



## BRIEFING PAPER

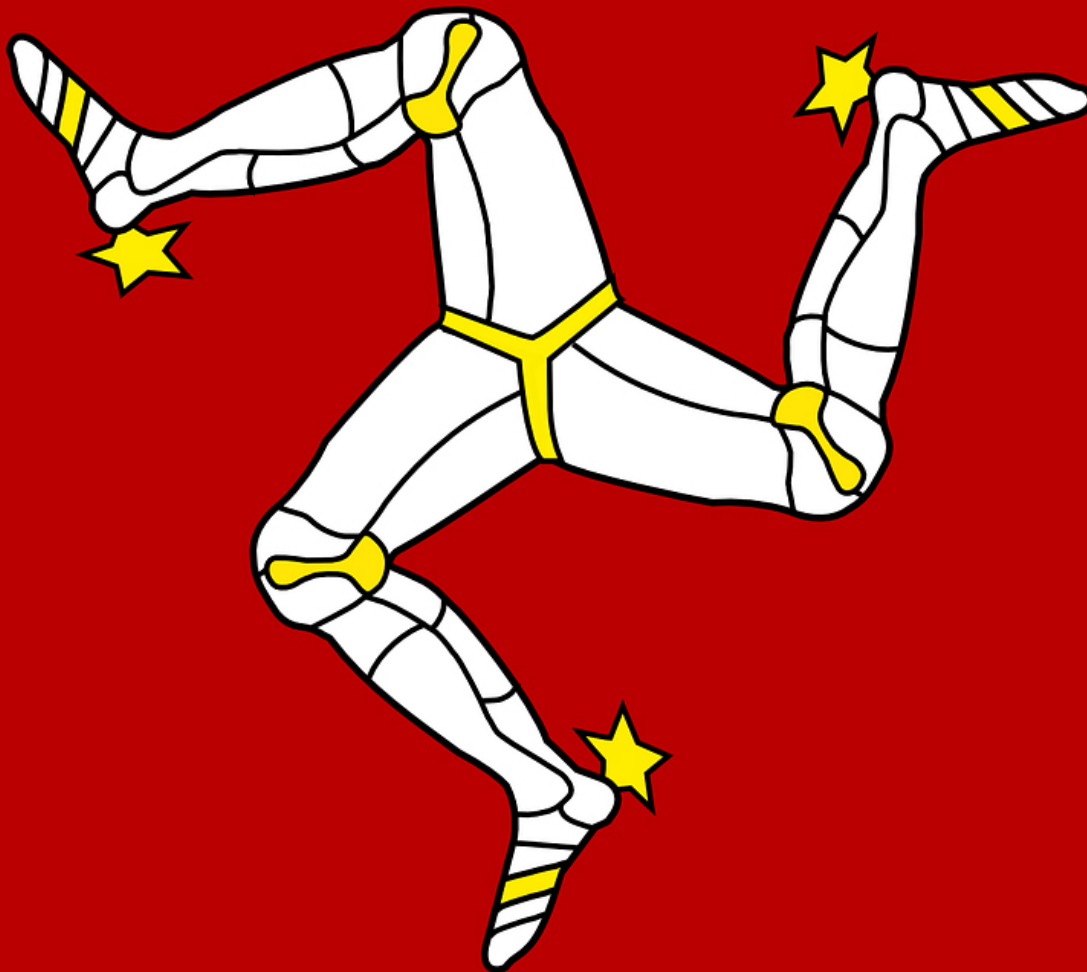
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# The Crown Dependencies

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## Summary

The Crown Dependencies are the Bailiwick of Jersey, the Bailiwick of Guernsey (which includes Alderney and Sark) and the Isle of Man.

The Crown Dependencies are not part of the UK but are self-governing dependencies of the Crown. This means they have their own directly-elected legislative assemblies, administrative, fiscal and legal systems. They are not represented in the UK Parliament. The Crown Dependencies have never been colonies of the UK. Nor are they British Overseas Territories, like Gibraltar, which have a different relationship with the UK.

The constitutional relationship of the Dependencies with the UK is through the Crown and is not enshrined in any formal constitutional document. The UK Government is responsible for the defence and international relations of the Islands, while the Crown, acting through the Privy Council, is ultimately responsible for ensuring their “good government”.

Primary legislation passed by the UK Parliament does not ordinarily apply to the Crown Dependencies. In certain cases it can be extended by Order in Council made with the agreement of the Dependencies concerned under an enabling provision known as a permissive extent clause.

This briefing paper examines the constitutional status of the Crown Dependencies, their history and governance, as well as relations with the UK, international treaties and the impact of Brexit.

# 1. What are Crown Dependencies?

The Crown Dependencies are the Isle of Man, the Bailiwick of Jersey and the Bailiwick of Guernsey (which includes Alderney and Sark).

The Crown Dependencies are self-governing entities, over which the Crown has certain responsibilities. Each has a different historic and constitutional relationship with the Crown, but they are not part of the United Kingdom. The three Dependencies each have their own political, legal and fiscal systems, separate from the UK.<sup>1</sup>

The Queen is Head of State in each Dependency and is represented in each island territory by a [Lieutenant Governor](#). In the Channel Islands the Queen is styled Duke of Normandy, and in the Isle of Man, Lord of Mann.

