

Legal Directorate

Business Plan
2012/13



Foreign &
Commonwealth
Office



'We conclude that one of the FCO's most important contributions to UK Government is in advising and representing it on matters of international law, with the aim of promoting the upholding of international law and UK compliance with it.'

[The Foreign Affairs Committee Seventh Report](#), 'The Role of the FCO in UK Government', 27 April 2011 (para 71)



This is the FCO Legal Directorate's Business Plan for 2012/2013.

Legal Directorate is the renamed "Legal Advisers". The change of name reflects the fact that in addition to the specialist legal cadre the Directorate includes a significant proportion of non-legal specialist and generalist staff advising on treaty, maritime, and parliamentary issues.

The Legal Advisers remain within the Directorate and retain their titles and role as part of a broader team.

***Part One** describes how the Directorate is organised and its aims.*

***Part Two** describes what the Directorate does, recording achievements from last year and challenges for next.*

***Part Three** highlights cross-cutting issues such as Parliamentary work, the FCO's litigation and engagement with the Overseas Territories.*

*Legal Directorate
Foreign and Commonwealth Office*

March 2012

Part One – The Directorate



There are over 70 staff in the Legal Directorate: lawyers, information, treaty and parliamentary specialists, communications and office managers and executive assistants. They advise on legal, treaty, maritime and some parliamentary aspects of the FCO's work.

Most lawyers are based in London. They are organised into four teams and advice to geographical directorates is split between the teams:

- *Counter Terrorism and Human Rights*
- *General Law and Litigation*
- *EU and Wider Europe*
- *International Institutions and Security Policy*

Individual lawyers are also co-located with clients in Consular Directorate, Information Management Group, Human Resources and Corporate Procurement Group.

Other members of the Directorate provide support to the legal teams or work in Treaty Section, the Legal Library, Maritime Policy Unit, ECHR Registry and in Office Management, Communications and Parliamentary work.

In addition, a number of lawyers serve as members of FCO posts overseas in:

- *UKRep Brussels*
- *UKMis Geneva*
- *The Hague*
- *UKDel Strasbourg and*
- *UKMis New York*

A number of lawyers are currently seconded to the EU and a senior lawyer is seconded to the Attorney General's Office.

Legal Directorate's Objectives:

- ❖ To provide accurate, prompt and policy-aware legal advice, fitted to the needs of the FCO Ministers and the wider Office, on all aspects of the work of the FCO
- ❖ To provide advice, information and treaty services to the FCO and other Government Departments
- ❖ To advance UK interests across the spectrum of maritime policy issues
- ❖ To ensure that these services are provided in accordance with FCO and Government procedures and processes, respecting management, security and budgetary requirements

Organisation and Management

Legal Directorate is headed by the Legal Adviser, Iain Macleod, and four Deputies: Chris Whomersley, John Grainger, Cathy Adams and Martin Hemming.

The Directorate Management Committee consists of representatives from each team and meets every two weeks.

Staff Survey 2012

Everyone in the Directorate responded to the FCO's 2011 staff survey. There is strong pride in working for the FCO and reasonable scores for Learning and Development, but there is still work to be done in some areas.

An all-staff meeting was held in January 2012 to consider what steps need to be taken to address areas of concern, and action on this is now underway.

Learning and Development

The Legal Advisers Training Group (LATG) has been established to supervise and organise learning and development for the Directorate. Priority areas include revision of the Legal Directorate induction programme and the handbook and production of a comprehensive training plan. LATG will also:

- Liaise with other FCO Directorates and Government Departments with a view to organising/hosting joint events
- Provide information on training opportunities
- Create a database on training information
- Organise in-house training events
- Represent the Legal Directorate on training and development on HR's Learning and Development Committee

Legal Awareness in the FCO

A priority for 2012/2013 is to put in place a comprehensive legal training programme for the FCO, covering:

- Substantive areas of law (eg on human rights, EU law and the overseas territories)
- Legal processes and procedures (eg handling litigation)
- Treaty practice
- Working with Legal Advisers

We aim to provide this training initially through a combination of seminars and e-learning, drawing on best practice from around the FCO and the Government Legal Service.

Broader Engagement on International Law

A key part of the Directorate's role is to enhance the rule of law, especially international and EU law, in policymaking across the FCO and Whitehall and to maintain its high reputation as a source of thinking, ideas and expertise on international and EU law worldwide.

The Directorate's aims for 2012/2013 and coming years will include:

- (a) Working with colleagues in the Government Legal Service to increase knowledge of and good practice in international law across Government, particularly through training programmes, but also by interchange of personnel and expertise;
- (b) Working with international and EU lawyers in the UK outside Government service to increase awareness of each other's areas of work and expertise and to identify issues on which we can work together to enhance the rule of law internationally.

