

# The Jersey Law Review - February 2003

## INTERNATIONAL CONVENTIONS AND AGREEMENTS

### EUROPEAN DIRECTIVES [\[1\]](#)

#### PART ONE: NEW ISSUES REFERRED TO THE INSULAR AUTHORITIES BETWEEN 1ST APRIL 2001 AND 31ST MARCH 2002.

##### *1. International Labour Organisation*

The Island is party to a number of conventions under the auspices of the International Labour Organisation. During this reporting period, the Island was required to submit Convention reports on the following:

Minimum Age (Agriculture) Convention 1921	(No. 10)
Medical Examination of Young Persons (SEA) Convention 1921	(No. 16)
Equality of Treatment (Accident Compensation) Convention 1925	(No. 19)
Seamen's Articles of Agreement Convention 1926	(No. 22)
Sickness Insurance (Industry) Convention 1927	(No. 24)
Sickness Insurance (Agriculture) Convention 1927	(No. 25)
Forced Labour Convention 1930	(No. 29)
Protection Against Accidents (Dockers) Convention (Revised) 1932	(No. 32)
Sickness Insurance (SEA) Convention 1936	(No. 56)
Certification of Ship's Cooks Convention 1949	(No. 69)
Certification of Able Seamen Convention 1956	(No. 74)
Labour Inspection Convention 1949	(No. 81)
Freedom of Association and the Right to Organise Convention 1949	(No. 87)
Migration and Employment Convention 1956	(No. 97)
Right to Organise and Collective Bargaining Convention 1950	(No. 98)
Abolition of Forced Labour 1957	(No. 105)
Radiation Protection Convention 1964	(No. 115)
Paid Education Leave Convention 1977	(No. 140)

##### *2. Mixed Competence Agreements*

Purpose: A number of Mixed Competence Agreements had been arranged between the Member States of the European Union and third countries. The crux of these agreements

concerns co-operation, stabilisation and peace matters; for example improving co-operation on the prevention and combating of illegal cross-border migration, and facilitating expulsion of persons whose entry or residence in their territories is illegal. The Insular Authorities have, on occasion, been asked whether they wish these Agreements to be extended to Jersey.

Action: The Insular Authorities have accepted that the areas of community competence within the framework of Protocol 3 will perforce apply to the Island. Given, however, that these Agreements fall, in the main, outside the scope of Protocol 3, the Island did not accept extension of these agreements with the following countries:

Arab Republic of Egypt

African, Caribbean and Pacific States

Macedonia

Croatia

An Agreement on trade, development and co-operation between the European Community and its Member States and the Republic of South Africa, is still being considered. The Insular Authorities have asked for more information on this Agreement.

### *3. European Charter for Regional or Minority Languages*

Purpose: The protection and promotion of regional or minority languages.

Action: The United Kingdom ratified the Charter on March 27th, 2001 and the Insular Authorities were asked whether they wanted the Charter extended to Jersey.

After consideration by the Education and Policy and Resources Committees the Insular Authorities confirmed they did not wish the United Kingdom's ratification to be extended to the Island at this time.

### *4. Agreement between the Government of the United States of America and the Government of Great Britain and Northern Ireland Regarding the Sharing of Forfeited or Confiscated Assets or their Equivalent Funds*

Purpose: To improve the effectiveness of law enforcement in both countries in the investigation, prosecution, and suppression of crime and in the tracing, freezing, seizure and forfeiture or confiscation of assets related to crime.

Action: The Insular Authorities were asked whether they wished the Agreement to be extended to the Island.

The Insular Authorities are in principle interested in reaching a satisfactory agreement on the question of asset sharing, and are giving active consideration as to how this may best be taken forward.

## **PART TWO: OUTSTANDING MATTERS WHICH REMAIN UNDER CONSIDERATION**

### *1. Bonn Convention on the Conservation of Migratory Species of Wild Animals*

Purpose: To protect particular species of wild animals which are under threat.