## 1.1 Constitutional status

The 1973 report of the [Royal Commission on the Constitution](#) referred to the constitutional position of the Crown Dependencies as “unique”:

In some respects they are like miniature states with wide powers of self-government, while their method of functioning through committees is much more akin to that of United Kingdom local authorities.<sup>2</sup>

A 2010 Justice Committee report referred to “their essential independence from the UK [and] their independence from each other”.<sup>3</sup> The same report emphasised that the Crown Dependencies’ relationship was with the Crown rather than the UK, and that the Government’s responsibilities were derived from that fact. As the former Justice Secretary Jack Straw observed in 2008:

The relationship between us and the Crown Dependencies is a subtle one. They are dependencies of the Crown, they are not part of the United Kingdom, so the responsibilities I have for them are as a privy councillor.<sup>4</sup>

The Crown Dependencies are not represented in the UK Parliament and their relationship with the European Union is largely limited to membership of the customs union.<sup>5</sup> Although self-governing, the UK Parliament can legislate:

for the Crown Dependencies in the areas of defence, nationality, citizenship, Succession to the Throne, extradition and broadcasting, by implication limiting the competence of the Island jurisdictions in these areas.<sup>6</sup>

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<sup>1</sup> Social legislation is also distinct. Homosexuality was decriminalised in the Isle of Man 1992, 25 years after England and Wales.

<sup>2</sup> HMSO, *Royal Commission on the Constitution 1969-1973* Volume 1, Cmnd 5460, para 1360.

<sup>3</sup> Commons Justice Committee, [Crown Dependencies](#), 23 March 2010, p44.

<sup>4</sup> *Ibid.*, p6.

<sup>5</sup> Protocol 3 of the UK’s Treaty of Accession also provides for the free movement of goods and (asymmetric) free movement of people in the Dependencies.

<sup>6</sup> Justice Committee, [Crown Dependencies](#), p20.

## 1.2 Historical background

The Crown Dependencies have never been colonies of the UK. Nor are they [Overseas Territories](#), like Gibraltar, which have a different constitutional relationship with the UK.

### Channel Islands

Situated 10-30 miles off the north-west coast of France, the Channel Islands comprise two Crown Dependencies, the Bailiwicks of Jersey and Guernsey. The Bailiwick of Guernsey comprises the Islands of Guernsey, Alderney, Sark and Herm.

The Channel Islands were originally part of the Duchy of Normandy. Following England's loss of continental Normandy to France in 1204, the Channel Islands pledged allegiance to the then English Crown in return for a guarantee concerning their local customs. Royal charters were granted to the Bailiwick of Jersey and the Bailiwick of Guernsey.<sup>7</sup>

### Isle of Man

The Isle of Man lies in the Irish Sea, equidistant from England, Scotland and Northern Ireland. Originally part of the Norwegian Kingdom of the Isles, its legislative system was introduced around 800AD, thus making it "the oldest parliament in the world with an unbroken existence".<sup>8</sup>

In 1266, the island was ceded to Scotland, and England later acquired it by treaty under Edward I. The lordship of Mann was handed over to English lords in return for regular payments to successive monarchs. From 1405 to 1765, the island was ruled by the Earls of Derby and later the Dukes of Atholl, as Lords of Mann.

The use of the island as a secure base for smugglers became such a problem that, in 1765, the British government required all customs and taxes to be paid into the British exchequer. The lordship reverted to the Crown and King George III became Lord of Mann.<sup>9</sup>

The modern constitutional relationship dates from 1866, when an Act of Parliament was passed separating Manx revenues from those of the UK and giving the island a limited measure of control over "insular" expenditure. Since then a series of measures, culminating in the *Isle of Man Act 1958*,<sup>10</sup> transferred more control into local hands.<sup>11</sup>

[Appendix 1](#) of the Justice Committee's 2010 report on Crown Dependencies includes an overview of the "geography, people, government, economy and constitutional position of each jurisdiction".

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<sup>7</sup> Royal Family website, [Crown Dependencies](#).

<sup>8</sup> Tynwald website, [Welcome to the Oldest Continuous Parliament in the World](#).

<sup>9</sup> Peter Edge, "[The Isle of Man's Path to Autonomy](#)", History Today website, 9 September 2014.

<sup>10</sup> Later repealed and replaced by the [Isle of Man Act 1979](#).

<sup>11</sup> See the *Isle of Man Customs, Harbours, and Public Purposes Act 1866* and *House of Keys Election Act 1866*.

## 1.3 Governance

### Channel Islands

The unicameral [States of Guernsey](#) (*États de Guernesey*) is the parliament of Guernsey. It comprises 38 People's Deputies and 2 Alderney Deputies. All its enactments apply to the island of Herm, while some also apply to Alderney and Sark as "Bailiwick-wide legislation" (with the consent of the [States of Alderney](#) or Sark [Chief Pleas](#)).<sup>12</sup>

Until relatively recently, Sark's government was based on a feudal system and was therefore unelected. This arrangement came to be considered untenable in the light of human rights law, and reforms led to elections in 2008 (see **Section 3.1** below).

Jersey's [States Assembly](#) (*Assemblée des États*) is also unicameral, consisting of eight Senators, 29 Deputies and 12 Connétables.<sup>13</sup>

### Isle of Man

The Isle of Man Parliament, known as [Tynwald](#), consists of two branches: the [Legislative Council](#) (mostly chosen by the House of Keys) and the [House of Keys](#) (which has 24 elected members). Tynwald sits as a single body to deal with financial and policy matters.

### Tynwald Day

On 5 July each year, the Tynwald Court assembles in the open air on Tynwald Hill at St John's. During the Queen's most recent visit in July 2003, Her Majesty presided over the ancient ceremony.

Following a religious service in the Royal Chapel, the members of Tynwald process to Tynwald Hill for proceedings presided over by the Lieutenant Governor. They then return to the Royal Chapel where a formal sitting of Tynwald takes place.