Examples of this broader engagement in 2011/2012 included:

Training courses and lectures delivered by Legal Directorate:

- University visits to talk about and promote work of FCO
- Speech to law students on the subject of working internationally in law at an American Bar Association event at Kings College Law School
- Participation in the Investment Treaty Forum, part of the British Institute of International Comparative Law (BIICL), on issues affecting the public international law on investment
- BIICL seminars on consular and diplomatic law and practice, and on reservations to treaties
- A talk to students at Reading University on Law and Diplomacy LLM
- Organisation of the Cambridge International Law Course
- Talks at Government Legal Service training events on issues such as international law in the domestic courts, the European Court of Human Rights and European Court of Justice

- A series of talks to Counter Terrorism Department on 'Contract Law and Accountable Grant Agreements'
- A talk on 'Applications to the European Court of Human Rights' at a Ministry of Justice organised Human Rights Seminar
- Joint hosting of a seminar on 'Parliamentary Scrutiny of EU Law Legislation' with the Parliamentary and Communications Team
- Hosting of the annual Maritime Policy Unit cross-Whitehall seminar covering law of the sea issues
- Lectures on law of the sea/maritime security at the Summer Academy 2011, at the International Tribunal for the Law of the Sea, Hamburg
- A presentation at the 2011 Greenwich Forum Symposium concerning 'Solving the Maritime Piracy Problem: Public and Private Initiatives'
- Organisation of a Whitehall-wide training course on Sanctions
- Speeches at Chatham House and Columbia University School of Law on the extra-territorial jurisdiction of the European Convention on Human Rights
- Participation at Council of Europe Seminar in Kiev to discuss effective national implementation of Human Rights obligations
- Joint seminar of the US Supreme Court and European Court of Human Rights at George Washington University Law School on the two courts roles in their respective judicial systems

Publications

- 'British Overseas Territories Law' (2011 Hart Publishing) **by Ian Hendry and Susan Dickson**
- Paper published in the TMC Asser Institute Centre for the Law of EU External Relations (CLEER) Working Paper on the European Union's external relations a year after Lisbon (Working Paper 2011/3) **by Ivan Smyth**
- Chapter on the 'Recent legal issues and problems relating to acts of piracy off Somalia', in a book titled 'Selected Contemporary Issues in the Law of the Sea', C. Symmons (ed), Martinus Nijhoff Publishers (2011) **by Andrew Murdoch**

We intend to continue and step up this engagement in the coming year.

The Directorate also has close links with academic institutions such as the British Institute of International and Comparative Law, the Lauterpacht Centre for International Law at the University of Cambridge, the International Law Programme at Chatham House and other universities. In the coming year, we plan:

- To launch a revitalised series of "academic seminars" – opportunities for dialogue and exchanges of ideas with international law academics and practitioners, building on a seminar on Jurisdictional Immunities of States held in March 2012
- To look for ways of increasing the pool of barristers and lawyers in private practice available to take on international law work for the Government
- To enhance links with universities and societies of international law in the UK

Part Two: The Teams



This team's work directly contributes to the first of the FCO's Foreign Policy Priorities: Safeguarding Britain's national security

The CTHR work includes the Middle East, Counter-Terrorism, Human Rights and Democracy and the European Court of Human Rights Litigation. The focus for 2011 has been on **The Arab Spring crisis, and European Court of Human Rights Reform.**

The team worked on the Libya and Syria crises where they advised on a wide range of issues including UN Security Council resolutions; aspects of the NATO operation; and relations with the opposition. They also worked closely with senior management and Ministers on the legal implications of the storming of the British Embassy in Tehran.

"We see human rights as essential to and indivisible from our foreign policy objectives. There will be no downgrading of human rights under this Government and ... I intend to improve and strengthen our human rights work."

Foreign Secretary, William Hague, 15 September 2011



The team is supported by the ECtHR Agents Support Unit (EASU) who process ECHR cases and deal with Rule 39 communications from the ECtHR. Last year 35 Rule 39 communications were actioned. EASU also deal with all administrative issues

The team has worked on:

- ✓ **Human rights work**- the team act as Agents in all cases against the UK in the European Court of Human Rights and a team member is Chair of the Council of Europe Steering Committee for Human Rights.
- ✓ **Reform of the European Court of Human Rights**
The team is involved in negotiations to reform the Court.
- ✓ **Cyber Conference** - A key priority for the Foreign Secretary in 2011/2012 was the National Cyber Strategy, including a Conference in London.



In 2011 the team helped present the UK's position in important cases before the European Court of Human Rights, dealing with issues such as:

- ✓ the extra-territorial application of the Convention
- ✓ the Government's Deportation with Assurances policy and
- ✓ Prisoner voting



- ✓ ***Torture Reporting Guidance/Overseas Justice and Security Assistance Guidance*** - The team worked with Human Rights and Democracy Department in drafting guidance for all HMG staff:

- on how to report allegations or concerns about torture or other mistreatment; and
- on assessing and mitigating human rights risks when providing security or justice assistance overseas.