Action: The following developments occurred during the year –

the Insular Authorities commented on a draft joint programme of work between this Convention and the Convention on Biological Diversity, stating that they would be pleased to contribute to the implementation of this working plan when appropriate or possible;

the Insular Authorities asked to be included in the United Kingdom's ratification of the "Agreement on the Conservation of Albatrosses and Petrels";

the Insular Authorities contributed to the United Kingdom's submission to the (COP7) – Seventh Conference of Parties to the Convention and African Eurasian Waterbird Agreement.

### *2. Council of Europe Convention on Cyber-Crime*

Purpose: To enable international mutual assistance to be provided in the investigation and prosecution of crimes committed with the help of or entirely by computer (e.g. computer related forgery and fraud, offences related to child pornography).

Action: The Insular Authorities were sent a copy of the final draft of the Convention, together with the Explanatory Report and draft schedule of the legislation that is required before the United Kingdom may ratify the Convention.

The Convention was signed in Budapest on November 23rd, 2001. The Insular Authorities have been asked whether the Island wishes the Convention to be extended when it is ratified by the United Kingdom. The matter is being considered by the Law Officers, and relevant departments have been consulted.

### *3. United Nations Framework Convention on Climatic Change and Kyoto Protocol*

Purpose: The Convention seeks to monitor the emissions of greenhouse gases, with the Protocol setting out targets for Europe to reduce its emission of the six main gases that cause climate change.

Action: The Insular Authorities had previously confirmed that they wished to have the Protocol extended to the Island, and did so again in December 2001.

The United Kingdom requested assurance that all the necessary steps had been taken to meet the Protocol's obligations, in particular, an indication of the general trend in future greenhouse gas emissions. The Environmental Adviser is considering the matter.

### *4. Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas (ASCOBANS)*

Purpose: The conservation of small cetaceans of the Baltic and North Seas.

Action: The Insular Authorities wrote to the Lord Chancellor's Department (LCD) about the Island's concern at the increasing number of dead dolphins being found on the Island's beaches as a result of fishing activities.

Through the LCD, the Department of Environment Food and Rural Affairs (DEFRA) replied that it shared the concern about small cetacean casualties caused by fishing, and stated that at the European level action was being taken by the European Fisheries Commissioner. DEFRA further noted that it had funded the Sea Mammal Research Unit (SMRU) to undertake monitoring projects in this area.

In addition, at the third meeting of ASCOBANS in July 2000, the United Kingdom's "Harbour Porpoise Conservation Strategy" was launched, which sets out how the species is to be protected from pollution, seismic and other disturbances, as well as incidental mortality as a result of fishing activity. DEFRA is proposing to produce a strategy for the protection of all cetacean species.

#### *5. Convention on Wetlands of International Importance (RAMSAR)*

Purpose: To achieve sustainable development throughout the world by the conservation and wise use of wetlands.

Action: Numerous developments have arisen over the year –

In May 2001 the Insular Authorities commented on the United Kingdom's Ramsar Committee Meeting and various documents following that meeting, and requested observer status at future Ramsar Committee meetings;

the Insular Authorities, at the end of May 2001, were sent a copy of the third draft of the Ramsar Strategic Plan 2003-2008;

in June 2001 the Insular Authorities were invited to have observer status at the United Kingdom's Ramsar Committee meetings, and replied that they would be pleased to do so;

on June 25th, 2001 the Insular Authorities were requested to complete a questionnaire/report on the implementation of the Convention in the Island. The Environmental Adviser supplied answers to those items relevant to the Island;

the Insular Authorities were sent the consultation draft of the United Kingdom's Ramsar Report which was to be presented at the eighth meeting of the Contracting Parties to the Convention in Valencia in November 2002;

the Insular Authorities attended the United Kingdom's Ramsar Committee meeting in November 2001;

the Insular Authorities have received a copy of the proposed new guidelines for management planning for Ramsar sites and other wetlands.

6. *United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*

Purpose: In accordance with the principles proclaimed in the Charter of the United Nations, the Convention recognises the inherent dignity of the human person and proscribes torture and other cruel, inhuman or degrading treatment or punishment throughout the world.

Action: In accordance with reporting requirements, the Insular Authorities were asked to prepare their third periodic report. The basis of the report concerned deaths in prison or prison custody, and the issue of torture or degrading treatment. The Island was asked to address any relevant new legislation or measures. The Island's report was submitted to the United Kingdom in January 2002 and will be included as part of the United Kingdom's report.