By statute, each Act of Tynwald must be promulgated on Tynwald Hill within 18 months of enactment or it ceases to have effect. Any person may also approach Tynwald Hill on Tynwald Day and present a Petition for Redress.<sup>14</sup>

## 1.4 Legislative process

Principal legislation made by Crown Dependency legislatures requires Royal Assent. The [Ministry of Justice](#) examines each piece of legislation to ensure there is no conflict with the UK's international obligations (including the [European Convention on Human Rights](#)) or with any "fundamental constitutional principles". Having done so, it advises the Privy Council as to whether Her Majesty should make an Assenting Order.<sup>15</sup>

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<sup>12</sup> The States of Guernsey may legislate for Sark on criminal matters without the consent of the Chief Pleas.

<sup>13</sup> See [States of Jersey Law 2005](#).

<sup>14</sup> See Tynwald website, [Tynwald Day](#). There are no equivalent ceremonies in the Channel Islands.

<sup>15</sup> See Ministry of Justice, [Background briefing on the Crown Dependencies: Jersey, Guernsey and the Isle of Man](#)

The Justice Secretary can recommend that Royal Assent be withheld, although this is rare (see **Section 3.1** below).

For Channel Island legislation, Royal Assent is granted by the Queen in Council. For Isle of Man legislation, the granting of Royal Assent is delegated to the Lieutenant Governor for many “non-reserved” purposes.<sup>16</sup> The Ministry of Justice will still review the legislation prior to indicating to the Lieutenant Governor that s/he may grant Assent.

The 1973 report of the Royal Commission on the Constitution observed that it was practice at the beginning of each reign to appoint Committees of the Privy Council to “entertain petitions from the Channel Islands and the Isle of Man respectively”.<sup>17</sup>

The [Committee for the Affairs of Jersey and Guernsey](#), for example, is the body which recommends approval of Channel Islands legislation.

Farida Eden, a constitutional law specialist at the Ministry of Justice, explained the process to the Commons Justice Committee in 2010:

What happens is that a piece of legislation comes into us and we think maybe the drafting is not quite tight enough or we think there might be a human rights point, and we will get on the phone to our opposite numbers in one of the Crown Dependencies and talk them through it. It is a sort of partnership rather than us taking a hard line and saying we are going to refuse Royal Assent. Sometimes they will explain something to us and we will say that makes sense or sometimes we might seek assurances as to how a piece of legislation is actually going to be operated in practice.<sup>18</sup>

A Justice Committee inquiry found that Ministry of Justice lawyers were not necessarily confining themselves to the constitutional grounds for review and “were questioning the form and policy content of insular legislation on other grounds”, such as “congruence with UK policy”. This the Committee considered constitutionally “inappropriate”. Later, Lord McNally, then Minister of State for Justice, acknowledged this “second-guessing” had been “paternalistic and unnecessary”.<sup>19</sup>

## 1.5 Nationality

Nationality is generally acknowledged as a UK responsibility. The [British Nationality Act 1981](#) conferred British citizenship on all those with close connections with the UK, the Channel Islands and the Isle of Man. Each Dependency has adopted the common format passport, while the Lieutenant Governor is the passport-issuing authority on each island.

Jersey, Guernsey, the Isle of Man and the Republic of Ireland, together with the UK, comprise the [Common Travel Area](#). There are no immigration controls between the UK and the Islands or between the Islands themselves. Rather, the Islands form part of the border for the British Isles as a whole.

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<sup>16</sup> See the Isle of Man [Constitution Act 1990](#).

<sup>17</sup> *Royal Commission on the Constitution*, para 1361.

<sup>18</sup> Justice Committee, *Crown Dependencies*, p23.

<sup>19</sup> Commons Justice Committee, [Crown Dependencies: developments since 2010](#), 10 December 2013, p16.

## 2. UK Government relations with the Crown Dependencies

The Ministry of Justice – through its Crown Dependencies Unit – is responsible for managing the UK’s constitutional relationship with the Crown Dependencies.<sup>20</sup>

That relationship involves a variety of different responsibilities, including involvement in Crown Appointments,<sup>21</sup> processing legislation for Royal Assent and issuing “Letters of Entrustment”. These authorise Crown Dependency governments to negotiate and conclude certain international agreements (see **Section 4**).<sup>22</sup>

Other major aspects of this relationship involve:

- the Ministry of Justice informing other Whitehall departments of their obligations in relation to the Crown Dependencies and mediating contact with the Islands where necessary;
- processing insular legislation prior to Royal Assent;
- keeping the Crown Dependencies informed in relation to any UK legislation or international treaties intended to apply to or affect them;
- representing the interests of the Crown Dependencies on the international stage;
- defence; and
- advising the Sovereign if there is any threat to the good government of a Dependency which would justify intervention.<sup>23</sup>

Although the Ministry of Justice issued “how to” notes in 2013, there is no Act of Parliament or other document clearly setting out the relationship between the UK Government and the Crown Dependencies. As a group of Jersey lawyers observed, as with “so much on our constitutional map”:

the relationship between the Crown Dependencies [...] and the United Kingdom is not clearly delineated [and] rest largely on the common law, ancient Royal Charters and constitutional convention about which there is not always agreement.<sup>24</sup>

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<sup>20</sup> Previously, the responsible UK Government department had been the Home Office.

<sup>21</sup> See Ministry of Justice, [Background briefing on the Crown Dependencies: Jersey, Guernsey and the Isle of Man](#), p4, for a full list of Crown Appointments.

<sup>22</sup> See Ministry of Justice, [Government Response to the Justice Select Committee Report ‘Crown Dependencies: developments since 2010](#), March 2014, p15.

<sup>23</sup> Justice Committee, *Crown Dependencies*, p3.

<sup>24</sup> Jeffrey Jowell et al, [“The Barclay Cases: Beyond Kilbrandon”](#), Jersey Legal Information Board, March 2018.