Priorities for 2012/13:

- ***Reform of the European Court of Human Rights (ECtHR)*** UK as Chair of the Council of Europe – the team is assisting in preparations for the Ministerial conference in Brighton.
- ***Stabilisation in Arab Spring countries, in particular Syria, Libya and Egypt***
- ***ECtHR cases:*** Judgments expected on extradition to the USA, the evacuation of Chagos islanders from BIOT and state immunity.
- ***Steering Committee for Human Rights*** – the team will continue to provide the Chair for the committee.
- ***Litvinenko*** – participating, as necessary, in the coronial inquest into the death of Alexander Litvinenko.
- ***Human Rights*** - providing legal advice in support of human rights activity in the UN system, in the Human Rights Council and the United Nations General Assembly Third Committee, and in the EU.
- ***Counter-Terrorism*** - working on Deportation with Assurances (DWA) cases and possible extension of DWA arrangements to new countries. Implementing the Victims of Terrorism Overseas Compensation Scheme.



General Law and Litigation Team

This team has the broadest range of work of all the teams and contributes to all three of the FCO's priorities:

- Work on litigation and inquiries, which focuses primarily on counter terrorism, helps to **safeguard Britain's national security**.
- Work on air services, the law of the sea and consular issues contributes to **building Britain's prosperity**.
- Consular work is vital in the **support of British nationals around the world**.



The work of the team includes Litigation (see page 25 for more information), Overseas Territories, Consular, Protocol and Treaty services.

The focus during 2011 was on consular work during the Arab Spring crises, as well as:

- ✓ Detainee Inquiry
- ✓ Saudi Prison Transfer Agreement
- ✓ Working on new constitutions for British Overseas Territories
- ✓ Attending sessions of the International Law Commission in Geneva
- ✓ Representing the UK in the Sixth Committee of the UN General Assembly
- ✓ The Foreign Compensation Commission

Priorities for 2012/13:

- *Assisting with the introduction of legislation for handling sensitive material in a range of civil claims following publication of the Green Paper on Justice and National Security*
- *Publication of a new legal and policy framework setting out the FCO's duty of care to its staff*
- *Ensuring optimal conditions to enable the new Turks and Caicos Islands Constitution Order to come into force*
- *Completion of new Air Services agreements with several key overseas partners*
- *Negotiation of a Prisoner Transfer Agreement with the UAE*
- *Implementation of a Victims of Terrorism overseas compensation scheme*
- *Publication of a White Paper setting out a new vision for the relationship between the UK and Overseas Territories*
- *Assisting Protocol Directorate in the introduction of new arrangements for the handling of inward special missions and with the Olympics*



EU and Wider Europe Team

This team's work directly contributes to the second of the FCO's Foreign Policy Priorities: Building Britain's Prosperity

- ✓ *Work on EU issues helps advance the British national interest through an **effective EU policy in priority areas**, engaging constructively while protecting our national sovereignty*

The work of the team includes legal advice to FCO Directorates which cover Europe, Prosperity, Communications, Migration and Parliamentary Relations. It also provides legal support to the Department for Business, Innovation and Skills on international investment law and the Department for International Development on EU and International Law.

The focus of the team's work for 2011 has been **The EU Act 2011**. The Act delivered key EU-related policy objectives such as:

- reducing the democratic deficit in relation to the EU
- enhancing the role of Parliament and
- providing for the holding of national referendums in respect of future changes to the EU Treaties



Priorities for 2012/13:

- **Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (SCG Treaty)** - ensuring that the UK's interests are protected in respect of the negotiations on the intergovernmental agreement
- **Legislation** - ensuring the successful passage through Parliament of the Bills to approve the amendment to Article 136 of the Treaty on:
 - The Functioning of the European Union (European Stability Mechanism)
 - The accession of Croatia to the EU
 - The decision allowing for an increase in the number of Commissioners to one per Member State
 - Approval of the Protocols giving effect to guarantees/assurances given to the Czechs and Irish during the Lisbon Treaty negotiations
- **European Court of Justice** - appointment of a new UK judge to the ECJ and the successful conclusion of negotiations on reform of the ECJ and General Court
- **External representation** - ensuring that implementation of the General Arrangements for EU Statements in multilateral organisations enables a strong EU voice whilst protecting the UK's foreign policy objectives and ability to act independently in areas within its competence
- **Parliamentary Scrutiny of EU matters** - negotiation of new terms of reference and scrutiny reserve resolution for the House of Commons European Scrutiny Committee



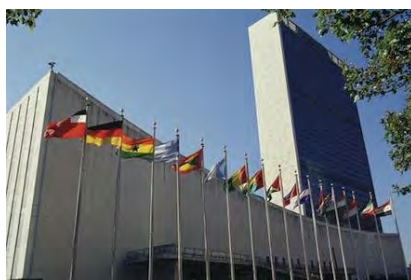
International Institutions and Security Policy

This team's work contributes primarily to the first of the FCO's Foreign Policy Priorities: Safeguarding Britain's national security

The team works on multilateral policy (including sanctions and war crimes), Defence and International Security, South Asia and Afghanistan, Africa and Asia Pacific.