7. *Convention on Biological Diversity*

Purpose: To ensure the maintenance of the variety of life forms for present and future generations.

Action: The Island was included in the United Kingdom's ratification in September 1994. The Insular Authorities commended on a draft joint programme of work between this Convention and the Convention of Migratory Species of Wild Animals.

8. *Montreal Protocol and Beijing Protocol Amendments to the Vienna Convention on Substances that Deplete the Ozone Layer*

Purpose: These Protocols provide additional measures for the protection of the ozone layer, with amendments in respect of trade, licensing, production, new substances and data reporting.

Action: The Insular Authorities had previously (January 1999) requested to be included in the United Kingdom's ratification of the Montreal Protocol (as amended). As to the Beijing Protocol the Insular Authorities have requested more information so as to establish whether the Island needs further legislation in place in order to have ratification extended to the Island.

9. *European Convention on Mutual Assistance in Criminal Matters 1959*

Purpose: To afford mutual assistance between contracting states in proceedings in respect of offences the punishment of which, at the time of request for assistance, falls within the jurisdiction of the judicial authorities of the requesting party.

Action: The Insular Authorities were asked whether Jersey would now wish the extension of the Convention to the Island, given that the Criminal Justice (International Co-operation) (Jersey) Law 2001 has come into force. The matter is with the Law Officers for consideration.

The Second Additional Protocol to the Convention was sent to the Insular Authorities for information.

#### *10. European Convention on Extradition*

**Purpose:** To develop uniform rules with regard to extradition and to assist common action in legal matters.

**Action:** The Insular Authorities were asked whether they wished the Second Additional Protocol, dealing with extradition for fiscal offences, to be extended to the Island at the same time as the other Crown Dependencies. Jersey has confirmed that it desires the extension of the United Kingdom's ratification of the Protocol, given its commitment to the fight against international fiscal crime.

#### *11. Convention on International Trade in Endangered Species (CITES)*

**Purpose:** To regulate the international trade in wild animals and plant species whose survival is endangered.

**Action:** The Insular Authorities have been asked to progress domestic legislation equivalent to the EU Regulation 338/97 which would enable Jersey to comply with the Convention. Whilst the Insular Authorities are still of the opinion that this is a trade in goods matter, the Law Officers, in consultation with officials, are considering the matter and have asked for a meeting the DEFRA officials. In addition, the practical issue of CITES certificates is being addressed.

On behalf of the Durrell Wildlife Conservation Trust, the Insular Authorities asked the United Kingdom to assist with reclassifying the Madagascar flat-tailed tortoise – *Pyxis planicauda*. The United Kingdom was unable to assist, this being a matter for the Madagascan government.

#### *12. United Nations Convention against Transnational Organised Crime*

**Purpose:** To eliminate inconsistencies among States that are frequently exploited by multinational criminal groups. Specific issues included combating money laundering, mafia activity and the growth in sexual slavery, illegal smuggling of migrants and trafficking of women and children.

**Action:** The Insular Authorities were asked whether they wished the Convention to be ratified on the Island's behalf, although it has not yet been ratified by the United Kingdom. The Insular Authorities are conducting a review of local legislation, having expressed their agreement with the objects of the Convention.

#### *13. International Plant Protection Convention (IPPC)*

**Purpose:** To secure common and effective action to prevent the spread and introduction of pests and plant products and to promote measures for their control.

**Action:** The Insular Authorities have been informed by DEFRA that approximately 35 countries have accepted the changes in the revised text, which the Insular Authorities had previously agreed. Thirty-five is less than half the number required for formal adoption, but most countries using IPPC are acting as if the changes have been accepted, with the inclusion of an interim Commission.

*14. United Nations Convention on the Elimination of Racial Discrimination (ICERD)*

Purpose: To prohibit and prevent all forms of racial discrimination.

Action: The Insular Authorities were asked for an update so that it could be included in the United Kingdom's 16th Periodic Report.

With reference to the 2001 census, a breakdown of the population by ethnic and cultural background was provided; and the progress of draft legislation was noted, as well as the work of nine working groups which had recommended the creation of a "Jersey Community Relations Trust". This recommendation has been agreed in principle by the Policy and Resources Committee, but the issue of funding is still outstanding, preventing its establishment.