## 2.1 Intergovernmental relations

The three Crown Dependencies also take part in a number of statutory and non-statutory intergovernmental forums, alongside other governments in the British Isles.<sup>25</sup>

### British-Irish Council

The 1998 [Belfast/Good Friday Agreement](#) established the [British-Irish Council](#) (BIC) with a secretariat based (since 2012) in Edinburgh.

According to the BIC's website, its purpose is:

to promote the harmonious and mutually beneficial development of the totality of relationships among the peoples of these islands [...] the BIC will exchange information, discuss, consult and use best endeavours to reach agreement on co-operation on matters of mutual interest within the competence of the relevant administrations.<sup>26</sup>

The BIC consists of representatives from the:

- UK Government;
- [Irish Government](#);
- [Northern Ireland Executive](#);
- [Scottish Government](#);
- [Welsh Government](#);
- Isle of Man Government;
- States of Guernsey; and
- States of Jersey.

The BIC usually meets twice a year at ministerial summits, and via “work sector” meetings, which include ministers and officials from specific policy areas. Work sectors cover energy, early-years policy, transport and misuse of drugs, all areas where there are common challenges across all member administrations.

The three Crown Dependencies host BIC summit meetings, as do the other member governments, on rotation. The [29<sup>th</sup> BIC summit](#) met in Jersey on 10 November 2017, the [30<sup>th</sup> in Guernsey](#) on 22 June 2018 and the [31<sup>st</sup> summit](#) on the Isle of Man on 9 November 2018.

### Chief Ministers' Quarterly

Quarterly meetings also take place between the UK Government's Minister for Exiting the European Union and the Chief Ministers of Guernsey, Jersey and the Isle of Man. This forms part of a programme of engagement concerning the UK's departure from the EU.<sup>27</sup>

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<sup>25</sup> The 1973 report of the Royal Commission on the Constitution had proposed a “Council of the Isles” to facilitate relations between the UK and Crown Dependencies, but that proposal was not taken up by the UK Government (see para 1508).

<sup>26</sup> British-Irish Council website, [“About the Council”](#).

<sup>27</sup> See UK Government Press Release, [“Minister gives Brexit update to the Channel Islands and Isle of Man”](#), 5 March 2018.

In August 2017 Robin Walker, then a Minister at the Department for Exiting the European Union, completed a three-day tour of Jersey, Guernsey and the Isle of Man to discuss the implications of Brexit for the Crown Dependencies.<sup>28</sup>

### **Council of Environment Ministers of UK Overseas Territories and Crown Dependencies**

Along with their counterparts from the Overseas Territories, environment ministers from Guernsey, Jersey and the Isle of Man hold regular meetings to discuss their respective environmental agendas. The first gathering took place in Gibraltar in 2015, with a second in Alderney in 2017, and a third on the Isle of Man in 2018.<sup>29</sup>

### **Judicial Committee of the Privy Council**

While each Crown Dependency has its own legal system and courts of law, the [Judicial Committee of the Privy Council](#) in London remains the highest court of appeal for the Crown Dependencies as well as the Overseas Territories and many members of the British Commonwealth.

### **Standing Committee on the Common Interests of the Isle of Man and the United Kingdom**

In 1969, on a recommendation from the [Stonham Working Party](#), more formal machinery for consultation between the UK and the Isle of Man was established. The “Standing Committee on the Common Interests of the Isle of Man and the United Kingdom” consisted of three members elected by Tynwald and three representatives of the UK Government with a joint secretariat. It met throughout the 1970s but appears to have lapsed thereafter.<sup>30</sup>

## **2.2 Financial relations**

Under long-standing agreement, the Isle of Man makes an annual contribution to the UK for defence and common services, including overseas representation. The amount is determined in accordance with the 1994 Contribution Agreement between the UK and Isle of Man governments.<sup>31</sup>

The Channel Islands make no such contribution.<sup>32</sup> After the First World War, an attempt was made by the UK Government to require an “imperial contribution” from Jersey and Guernsey, but this was

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<sup>28</sup> DEXU news release, [“Brexit Minister Robin Walker visits the Crown Dependencies”](#), 10 August 2017.

<sup>29</sup> See States of Alderney Press Release, [“Third United Kingdom Overseas Territories \(UKOT\) & Crown Dependencies \(CD\) Environment Ministerial Council Meeting, Isle of Man, February 2018”](#), 12 February 2018.

<sup>30</sup> See *Royal Commission on the Constitution*, para 1415.

<sup>31</sup> The Isle of Man’s payment was introduced under the *Isle of Man Customs, Harbours, and Public Purposes Act 1866*. Previously, the UK Treasury had retained all surplus Manx revenue.

<sup>32</sup> Although Jersey does pay to maintain the Jersey Field Squadron (The [Royal Militia Island of Jersey](#)), a Territorial Army Regiment, on the island.

successfully resisted by the islands on the basis that any contribution had to be voluntary.<sup>33</sup>

All three Crown Dependencies neither receive grants from nor pay contributions to the UK, and nor do their inhabitants pay UK taxes. They pay for their needs out of their own revenues, the rates of which are decided by the respective legislatures. There have, however, been arrangements under which the Dependencies pay for or reciprocate benefits in education and other social services received from the UK.

In 2008, the UK Department of Health decided to terminate long-standing [Reciprocal Health Agreements](#) with the Crown Dependencies under which Island visitors to the UK and UK visitors to the Islands received free health care. This was on the basis that the Agreements did not represent value for money for the UK taxpayer.<sup>34</sup> The decision was subsequently reversed, with [a new agreement](#) coming into force on 1 October 2010.