A primary focus of the team's work for 2011/12 has been the Arab Spring crisis. In particular the team played a key role advising on:

- the establishment and implementation of the sanctions regime for Libya, Syria, Tunisia and Egypt
- the arms exports control review which assessed the effectiveness of the UK export licensing system after the Arab Spring



The team's other work over the last year has included:

- ✓ **Terrorism Sanctions** – roll over of the UN Security Council Al Qaida and Taliban sanctions regimes and handling the crucial *Kadi* litigation in the European Court of Justice which threatens the integrity of the UN targeted sanctions.
- ✓ **Somalia** - advice on a range of issues including legal support to the Somalia conference.
- ✓ **Piracy** – advice on armed guards on merchant ships, targeting pirate infrastructure and negotiating MoUs on prosecution and prisoner transfer.
- ✓ **Afghanistan** – in particular advising on UK detention policies in light of recent ECHR judgements.



Priorities for 2012/13:

- Defending UN and EU sanctions regimes in the domestic and EU courts
- Preparing secondary legislation to implement new and revised sanctions regimes
- Reviewing existing sanctions regimes in line with the "**better sanctions**" agenda to ensure they are more legally robust
- Advising on the negotiations for an **Arms Trade Treaty**
- Preserving the UK's position on the **confidential nature of intelligence** before the ECJ and other international tribunals
- Continuing to ensure that our **detention policy in Afghanistan** is legally robust
- Supporting FCO's policy Counter Proliferation Department on **proliferation** issues, especially in relation to Iran.
- Advising on the international legal framework for **outer space**
- Working with the CTHR team, ensuring that multilateral policy on Syria and other Arab Spring countries takes full account of international law



The Foreign and Commonwealth Office is the lead government department on the UN Convention on the Law of the Seas (UNCLOS). The FCO Maritime Policy Unit, a team of three supervised by one of the Deputy Legal Advisers, is responsible for policy on maritime issues, in accordance with UNCLOS.

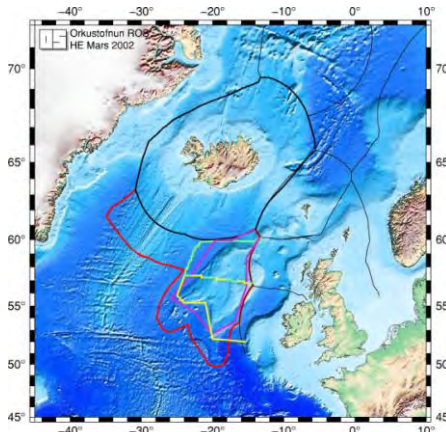
It works closely with other Government Departments with an interest in the oceans and maritime issues such as the Department for Transport, the Ministry of Defence, Department for the Environment, Food and Rural Affairs and the Department for Culture Media and Sport (DCMS), covering a range of issues that includes:



- Shipping
- The environment
- Scientific research
- Whaling and
- Underwater cultural heritage (submerged wrecks)

In 2011, the Maritime Policy Unit has:

- ✓ Concluded an Agreement with the French on the delimitation of an Exclusive Economic Zone, through an Exchange of Notes
- ✓ Introduced an entirely digital system for processing and storing marine scientific research applications to replace the old paper-based system
- ✓ Hosted an international meeting of major maritime powers, as well as a meeting of Government Departments to discuss current issues related to the Law of the Sea



Priorities for 2012/13:

- Progress negotiations with Ireland, France and Spain on the delimitation of an extended continental shelf area
- Conclude bilateral negotiations with a further five neighbouring states to the UK over an Exclusive Economic Zone boundary
- Introduce an on-line, self-service system for the process of applications for marine scientific research in UK waters
- Secure International Seabed Authority approval for environmental safeguards covering deep seabed mining in environmentally sensitive areas



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Treaty Section

“Woe to those who do not respect treaties!”

