

September 2014

UNITED KINGDOM

1. What is the title, rank and position of the Legal Adviser?

The office of the Legal Adviser to the Foreign and Commonwealth Office (FCO) was created in the second half of the nineteenth century. The Legal Adviser is the head of the Legal Directorate.

2. What are the principal functions of the OLA?

The Legal Directorate includes lawyers; specialists in maritime policy, treaty procedures and knowledge and information management; office managers; and executive assistants.

The principal function of lawyers within FCO Legal Directorate is to provide legal advice to Ministers and officials within the FCO. This involves advice on matters of public international law, European Union law, human rights law, constitutional law, the law relating to the British overseas territories, and domestic law (including for example freedom of information, data protection, commercial and contractual matters), as well as dealing with a range of civil litigation before the UK courts. Lawyers act as agent for the Government before international tribunals (including the International Court of Justice, the European Court of Human Rights and inter-State arbitrations), and frequently attend conferences and meetings both in the UK and abroad as head or members of the UK delegation.

3. Please give a brief description of staff employed by the OLA, including overseas staff. What is the distribution of posts between men and women within the OLA and what category of staff do they respectively belong to?

There are currently approximately 70 staff in the Legal Directorate, about 50 of whom are lawyers working in London. All lawyers are qualified as barristers or solicitors in the UK, and most have post-qualification experience in private practice, in other Government Departments or in international institutions.

A number of FCO lawyers are also posted overseas:

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| - UK Mission to the UN in New York | 2 lawyers |
| - UK Mission to the UN in Geneva | 1 lawyer |
| - UK Permanent Representation to the EU (Brussels) | 4 lawyers |
| - British Embassy in The Hague | 1 lawyer |
| - UK Delegation to the Council of Europe, Strasbourg | 1 lawyer |

In addition, a lawyer from the FCO is seconded to the Attorney General's Office and other secondments take place from time to time.

There are four grades for lawyers within the Legal Directorate: the Legal Adviser; three Legal Directors; Legal Counsellors; and Assistant Legal Advisers.

Numbers of women and men employed in the Legal Directorate in London (as of August 2014) are:

<i>Role</i>	<i>Women</i>	<i>Men</i>
Legal Adviser	-	1
Legal Director	1	2
Legal Counsellor	3	5
Assistant Legal Adviser	27	13
Other roles (e.g. Office Management; Maritime Policy; Treaty and Knowledge and Information Specialists)	10	7
<i>Totals</i>	<i>41</i>	<i>28</i>

4. Are there any specific recruitment and promotion policies, provisions and/or quotas to ensure non-discrimination and equal opportunities, e.g. for the underrepresented sex, for persons with disabilities or for persons belonging to ethnic or religious minorities or of immigrant origin?

All staff are recruited and promoted in accordance with the Foreign and Commonwealth Office's policy of making all appointments by merit through open and fair competition, in strict accordance with the key recruitment principles of the Civil Service Commission (available at <http://civilservicecommission.independent.gov.uk/civil-service-recruitment/>).

A person's gender, marriage, colour, race, nationality, ethnic or national origin, disability, age or sexual orientation cannot be taken into account when recruiting or promoting; nor can an applicant be chosen from a particular group for reasons of diversity balance.

5. Is OLA staff trained on gender equality issues and are these issues mainstreamed into the OLA's work?

All FCO staff are required to take part in training on Diversity at Work, which covers issues of gender, race, age, religion/belief, disability and sexual orientation. All staff with management or recruitment responsibilities are also required to undertake Unconscious Bias training.

Legal Directorate has a Diversity Champion who works to improve the way diversity is addressed within the Directorate. This includes publishing a regular Diversity Bulletin that is circulated to all Directorate staff, and organising presentations and discussions targeted at specific Diversity issues, for example women into leadership.

6. Briefly describe the organisation and structure of the OLA.

The Legal Directorate is headed by the Legal Adviser and three Legal Directors. The Directorate Management Committee consists of representatives from each team and meets every two weeks.

Lawyers based in London are organized into teams, each of which is assigned a number of "client" departments within the FCO. At present there are four teams dealing with Counter-Terrorism and Human Rights; General Law and Litigation; EU and Wider Europe; and International Institutions and Security Policy. Whilst there are some areas in which certain lawyers may specialise, for example EU law or international human rights law, all lawyers are expected to be able to take on a variety of work and to move between teams at different times in their careers.

Non-legal members of staff in the Legal Directorate are FCO specialists, career diplomats or home civil servants. Some are attached to the teams of lawyers and others work in the following teams:

- Maritime Policy Unit – responsible for government policy on maritime issues, in accordance with the UN Convention on the Law of the Sea.
- Treaty Section – responsible for the UK’s treaty practice and procedure including publication of treaties before parliament, and performs depositary functions in respect of those multilateral treaties for which the UK is the depositary.
- Knowledge and Information Section – provides a legal information and enquiry service to Legal Directorate and the wider FCO, and leads on the Directorate’s knowledge management strategy.
- Office Management Section – manages the Directorate’s financial resources and administration.