### Revenue sharing arrangement

In 1979, the UK and Isle of Man governments agreed to a revenue sharing arrangement (RSA) which removed the need for customs barriers between the Island, the UK and the European Union, and made the Island part of the EU's VAT territory. This replaced what had been known as the "Common Purse Agreement".

Under the RSA, the Isle of Man and UK pool VAT and most other indirect tax revenues and share them according to the agreement. Pooled revenues can be reviewed at the request of either party at any time, although termination requires a two-year notice period. In 2011, the RSA was renegotiated to take account of the "size and composition of the IOM economy".<sup>35</sup>

## 2.3 Disputes

Constitutional disputes between the Crown Dependencies and the UK Government are rare but not unprecedented.

One such disagreement concerned responsibility for broadcasting. Until the early 1960s, it seems not to have been in dispute that this was a matter for the UK Parliament and Government, both the *Wireless Telegraphy Act 1904* the *Television Act 1954* having been extended to the Isle of Man.

In 1961 Manx Radio, a company sponsored by the Isle of Man Government, applied to the UK Postmaster General for a transmission licence and a frequency. The application was refused. Tynwald then requested the revocation of the Order in Council extending the relevant Act to the island, while enacting legislation conferring powers to license broadcasting in the Island on the Lieutenant Governor. The requests for revocation of the Order in Council and for Royal Assent to the Bill were

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<sup>33</sup> Guernsey and Jersey did make a voluntary contribution to the UK Exchequer as a contribution to the cost of the First World War.

<sup>34</sup> Justice Committee, *Crown Dependencies*, p13.

<sup>35</sup> See Isle of Man Treasury, [Customs and Excise Agreement](#), 5 August 2011.

both refused, partly on the grounds that it conflicted with the UK's international obligations.

A 1962 proposal to license a television and radio station to transmit to the British Islands only was also refused by the UK. Only when the Isle of Man submitted proposals for a radio station to broadcast to the Island alone were they approved. A licence was issued in 1965 and a commercial broadcasting station was established in the Island.

When the *Marine etc Broadcasting (Offences) Bill* was introduced to the UK Parliament, it contained a clause permitting it to be extended by Order in Council to the Isle of Man. The Isle of Man Government indicated its preference for legislating in Tynwald for as much of the subject matter (pirate broadcasting) as was within its constitutional competence, for example criminal law. The Tynwald appealed to the Queen in Council against extension but this was rejected.<sup>36</sup>

These disputes led to both the Stonham Working Party (see **Section 2.1** above) and for the Isle of Man to seek a new procedure for Royal Assent of Manx legislation, which remains in place (see **Section 1.4** above).

### Relations since 2010

A 2013 Justice Committee report found that on a number of occasions since 2010 the UK had:

acted in ways which the Crown Dependencies judged to be inappropriate, wrong or unfair, and which have strained the relationship. These include instances where the UK has made decisions which impacted on the Islands without prior consultation.<sup>37</sup>

However, the Committee also concluded that compared with the situation prior to 2010, the relationship had:

improved considerably. The process for granting Royal Assent for Crown Dependency legislation is much quicker; and the Islands are, in general, better consulted about UK legislation and international measures affecting them. Where tensions do arise, the Ministry of Justice works effectively to facilitate resolution as far as possible.<sup>38</sup>

In evidence, Lord McNally described the relationship as “like a good marriage; it has to be worked at. It is not a finished product; it is work in progress.” He also rejected a proposed review of the constitutional relationship, saying:

As long as the Westminster Government appreciate and understand the nature of that relationship—that they are not colonies and cannot be browbeaten and bullied but have to be taken into account and discussed with—and as long as they realise that they have responsibilities both to the United Kingdom and the global community in the observance of treaties, agreements and such, it is a solid relationship and one that I do not see needs any tinkering with in any fundamental way.<sup>39</sup>

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<sup>36</sup> See *Royal Commission on the Constitution*, paras 1421-29.

<sup>37</sup> Justice Committee, *Crown Dependencies: developments since 2010*, p11.

<sup>38</sup> *Ibid.*, p3.

<sup>39</sup> *Ibid.*, p14.

## 3. Extension of UK legislation to the Crown Dependencies

In contrast with the British Overseas Territories, on which the UK Parliament has unlimited power to legislate,<sup>40</sup> UK primary legislation does not ordinarily apply to the Crown Dependencies. It can, however, be extended to them if:

- UK Government departments consider that primary UK legislation in whole or in part needs to have effect in any of the Crown Dependencies; or
- UK Government departments have received a request from a Crown Dependency seeking to extend provisions of a UK Act (with or without modifications) to their jurisdiction by activation of a **permissive extent clause** (PEC).

This can happen either by “direct application” (expressly or by necessary implication) or via an Order in Council. According to the Ministry of Justice, “for an Act to extend otherwise than by an Order in Council is now very unusual”.<sup>41</sup>

A PEC in a UK Bill could take the following form:

Her Majesty may by Order in Council provide for any of the provisions of this Act to extend, with or without modifications, to any of the Channel Islands or the Isle of Man.<sup>42</sup>

Ministry of Justice guidance also states that UK departments:

must consult the Crown Dependencies at the earliest opportunity in the event that extension is under consideration and a PEC should not be included in a Bill without the prior agreement of the Islands.<sup>43</sup>

### 3.1 Constitutional convention

The 1973 Royal Commission on the Constitution observed that, by convention, the UK Parliament did “not legislate for the Islands without their consent in matters of taxation or other matters of purely domestic concern”. It also noted that the last time the UK made use of prerogative Orders in Council to legislate for a Crown Dependency was the *Court of Appeal (Channel Islands) Order 1949*, although this had been based on a scheme which had prior approval.<sup>44</sup>

But this is a convention rather than a matter of law.<sup>45</sup> The Royal Commission also concluded “that in the eyes of the courts [the UK] Parliament has a paramount power to legislate for the Islands in any circumstances”:

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<sup>40</sup> See UK Government White Paper, *The Overseas Territories*, 28 June 2012.