Napoleon Bonaparte, March 1803

*Treaty Section is organised into two teams covering **treaty procedures and publishing** and **Information and depositary work**. Its role is:*

- to supervise the conclusion of treaties by the UK
- to advise and assist with the form and content of draft treaties
- to maintain an information and enquiry service
- to act as a depositary for 36 multilateral treaties
- to ensure that the provisions of the Constitutional Reform and Governance Act 2010 as it applies to the ratification of treaties are upheld

Treaty procedures and publishing

- ✓ This includes the key treaty stages of drawing up:
 - Full Powers (authority to enable signature of treaties for the UK)
 - Instruments of ratification and equivalent documents
 - Publishing treaty texts before parliament as Command papers and
 - Registering them with the United Nations Secretariat



At any given time Treaty Section deals with multiple treaties at different stages of implementation. In 2011 members officiated at 11 treaty signature ceremonies in London, and supported signature events at UK posts abroad. Some of these signatures included:



- multiple signings of treaties and MoUs during the Chinese State Visit in June
- important bilateral treaties such as:
 - the Tax Cooperation Agreement with Switzerland in October and
 - the defence Agreement with Turkey in November

In the same period Treaty Section prepared ad-hoc Full Powers for the Foreign Secretary to authorise 20 individuals to sign treaties on behalf of the UK. It prepared a further 15 ratification or accession instruments to treaties and ensured that they were deposited with the respective treaty authorities.

Information and depositary work

The Section has a publications budget of £50,000, and in 2011 published 70 treaties, the majority of which are in force for the UK.



[“UK Treaties Online”](#) is a database of treaties hosted on the FCO website. These records of the UK’s treaty commitments date back to the 1830s and form the cornerstone of the section’s enquiry and information service, supplemented by an archive of published reference works.

Treaty Section’s extensive records are a key source of information, and were used for requests from the governments of India, Iraq, Nigeria and Kosovo for details of bilateral treaties that are applicable between themselves and the UK.

Priorities for 2012/13:

- *To adopt revised working practices including more flexible working and a renewed focus on training and development*
- *To improve the effectiveness and outreach of the section’s information systems*
- *To identify opportunities to engage proactively with FCO and OGD clients, Parliament and other contacts wherever possible*



No possession can surpass, or even equal a good library

John Alfred Landford (1823-1903)

The FCO's Legal Library is staffed by qualified and experienced information professionals who are part of the FCO's network of Knowledge and Information Management specialists.

It provides a legal information and enquiry service to Legal Directorate and the wider FCO and shares information and resources with legal information services in other government departments.

Legal Information

The Legal Library maintains and develops collections of legal information resources for use by Legal Directorate and others, including:

- A comprehensive collection of print materials - legal textbooks, journals, yearbooks and legislation of the UK and the Overseas Territories
- Desktop access for all lawyers to UK, European Union and international legal resources through databases such as Westlaw, Lexis Library and Justis



In addition the team develops in-house online information resources, including International Law pages for use by Government Legal Service colleagues on the LION website.

Enquiries and research

The Legal Library's information and research work includes the provision of current awareness alerts and an enquiry service answering queries ranging from requests for journal articles, cases or legislation to substantial pieces of research.

Information requests dealt with by the Legal Library over the past year included research into:

- UK statements and policy on the recognition of governments and states
- the form and process of issuing a Foreign Office certificate to recognise a new government
- diplomatic immunities for family members of Heads of State
- details of ECHR judgments and communicated cases on deportation
- legislation outlining the role of the Attorney General of St Helena
- multilateral treaties on human rights to which Afghanistan is a party
- the definition of torture under customary international law

The Library also supplied copies of legislation, law reports, journal articles and other material on topics including:

- ✓ the reform of the European Court of Human Rights
- ✓ the international legal regime on outer space
- ✓ the rules of procedure and evidence of international courts and tribunals
- ✓ Palestinian statehood
- ✓ cyber warfare
- ✓ the International Criminal Court's role in deterring war crimes and crimes against humanity



Knowledge Management

The Legal Library runs the Legal Advice Database, set up in September 2011 with the aim of storing key advice given by the Legal Advisers and making it easy to search for and retrieve. New advice is added to the database every week, creating a collection of in-house knowledge and expertise for future use.

Priorities for 2012/13:

- *Ensure FCO staff are able to access high-quality, accurate legal information*
- *Continue to develop use of electronic resources, with better training and user guides to help staff make the most of available information*
- *Create a Legal Directorate's SharePoint site as a single point of access for online legal information*
- *Keep the collection of print materials up-to-date and relevant*
- *Continued development of the Legal Advice Database*



Office Management Section is headed by Seb Kay and its objective is to deliver high quality financial, information and administrative management for the Legal Directorate. Its main priorities are:

Financial services

- ✓ manage financial resources in accordance with the FCO's Foreign Policy Priorities
- ✓ procure goods or services
- ✓ process and pay invoices



Information services

- ✓ act as first point of contact in the United Kingdom under the European Convention for Information on Foreign Law (ECIFIL)

Administrative services

- ✓ provide a first induction for new staff who join the department
- ✓ troubleshoot general IT related queries
- ✓ manage office equipment and furniture requirements
- ✓ maintain departmental security
- ✓ provide annual administrative returns

Priorities for 2012/13:

