependencies. The Crown Dependencies often face very similar justice issues to the OTs and have a wealth of experience in building a strong and effective justice system in small island communities.

The MoJ will continue to promote the sharing of best practice between OT and Crown Dependency Governments so that joint capacity and expertise can be built locally, without the need to rely exclusively on expertise from the UK mainland.

Exploring options for the transfer of high risk prisoners to the UK mainland

The Colonial Prisoners Removal Act (1884) already allows for the transfer of prisoners from one OT to another, or to the UK mainland, in certain limited circumstances. Such circumstances may include a significant risk of harm is posed to the prisoner or where the prisoner is a particularly high security risk.

Due to financial constraints, the MoJ has to date only been able to take prisoners from the OTs to serve their sentences in the mainland UK on a full cost recovery basis. This means that this option is expensive in many cases and is only used in extreme circumstances. There is currently only one prisoner from the OTs serving his sentence on the UK mainland.

We will work with the OT Governments to explore options to increase capacity in the OTs to deal with high security prisoners, with a focus on local capacity building including the training of prison staff, and consideration of a regional high security prison. We will also consider options for how the MoJ can make relocating prisoners to the UK mainland more cost effective for the OT Governments and a more viable option for the OTs where this is the only practical option.

Helping facilitate work with protected witnesses

Small communities, such as those in the OTs, can pose significant difficulties for protecting witnesses in some criminal cases. Often witnesses and the accused are familiar with each other and live in close proximity in the community. This problem becomes particularly acute in the prison system where the small and limited prison facilities in many of the OTs can make the separation of prisoners virtually impossible.

Often convictions in drug trafficking and gang crime cases are secured on the evidence of gang members already serving sentences. Whilst testifying against their former colleagues often secures a reduction in their sentence, it can put them at significant risk of reprisal.

The MoJ already works closely with OT Governments, the FCO and the Home Office to assist the OTs to protect vulnerable witnesses in criminal cases. Working with the Home Office, we have also facilitated the removal of a small number of vulnerable witnesses to the UK.

However, the most cost effective solutions for the OTs to protect vulnerable witnesses are local ones, and we will continue to work with the OT Governments to identify long term and sustainable solutions.

Protecting vulnerable witnesses is further complicated where the witness is yet to be sentenced. The removal of prisoners to another OT or to the mainland UK is governed by the Colonial Prisoner Removal Act 1884. The Act only provides for the relocation of witnesses from the OTs where they are already serving their sentence. This prevents the OT Governments from being able to move witnesses yet to be sentenced, in order to ensure their safety, unless they have specific consent to do so.

Working with the FCO and the Home Office, the MoJ is considering options to update the legislation governing the removal of protected witnesses and to ensure the safety of those concerned, relieving the pressure placed on prisons in the OTs.

Working with the Territories to expand the use of conditional discharges and community sentencing

Recent work with the Governors of the OTs has highlighted the limited sentences available to Magistrates in some of the territories. In particular, the absence of conditional discharges and community sentences as an alternative to custodial and financial sanctions.

The MoJ will work with the Territories to identify where there are shortfalls in the sentencing options available to the Courts in some OTs and develop options to support the Territories in enabling alternatives to custodial sentences where there is a desire from local Governments to do so.

This work will be taken forward as part of our overarching aims to support best practice and policy development in the OTs through linking up experts in the UK with officials in the Territory Governments. We will also explore whether the virtual officials' network and twinning programmes could be used to support specific projects, such as the drafting of enabling legislation, policy development, or the communications needed around changes in legislation, to expand the capacity available to enable the use of more community based punishments.

Bribery and corruption

The Ministry of Justice will explore with the Territories the possibility of extending the Bribery Act 2011 to cover their individual jurisdictions. Where this is considered desirable by the Territory Governments we will work alongside them to assess how this could be implemented and what the practical implications of enactment and enforcement would be.