<sup>41</sup> Ministry of Justice, [How To Note: Extension of UK primary legislation to the Crown Dependencies](#)

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> *Royal Commission on the Constitution*, para 1362.

<sup>45</sup> As is the case with the “Sewel Convention” in its application to devolved areas in Scotland, Wales and Northern Ireland.

This does not, of course, mean that Parliament should be any more ready than in the past to interfere in the Islands' domestic affairs and any less mindful of the need to preserve their autonomy [...] If, exceptionally, circumstances should demand the application to the Islands without their consent of measures of a kind hitherto regarded as domestic, then Parliament would, in our view, have the power to enact the necessary legislation.<sup>46</sup>

In 2014, Lady Hale, president of the Supreme Court, noted the Royal Commission's view but added that it was "the practice to consult the Islands before any United Kingdom legislation is extended to them".<sup>47</sup>

When, for example, the European Convention on Human Rights was incorporated into UK law through the [Human Rights Act 1998](#), there was discussion as to whether that Act should be extended to the Crown Dependencies. In the end, it was decided they would pass their own human rights legislation.<sup>48</sup>

### 3.2 The Crown Dependencies and "good government"

The Royal Commission on the Constitution also believed the UK could legislate on behalf of the Crown Dependencies on the basis of what it called "good government". In 2010, the Commons Justice Committee found "a high degree of consensus amongst academics, legal advisors, politicians and officials" as to the meaning of this term:

They agree that good government would only be called into question in the most serious of circumstances, exemplified by the recent events in Turks and Caicos which did, indeed, lead to UK Government intervention. Such circumstances are likely to include a fundamental breakdown in public order or endemic corruption in the government, legislature or judiciary.<sup>49</sup>

Consideration of "good government" appears to have formed the basis for the Justice Secretary's initial rejection of Royal Assent for the first formulation of a new democratic legislature for Sark in 2008. He declined to recommend the proposed law for Assent on the basis that it was "inconsistent with basic democratic principles, some of which were set out in the European Convention on Human Rights". When a revised law was resubmitted by Sark, the Justice Secretary judged it to be acceptable and recommended it for Royal Assent, which it duly received.<sup>50</sup>

In its 2010 report, the Justice Committee recommended that the "independence and powers of self-determination of the Crown Dependencies" should "only to be set aside in the most serious circumstances", used only:

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<sup>46</sup> *Royal Commission on the Constitution*, para 1473.

<sup>47</sup> See Jowell et al, "[The Barclay Cases: Beyond Kilbrandon](#)"

<sup>48</sup> *Ibid.* A similar arrangement exists regarding Brexit (see **Section 4.2**).

<sup>49</sup> Justice Committee, *Crown Dependencies*, p16.

<sup>50</sup> *Ibid.*, p18.

in the event of a fundamental breakdown in public order or of the rule of law, endemic corruption in the government or the judiciary or other extreme circumstance.<sup>51</sup>

Giving evidence to a later inquiry, Lord McNally confirmed the UK Government's view that "unless there is real evidence of a breakdown either in the policing or the integrity of the judiciary or general law and order", it would not intervene.<sup>52</sup>

### 3.3 Beneficial ownership registers

Questions of "good government" also arose in the context of registers of beneficial interest and their possible extension to the Crown Dependencies. Beneficial ownership is a legal term which refers to someone who enjoys the benefits of owning something without being listed publicly as the owner.

The UK has registers of beneficial ownership for assets and trusts, which means the beneficial (or ultimate) ownership of companies (but not trusts) is publicly available.<sup>53</sup> In April 2014, the Prime Minister [wrote to the Crown Dependencies](#) and British Overseas Territories (BOTs) to encourage them to follow the UK's example.

Subsequently, the UK completed a series of bilateral agreements with both on sharing beneficial ownership information. As of July 2017, this has provided UK law enforcement with access to company beneficial ownership information in support of investigations. Beyond that, the Crown Dependencies only committed to following suit when public registers become the global norm.

Some MPs believed both the BOTs and Crown Dependencies ought to be compelled to follow the UK's lead. At the Commons Report Stage of the *Sanctions and Anti Money Laundering Bill 2017-19*, the Government agreed to a new clause which would in effect compel the BOTs to establish public registers of beneficial ownership but did not agree a second amendment extending this to the Crown Dependencies.

Later, during Parliamentary consideration of the *Financial Services Bill 2017-19*, a cross-party group of MPs proposed a similar amendment requiring public registers with details of anyone owning more than 25% of a company based in a Crown Dependency by 2020.

The MPs cited the 1973 Royal Commission on "good government", although the Crown Dependencies argued that their systems for combating money laundering already [represented this](#).

In response, the Chief Ministers of Guernsey, Jersey and the Isle of Man argued that Westminster could not impose legislation without consent. Lyndon Trott, Guernsey's Deputy Chief Minister, added that the imposition of a public register would "seriously undermine our longstanding and close relationship with the UK and the crown".<sup>54</sup>

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<sup>51</sup> Justice Committee, *Crown Dependencies*, p18.

<sup>52</sup> Justice Committee, *Crown Dependencies: developments since 2010*, p30.

<sup>53</sup> See the [Small Business, Enterprise & Employment Act 2015](#).

<sup>54</sup> George Parker, "[Crown dependencies set for transparency clash with Westminster](#)", *Financial Times*, 3 March 2019. According to the *Financial Times*' report, Andrew

On 4 March 2019, the Government withdrew the *Financial Services Bill*, saying the amendment would be considered at a later date.<sup>55</sup>

### 3.4 Response in the Crown Dependencies

Primary legislation passed in the UK and extended to the Channel Islands requires the resulting Order in Council to be registered in the islands' respective courts. This is not the case in the Isle of Man.