- *Tighter control on financial management*
- *Improve Departmental Security*
- *Develop and test our Business Continuity Plan*
- *Complete the office relocation project*



A small group of lawyers work in our missions overseas. They are:

Kate Jones, Legal Adviser at the UK Delegation to the Council of Europe, Strasbourg

The work of the UK Delegation to the Council of Europe is currently focused on delivery of and follow-up to the UK's Chairmanship of the Committee of Ministers of the Council of Europe. This six month stint occurs once every 24 years and is a unique opportunity for the UK to lead the Council of Europe. As Deputy Head of the Delegation, Kate is closely involved in all its work, particularly in:

- ✓ achieving priorities on reform of the European Court of Human Rights
- ✓ combating discrimination on the grounds of sexual orientation and gender identity
- ✓ strengthening the rule of law and promoting internet governance



Kate Jones also represents the UK at the Committee of Ministers when it oversees the execution of judgments of the European Court of Human Rights, and negotiates for the UK on human rights and justice issues.

Kanbar Hosseinbor, Legal Adviser at the British Embassy, The Hague



As legal adviser to the embassy in The Hague, Kanbar Hosseinbor leads the international law team there. He provides strategic direction and leadership with respect to the UK's engagement with Hague-based international organisations, including:

- ✓ the International Criminal Court
- ✓ the International Criminal Tribunal for the Former Yugoslavia
- ✓ the International Court of Justice
- ✓ the Special Tribunal for Lebanon
- ✓ the Permanent Court of Arbitration and
- ✓ the Hague Conference on Private International Law

Diana Brookes, Eleanor Hourigan and Indira Rao, Legal Advisers at the UK Representation to the EU, Brussels



The UKRep legal team of three - Diana Brookes, Eleanor Hourigan and Indira Rao - provide legal advice to the Permanent Representative, the Deputy Permanent Representative, the Political and Security Committee Representative and each of the UKRep Counsellors and all members of their teams. They also advise and help bring together thinking across UKRep sections on cross-cutting/horizontal issues that raise legal questions such as Treaty change and EU external relations.

The team maintains close contacts with the legal services of the institutions in order to obtain views from and influence thinking by those legal services on dossiers of importance to the UK.

Theo Rycroft, Legal Adviser at the UK Mission to the UN, Geneva

The UKMis Legal Adviser, Theo Rycroft, has responsibility for legal-policy issues arising in UKMis's work across Geneva, as well as giving legal advice to UKMis colleagues in their areas of responsibility. In particular:

- ✓ At the UN Human Rights Council (HRC), leading negotiations for the UK on resolutions with high legal content and advising colleagues on legal issues arising in the HRC
- ✓ Representing the UK on the Governing Council of the UN Compensation Commission
- ✓ Implementation, in all Geneva based International Organisations, of agreed and effective post-Lisbon EU working arrangements which protect against competence creep or crossing other UK red lines
- ✓ Engaging with ICRC legal advisers on International Humanitarian Law issues which are of concern to the UK
- ✓ Engaging with the extensive international law community in Geneva and arguing for UK positions on key international law issues.



Paul McKell and Jesse Clarke, Legal Advisers to the UK Mission to the UN, New York

The UKMIs New York Legal Section provides legal advice to the Permanent Representative and his team on all the work of the Mission. They are responsible for a range of legal policy areas, including:

- ✓ the international criminal tribunals
- ✓ the law of the sea
- ✓ the work of the Sixth Committee

They also support and advise on issues arising in the Security Council.





Lawyers co-located with FCO Policy Teams

Four lawyers work directly for FCO Policy Directorates. Their work helps support the delivery of policy work and joins up the legal with the policy teams.

Information Management Department (IMD)

IMD's Legal Adviser, Barry Proudfoot, who is also Head of the Information Rights Team, provides advice and assistance to colleagues inside the FCO and beyond on Information Rights issues such as the Freedom of Information Act, the Data Protection Act and the Environmental Impact Regulations. Advice and assistance is also given on related issues such as Copyright and Confidentiality.

The work of the IMD Legal Adviser includes:

- oversight of the FCO's appeals at the Information Tribunals
- providing general and bespoke training to FCO staff
- providing training within the Government Legal Service and
- representing the FCO at cross Whitehall level on Information Law issues



In the next year, the IMD Legal Adviser will be involved in the development of digitisation of case files this is aimed at improving the handling of and access to case files.