Alternatives to Court – Mediation and Alternative Dispute Resolution (ADR)

Court proceedings can be a damaging process to individual relationships and litigation can breed animosity amongst members of small communities. Court litigation can also be expensive, restricting access to a just remedy, as well as being expensive for tax payers.

There are developments in some jurisdictions to use ADR rather than court proceedings to resolve civil and family disputes. This has been found to offer a quicker and more cost effective alternative to Court and can be a more amicable way of resolving disputes. We would be willing to explore ways in which we could assist the OT Governments to consider alternatives to Court litigation, ensuring fair and cost effective access to justice as well as helping to reduce the costs of the judicial system for Territory Governments.

The Ministry of Justice will continue to work with the Territory Governments to consider the use of mediation and ADR. Where needed, we will look at how the Ministry of Justice can support the development of ADR services in the Territories and highlight the significant benefits that this can bring. We will continue to share expertise and best practice with the Governors in ADR policy and source practical expert advice on implementation and operation of ADR services where required.

Proposed engagement over the next five years

The next six months

The Ministry of Justice already works closely with the Overseas Territories (OTs) to deliver a range of bespoke justice assistance in response to requests from individual Territory Governments. Work to date has included training on probation and parole to justice officials in the Caribbean, hosting a bi-annual justice seminar for the OT Governors and accepting high risk prisoners to serve their sentences in prisons in the UK.

Over the coming six months we will consolidate the work delivered in the Territories from across the Ministry of Justice, coordinating our work through a single point of contact for the OTs and UK Government colleagues. Through this, we will also consolidate our role within Whitehall in relation to the OTs, building relationships with other Departments and joining up the work of the Ministry of Justice with wider HMG objectives.

In addition to continuing to respond to the Territories' needs, we will begin to look at where we can put in place a framework for building longer term justice assistance networks. Proposals already being taken forward in the Ministry of Justice include building professional links between the Crown Dependencies and the Overseas Territories and delivering pre-deployment justice training for new Governors.

The next 18 months

Over the next 18 months we wish to engage directly with the Territory Governments, in partnership with the FCO, Home Office and local Prison Advisors, to assist them in the identification and planning of the individual Territories' long term justice objectives. This engagement should identify both Territory and UK Government justice objectives and start to plan how this will be achieved and to what timescale.

From these objectives we will be able to jointly plan how and when assistance is delivered and identify resources and funding. This will also enable the monitoring and assessment of progress in delivering the Government's intention to enhance support to the Territories.

By developing individual justice assistance programmes we will also be able to identify where assistance can be pooled on a regional basis to deliver assistance more efficiently. We are keen to identify where specialist hubs of justice excellence can be created and start linking up Territory Governments to share best practice and expertise on a more cost effective, regional basis.

We will also identify and establish links between individual Territories and organisations in the UK and the Crown Dependencies to start to establish long term twinning links. By building the bonds between UK based justice agencies and Territory Governments and organisations we will put in place a long term support network that should facilitate the sharing and dissemination of best practice and expertise on a cost effective and mutually beneficial basis.

This period will enable the Territory Governments to take greater ownership of the justice assistance programmes, both individually and regionally. The priorities for justice assistance must be identified and driven locally, and the Ministry of Justice will help facilitate and manage this process with the aim of each Territory having its own “Justice Development Plan”, identifying both long and short term objectives.

The next 5 years

The long term justice objectives set in the 18 month period will be completed or well underway within five years. Regular review meetings and close links will have been established between the Territory Government, the Ministry of Justice and other justice assistance providers.

Over the longer term, we hope to see justice assistance programmes delivered to individual Territories on a local or regional basis with development on specific justice areas being delivered from well established virtual regional hubs of justice expertise drawing on local experience and providing training on a regional basis. Well established links between UK-based justice organisations and the Territories will facilitate the regular sharing best practice and support and Territories will have the contacts in place to decentralise the way that Justice Assistance is delivered and advice sought.

The Ministry of Justice will continue to play a role in helping the Territories to identify justice objectives and access specialist training and assistance where needed.