In response to the debate concerning registers of beneficial ownership, the States of Guernsey's Policy and Resources Committee [proposed changes](#) to the [Reform \(Guernsey\) Law 1948](#) to require that UK:

Acts of Parliament and Orders in Council which seek to apply to Guernsey will be referred to the States of Deliberation for approval and consent before such an Act of Parliament or Order in Council [...]is registered in Guernsey's Royal Court.

This proposal was similar to a legal requirement already in place in Jersey, where UK legislation is not law until it has been approved by the States of Jersey.<sup>56</sup>

In 1968, the UK Government had assured Guernsey that there was no question of it seeking to legislate for the Island "in any taxation matter or in any other matter which had long been accepted as the responsibility and concern of the insular authorities".<sup>57</sup>

### 3.5 Proposals for reform

In their evidence to the Royal Commission on the Constitution, the States of Jersey and Tynwald proposed "an Act of Parliament making a formal division of legislative and executive responsibilities between the United Kingdom and the Islands". This was rejected by the UK Government on the basis that it would leave it:

with responsibility both for the good government of the Islands and for their external relations, but without the power needed to exercise that responsibility.<sup>58</sup>

In 2013, the Justice Committee also noted pressure towards "redefining the constitutional relationship in a way that allows the Islands even greater independence from the UK". But it concluded that while:

the relationship has evolved over time and will rightly continue to do so, its very nature imposes certain responsibilities on the UK which it cannot ignore. We are therefore not convinced that any attempt to achieve a fundamental re-balancing would be fruitful.<sup>59</sup>

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Mitchell and Dame Margaret Hodge claimed in a letter to supportive MPs that the Crown Dependencies acted as "secret tax havens facilitating economic crime, tax avoidance and tax evasion".

<sup>55</sup> BBC News Online, ["Ministers halt discussion of tax transparency bill"](#), 4 March 2019.

<sup>56</sup> See [section 31 of the States of Jersey Law 2005](#). That law was approved by Her Majesty in Council.

<sup>57</sup> *Royal Commission on the Constitution*, para 1477.

<sup>58</sup> *Royal Commission on the Constitution*, para 1480. The *Government of Ireland Act 1920* was cited as a possible model.

<sup>59</sup> Justice Committee, *Crown Dependencies: developments since 2010*, pp36-37.



## 4. Crown Dependencies and international treaties

The Crown Dependencies are not recognised internationally as sovereign States in their own right but as “territories for which the United Kingdom is responsible”.<sup>60</sup> As such they cannot sign up to international agreements under their own aegis but can have the UK’s ratification of such instruments extended to them.

### The 1950 declaration

For the purposes of international agreements, until 1950 the Crown Dependencies were regarded as part of the “metropolitan territory” of the UK. In recognition of the fact this might be inconsistent with their constitutional status as self-governing territories, a declaration was made to the effect that, in future, any international treaty agreed by the UK would “not extend to the Island unless they were expressly included”.<sup>61</sup>

### 4.1 Process for extension of international treaties

The long-standing practice of the UK when it ratifies, accedes to, or accepts a treaty, convention or agreement is to do so on behalf of the United Kingdom of Great Britain and Northern Ireland and any of the Crown Dependencies or Overseas Territories that wish the treaty to apply. The UK’s ratification, accession or acceptance can also be extended at a later date.

This means that when the UK is planning to ratify particular International Conventions, Treaties, Protocols or Agreements (“International Instruments”), it consults the Crown Dependencies concerning their extension to them. The Ministry of Justice states that consultation regarding extension is a matter of:

essential policy and administration. International instruments which propose provisions relating directly to the Crown Dependencies should not be negotiated unless consultation in good time in advance has taken place with the Islands in question. Where applicable, the views of each Crown Dependency may also be required to formulate the UK negotiating position on an International Instrument.

Normal practice is for initial UK consultation with the Crown Dependencies to occur during the course of negotiation of an International Instrument, if the subject of that Instrument might be relevant to the Crown Dependencies.<sup>62</sup>

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<sup>60</sup> See Ministry of Justice, [Fact sheet on the UK’s relationship with the Crown Dependencies](#).

<sup>61</sup> *Royal Commission on the Constitution*, para 1381.

<sup>62</sup> Ministry of Justice, [Fact sheet on the UK’s relationship with the Crown Dependencies](#). The Isle of Man government told the Commons Justice Committee that the UK Government had, on occasion, “failed to leave adequate time for

If a treaty is extended to one or all the Crown Dependencies, the UK is responsible under international law for compliance with that treaty, for example by ensuring there is appropriate “insular” legislation in place.<sup>63</sup>

## 4.2 Brexit and the Crown Dependencies

The current relationship between the Crown Dependencies and the European Union (EU) is based on provisions in the EU Treaties and [Protocol 3](#) (on the Channel Islands and the Isle of Man) of the UK’s 1972 Treaty of Accession.<sup>64</sup>

Under Protocol 3, the Crown Dependencies are part of the customs territory of the EU and the common customs tariff, levies and agricultural import measures apply to trade between the Islands and non-member countries. Crown Dependencies use their domestic legislation to implement EU legislation falling within the parameters of this Protocol. Most other EU legislation does not apply.<sup>65</sup>

When the UK leaves the EU, Protocol 3 will no longer apply. Observing standard Government policy on international treaties, the UK Government has worked closely with the Crown Dependencies during the Brexit process.