Consular Directorate

The Consular Specialist Legal Adviser is Karen Morgan-Read. Her role is to provide advice and guidance to consular staff in London and overseas on the wide range of UK domestic legal issues which arise in the course of consular work. This includes advice on:



- UK criminal law
- UK family and children law issues
- Public law
- Data Protection and Freedom of Information issues
- Prisoners
- Child abduction
- Forced Marriage
- Mental Health law including issues around capacity

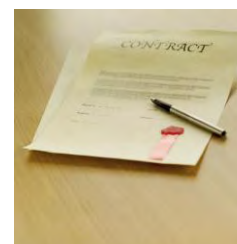
As well as delivering case-specific advice Karen is also developing specific consular policy and guidance on cases where individuals (both adults and children) are being forced to live contrary to their wishes. Over the next six months she will be advising and reviewing Rape and Sexual Assault guidance to explore ways in which vulnerable victims can be assisted further.

She sits as part of the Family Justice Council and seeks to promote the work and priorities of the FCO through this and regular dialogue with other Government Departments and legal groups.

Corporate Procurement Group

The Commercial Legal Adviser is Leila Pilgrim. Her role is to provide advice and guidance to the Corporate Procurement Group and to the FCO in general on a wide range of commercial matters. This includes advice on:

- Strategic and operational public procurement matters relating to projects in the Security, Estates and other areas of FCO activity (in the UK and at posts)
- Strategic and operational matters relating to FCO's grant funding programmes
- Representing the FCO in cross-Whitehall preparation for the negotiation of new public procurement directives in the EU
- Corporate matters (Governance, compliance with various legal requirements)
- Legal risk management (e.g. risks relating to potential litigation, reputation, engagement with business as part of Commercial Diplomacy or generally)



In addition to providing project and case specific advice the Commercial Legal Adviser is directly involved in developing specific public procurement policy and guidance, delivering training within the Corporate Procurement Group and to FCO Corporate Services Managers. She also leads a team in the Procurement Transformation Programme and attends the Procurement Working Group, which is a specialist group of commercial lawyers in Government.

Human Resources

The Employment Law Adviser is Peter Walter. His role is to provide advice and guidance to HRD, HR Managers, Directorates and senior FCO managers on the rapidly changing field of employment law and internal FCO employment policies in respect of UK based staff serving both at home and overseas.



As well as delivering general and case-specific advice the Employment Law Adviser's team manages employment tribunal claims against the FCO in liaison with Treasury Solicitors.

The Employment Law Adviser also represents FCO at the Treasury Solicitor's cross-Government Employment Law Working Group.

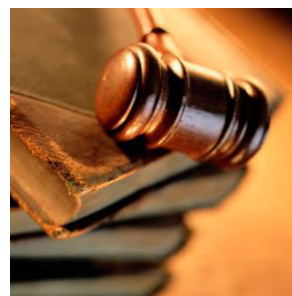
Part Three: Cross Cutting Themes



The FCO appears before a variety of domestic and international courts and tribunals. Our lawyers handle cases before the European Court of Human Rights on behalf of the Government

- We defend civil cases brought against the Foreign and Commonwealth Office in our domestic courts and tribunals and assist other Government departments to defend civil claims against them.
- We act as Agent for the Government of the United Kingdom before the European Court of Human Rights, the International Court of Justice and international tribunals
- We contribute to the presentation of the UK's position before European Court of Justice as well as leading policy in relation to the Court.

Our litigation work involves very close cooperation with other Government departments and agencies and with the Treasury Solicitor, First Treasury Counsel and the Attorney General's Panel Counsel.



In 2011

- The total number of domestic cases was 166
- The total number of new cases against the United Kingdom before the European Court of Human Rights reached 52
- The approximate spend for litigation was £1,180,000.00
- We are currently assisting the Home Office with 19 cases before the Special Immigration Appeals Commission
- And we are currently handling five cases before the Information Tribunal

Highlights Included:

- *Defending the Home Secretary's decision to deport Abu Qatada before the European Court of Human Rights*
- *Handling a range of highly sensitive cases brought by individuals detained abroad for counter terrorism purposes, including civil claims for damages and the seeking of disclosure of sensitive material under Norwich Pharmacal principles*
- *Defending the United Kingdom in the arbitration brought by Mauritius under UNCLOS challenging the establishment of the Marine Protection Area around British Indian Ocean Territory*
- *Defending the FCO in claims alleging the involvement of the UK Government in mistreatment of detainees during the Mau Mau Emergency in Kenya in the 1950s*
- *Representing the United Kingdom in the Al Skeini and Al Jedda litigation which considered the application of the European Convention on Human Rights to the actions of UK armed forces overseas*



The General Law Team provides advice on a range of issues relating to the Overseas Territories. The UK Government has extensive responsibilities for its 14 Overseas Territories (OTs):

- Anguilla
- Bermuda
- British Antarctic Territory
- British Indian Ocean Territory
- Cayman Islands
- Falkland Islands
- Gibraltar
- Montserrat
- Pitcairn Islands
- Sovereign Base Areas in Cyprus
- St Helena, Ascension and Tristan da Cunha
- South Georgia and the South Sandwich Islands
- Turks and Caicos Islands
- Virgin Islands