*15. Council of Europe Convention on the Protection of Animals for Slaughter*

Purpose: To protect animals at the time of slaughter or killing.

Action: The United Kingdom has informed the Insular Authorities that it was ready to proceed with the ratification of the Convention, and asked whether the Island still wished for the extension of ratification; because the necessary legislation is not yet in place, extension has been declined for the time being.

*16. Investment Promotion and Protection Agreements (IPPAs)*

Purpose: To create favourable conditions for greater investment of one Contracting Party in the area of the other.

Action: The Foreign and Commonwealth Office (FCO) informed the Insular Authorities that it was reviewing all existing and future IPPAs, given a recent dispute with Russia.

The Insular Authorities noted the FCO position, and requested further information on the dispute.

*17. International Coffee Agreement, 2001*

Purpose: To promote international co-operation on coffee matters.

Action: The International Coffee Agreement, 2001 was formally approved by the Council of the International Coffee Organisation in September 2001, replacing the International Coffee Agreement, 1994.

The Insular Authorities confirmed that they did wish to be a party with the United Kingdom to the new International Coffee Agreement.

*18. International Covenant on Economic, Social and Cultural Rights*

Purpose: In accordance with principles proclaimed in the Charter of the United Nations and the Universal Declaration of Human Rights, the Covenant seeks to guarantee that all human beings enjoy economic, social and cultural freedoms.

**Action:** The Crown Dependencies of Jersey, Guernsey and the Isle of Man were included as part of the United Kingdom delegation of the Twenty-eighth Session of the Human Rights Committee on Economic, Social and Cultural Rights examining the United Kingdom's fourth periodic report. This examination was held in Geneva on 6th – 7th May, 2002.

A report detailing the procedure, outcome, and concluding observations of this oral examination is to be presented to the States by the Policy and Resources Committee.

#### *19. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes*

**Purpose:** To limit and control the movement of hazardous and other wastes between countries and provide assistance to developing countries with the movements of such waste.

**Action:** The Insular Authorities were asked for information on the measures being taken to provide new facilities within the Island for the environmentally sound disposal of wastes generated and as to the time scales related thereto. The Insular Authorities provided a detailed response including their work on a long-term strategy. They further confirmed that the preparation of new domestic legislation was well advanced to enable the Convention to be extended to the Island, but requested an extension for a period of the Memorandum of Understanding between the United Kingdom and the States of Jersey relating to the agreed arrangements for the movements of hazardous wastes.

#### *20. 1999 Montreal Convention for the Unification of Certain Rules for International Carriage by Air*

**Purpose:** To consolidate existing agreements into one legal instrument that provides an adequate level of compensation for those involved in international air accidents.

**Action:** The Insular Authorities were asked for confirmation that Jersey legislation is adequate to allow the Convention to be extended.

The Law Officers are providing drafting instructions for the necessary Order in Council which will enable the extension, and have received copies of the United Kingdom's draft statutory instruments.

#### *21. Convention on the Protection of the Marine Environment in the North East Atlantic (OSPAR)*

**Purpose:** To merge the Convention for the prevention on marine oil pollution from land based sources (Paris) with the Convention on the prevention of marine pollution by dumping from ships and aircraft (Oslo) including such new concepts as the precautionary principle, best available technology, and best environmental practice.

**Action:** The French Minister for Foreign Affairs formally confirmed that the United Kingdom's ratification of the Convention was extended to Jersey on January 31st, 2002. This did not include Annex V of the Convention, and this matter is now being considered.

## **PART THREE: MATTERS RECENTLY RESOLVED**



*1. Amendment of the Agreement on the Conservation of Bats in Europe (EUROBATS)*

Purpose: To protect migratory species of wild animals.

Action: The Foreign and Commonwealth Office confirmed that the extension of the Agreement (with Amendment) to Jersey occurred on October 29th, 2001.

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[\[1\]](#)The Editor regrets that this section of the Review has been in abeyance since the October 2001 issue. The information is based upon reports published by the Policy and Resources Committee; the publication of those reports has only recently been resumed.

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