7. What is the OLA’s place within the Ministry of Foreign Affairs?

The head of the Legal Directorate ranks as a Director General (i.e. reports directly to the Permanent Under-Secretary.) Assistant Legal Advisers are appointed at close to the top of the Delegated Grade structure of the FCO, equating to the rank of First Secretary. Legal Counsellors and Deputy Legal Advisers form part of the Senior Management Structure.

Legal Directorate organises a legal training programme for the FCO, covering substantive areas of law (eg human rights, EU law and the overseas territories); legal processes and procedures (eg handling litigation); treaty practice; and working with Legal Directorate. Lawyers also speak on other courses with a legal content within the FCO, e.g. human rights and parliamentary procedures.

8. What are the main contacts of the OLA within Government?

As well as providing legal advice within the FCO, the Legal Directorate is the main centre of expertise on public international law within Government, and is often consulted by other Government Departments when international law issues arise. Thus, for example, all treaties which the UK enters into (with a few exceptions, such as double taxation agreements) have to be cleared by the FCO.

Legal Directorate lawyers act as agents on behalf of the Government in most international judicial proceedings (though not before the European Courts in Luxembourg). This includes cases before the International Court of Justice and the European Court of Human Rights, as well as international arbitration.

The Government’s principal legal adviser is the Attorney General. Departmental lawyers seek his advice on matters of general importance for the Government as a whole. As noted above a member of FCO Legal Directorate is seconded to the Attorney General’s Department.

FCO Legal Directorate is an associate member of the Government Legal Service (GLS) and has close links with the GLS. For example, lawyers frequently move between the GLS and the FCO on secondment. Training on a range of issues is organised jointly with GLS colleagues.

9. Please describe the relations of the OLA with lawyers in private practice, academics and legal institutions.

A key part of the Legal Directorate’s role is to work with non-governmental international and EU lawyers in the UK in order to increase awareness of each other’s areas of work and expertise and enhance the rule of law internationally. FCO Legal Directorate has traditionally been a part of an active public international law community in the UK, comprising lawyers from the public service and private practice as well as academic lawyers.

The Directorate has a programme of outreach to the international law community in the UK, through regular seminars at the FCO to discuss topical issues in international law to which international law academics and practitioners are invited. Lawyers are also encouraged to participate in conferences, meetings of learned societies (such as the American Society of International Law, the International Law Association and the British Institute of International and Comparative Law) and to write articles or books for publication. Other activities include visits to universities to speak to students about the work of the FCO and the organisation of government-wide seminars and training courses.

The FCO retains lawyers from private practice where the need arises. In litigation and arbitration it is usual to instruct outside counsel for their advice and advocacy.

10. Please provide a brief bibliography on the OLA, if available.

There is a considerable literature on the role of FCO Legal Advisers, including:

Sir Franklin Berman: "The Role of the International Lawyer in the Making of Foreign Policy", (in C.Wickremasinghe (ed.), *The International Lawyer as Practitioner*, BIICL 2000)

F.D. Berman: "The International Lawyer Inside and Outside Foreign Ministries" (in C.Hill and P. Beschoff (eds.) *Two Worlds of International Relations – Academics, Practitioners and the Trade in Ideas*, Routledge, 1994)

Daniel Bethlehem: "The Secret Life of International Law"; *Cambridge Journal of International and Comparative Law* 2012, 1(1), 23-36

Stephen Bouwhuis: "The Role of an International Legal Adviser to Government"; *International and Comparative Law Quarterly* 2012, 61(4), 939-960

Sir Gerald Fitzmaurice and Sir Francis Vallat: "Sir (William) Eric Beckett, KCMG, QC (1896-1966) –An Appreciation"; *International and Comparative Law Quarterly* 1968, 17 (2), 267-326

Dr. Clive Parry: "Background paper on National Organization and Procedures - United Kingdom" (in H.C.L. Merrillat (ed.), *Legal Advisers and Foreign Affairs*, Oceana, 1964)

Sir Ian Sinclair: "The Practice of International Law: the Foreign and Commonwealth Office" (in Bin Cheng (ed.), *International Law Teaching and Practice*, Stevens, 1982).

Brian Simpson: "The Rule of Law in International Affairs" (2003) Vol.125 *Proceedings of the British Academy*, 211-263

Sir Arthur Watts: "International Law and International Relations: UK Practice"; *European Journal of International Law* 1991, 2(1), 157-164

Michael C. Wood: "The Role of Legal Advisers at Permanent Mission to the United Nations", (in C.Wickremasinghe (ed.), *The International Lawyer as Practitioner*, BIICL, 2000)

Michael Wood: "The Perspective of a Foreign Ministry Legal Adviser" (in M. Evans (ed.), *International Law*, 2nd edition, OUP, 2006)