Recent work has included:

- ✓ The conclusion and drafting of new constitutions for Montserrat and the Turks and Caicos Islands.
- ✓ Advising on all legal aspects of the partial suspension of the 2006 Turks and Caicos Islands Constitution following a Commission of Inquiry which found a high probability of systemic corruption in government and the legislature and among public officers in Turks and Caicos Islands in recent years
- ✓ Extension on a permanent basis of the right of individual petition to the European Court of Human Rights in all the Overseas Territories to which the ECHR applies



Priorities for 2012/13:

- *Contributing to the smooth return to elected democracy and financial stability in the Turks and Caicos Islands*
- *Advising on legal aspects of the Government's White Paper on the Overseas Territories*
- *Assisting with preparation for outstanding extension of the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) to all permanently populated OTs*
- *Providing legal advice in respect of the UK's sovereignty over the Overseas Territories*
- *Defending legal challenges brought against the UK Government in relation to the Overseas Territories, e.g. in relation to the British Indian Ocean Territory*
- *Advising on legal aspects of the Government's White Paper on the Overseas Territories*
- *Training for FCO officials on the law of the Overseas Territories*



Parliament

Legal Directorate is heavily involved in the FCO's engagement with Parliament, from preparing legislation through to clearing and advising on statements and Parliamentary Questions (PQs). Important areas of work in 2011/2012 included:

Primary legislation (Bills and Acts)

The FCO is responsible for less primary legislation than some other Government departments, but in 2011, the EU team played a leading role in work on The European Union Act 2011.



Freedom of Information (FOI)

Office Management Section is the central point of contact for FOI requests regarding legal issues. In 2011 Legal Advisers received 18 FOI requests for information on various subjects. These were normally requests for information on individual cases or for details on amounts spent for legal fees. All FOI requests were responded to within the time permitted.

Statutory Instruments (Secondary Legislation)

The Parliamentary Manager submitted 36 Statutory Instruments to Parliament in 2011, all in the form of Orders in Council. These covered:

- Changes to Consular Fees
- Civil Aviation
- Disbanding the Irish Sailors and Soldiers Trust
- Changes to Terminology in Treaty of Lisbon Bill
- Child Abduction
- Sanctions regimes relating to Belarus, Egypt, Libya, Iran, Syria and Tunisia
- implementing obligations to arrest persons indicted by the International Criminal Court in relation to crimes in Libya

Parliamentary Questions

The FCO receives numerous Parliamentary Questions concerning international legal issues and Legal Advisers, working closely with their Departments, provide advice on these questions.

In 2011, Legal Directorate received 37 PQs. These included:

- the numbers of Statutory Instruments introduced and revoked
- what qualifies a state to be recognised by HMG
- the hourly rate paid to external barristers and solicitors in 2010-11
- how much the department has spent on legal advice and instructing counsel

- what percentage of the Earth's land mass is not recognised as being part of a state or country
- what our policy is on UK accession to the 2011 UNESCO Convention on Protection of the Underwater Cultural Heritage

Command Papers

Treaty Section arrange for all Treaties signed by the United Kingdom to be published as Command Papers and laid before Parliament for 21 sitting days, where a treaty is subject to ratification or its equivalent.

Command Papers are accompanied by an Explanatory Memorandum (EM) which brings to the attention of Parliament the main features of the treaty concerned. Explanatory Memorandums are prepared by the Department which has the main policy interest and are signed off by their Ministers.



The amount of detail provided may vary from case to case depending on the length and complexity of the treaty. Treaty Section will check that the format of the EM is correct and ensure that it is laid at the same time as the Command paper to which it refers. The Foreign Affairs Committee routinely receive individual copies of treaties and EMs as do other Parliamentary Select Committees where these are relevant to their subject-interests.

Treaties are laid before Parliament in one of the following series of Command Papers:

- ✓ Country Series (for bilateral treaties)
- ✓ Miscellaneous Series (for multilateral treaties)
- ✓ European Union Series (this series is reserved for the text of EU treaties requiring ratification approval or acceptance by the member state that are not yet in force)
- ✓ Treaty Series (when a treaty has entered into force for the UK whether on signature or following ratification or accession)



In February 2012, most of the Legal Directorate relocated to the former Colonial Office and FCO Library overlooking Whitehall. The room has not been used as a Library since 2008 but has now been restored for Legal Directorate's use. Its 18,500 feet of shelf space are now filled with the Legal Library's holdings, Treaty Section's records and Parliamentary materials.

Victorian pillars and a gallery adorn this iconic room. For many years the room was home to Albert, the famous stuffed anaconda, some twenty feet long, said to have been presented to the Colonial Secretary by a Bishop in the country now known as Guyana, towards the end of the nineteenth century. Albert is being cleaned and re-stuffed by the British Museum and will return to the FCO in the summer.

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