As Lord Callanan explained in the House of Lords on 13 December 2018, although the UK Government is responsible for the Crown Dependencies’ international relations, Guernsey, Jersey and the Isle of Man are responsible for passing their own Exit legislation:

This includes legislation which may be required to implement the Withdrawal Agreement in their jurisdictions. As the Prime Minister has made clear, the longstanding constitutional relationships between the UK and the Crown Dependencies will not change as a result of the UK’s decision to leave the EU.<sup>66</sup>

A Lords European Union Committee report on Brexit and the Crown Dependencies noted “three intertwined, and potentially conflicting, priorities for the Crown Dependencies in the context of the Brexit negotiations”:

- maintenance of their centuries-old constitutional relationship with the UK;
- retention so far as possible of the benefits of the existing relationship between the Crown Dependencies and the EU; and
- the evolution of the Crown Dependencies’ international identities, while respecting the UK’s constitutional obligation to represent them in matters of defence and international relations.

The Committee also urged the Government “to support Guernsey and Jersey in their efforts to ensure that the UK’s [World Trade Organisation]

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consultation on international treaties which are to be applied to it” (Justice Committee, *Crown Dependencies*, p10).

<sup>63</sup> Ibid.

<sup>64</sup> The Royal Commission on the Constitution heard serious concerns from the Crown Dependencies regarding the prospect of full membership of the then European Economic Community (see paras 1389-92).

<sup>65</sup> Justice Committee, *Crown Dependencies: developments since 2010*, p10.

<sup>66</sup> Lord Callanan, [Brexit: Written question – HL11872](#), 13 December 2018.

membership is extended to cover them, as it already does the Isle of Man".<sup>67</sup>

### 4.3 Letters of Entrustment

Guernsey, Jersey and the Isle of Man can sign specific international agreements if they have been authorised to do so by the UK, a process known as "Entrustment". Letters of Entrustment have been issued in the case of Tax Information Exchange Agreements and other agreements relating to taxation that provide for exchange of information on tax matters between the Crown Dependencies and third countries.

A 2013 report from the Justice Committee proposed greater use of Letters of Entrustment. It said this:

could help mitigate the potential difficulties on occasions where the Crown Dependencies need to pursue interests which are separate from those of the UK.<sup>68</sup>

The same Committee urged the Ministry of Justice to:

work with the Crown Dependencies to develop expeditious arrangements to deal with Dependency access to Bilateral Investment Treaties, now that the UK has ceded competence for these to the EU.<sup>69</sup>

### 4.4 International representation

In 2007-08, the then UK Secretary of State for Constitutional Affairs agreed "International Identity Frameworks" with each Crown Dependency. These were intended to clarify the constitutional relationship with regard to international relations.

The Frameworks include express acknowledgement that, in the context of the UK's responsibility for the international relations of the Crown Dependencies, it is understood that:

- the UK will not act internationally on behalf of the Crown Dependencies without prior consultation;
- the UK recognises that the interests of the Crown Dependencies may differ from those of the UK, particularly in respect of the parties' relationship with the EU;
- the UK will seek to represent any differing interests when acting in an international capacity; and
- the UK supports the principle of the Crown Dependencies developing further their international identities.<sup>70</sup>

The Justice Committee's 2010 report observed that where the interests of the UK and the Crown Dependencies conflicted in international terms, "the insular governments have a sense that their interests will

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<sup>67</sup> Lords European Union Committee, [Brexit: the Crown Dependencies](#), 23 March 2017, pp31-32.

<sup>68</sup> Justice Committee, *Crown Dependencies: developments since 2010*, p28.

<sup>69</sup> *Ibid.*, p29.

<sup>70</sup> See, for example, [Framework for developing the international identity of Jersey](#).

always be subordinate to those of the UK".<sup>71</sup> It therefore recommended that in:

cases of conflict, the Ministry of Justice must endeavour to find a mechanism for representation which will faithfully present and serve the interests of both parties.<sup>72</sup>

The UK Government, however, rejected this proposal, arguing that the Crown Dependencies were "not sovereign States and cannot represent themselves":

We do not think that it would be appropriate for the Crown Dependencies' position to be separately represented in international negotiations. It would be unrealistic to expect a UK official to put the interest of a Crown Dependency above that of the UK and in extreme circumstances this may hamper the ability of the UK to operate effectively on the international stage. Where international issues do engage the Crown Dependencies' interests their views can be taken on board as the UK line is developed.<sup>73</sup>

## 4.5 Overseas offices

The [Channel Islands Brussels Office](#) was opened in 2011 to:

promote the interests of the Channel Islands in Europe, to represent the Channel Islands to the EU institutions, and to advise the governments of Guernsey and Jersey on EU policy issues.

The [Isle of Man Government Brussels Office](#) also opened in 2011 with a similar remit, while the [Bureau des Îles Anglo-Normandes](#) promotes the interests of the Channel Islands in France.

There is also a [Government of Jersey London Office](#), but no equivalent for Guernsey or the Isle of Man.

Both the Jersey and Guernsey governments include [ministers with responsibility for the islands' External Relations](#).

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<sup>71</sup> Justice Committee, *Crown Dependencies*, p12. An earlier Justice Committee inquiry had examined UK representation of the Crown Dependencies during the Icelandic banking crisis.

<sup>72</sup> Justice Committee, *Crown Dependencies*, p31.

<sup>73</sup> Justice Committee, *Crown Dependencies: developments since 2010*, p25.

## 5. Useful websites and further reading

Isle of Man Government: [www.gov.im](http://www.gov.im)

Isle of Man Parliament: [www.tynwald.org.im](http://www.tynwald.org.im)

The States of Jersey: [www.gov.je](http://www.gov.je)

The States of Guernsey: [www.gov.gg](http://www.gov.gg)

The States of Alderney: [www.alderney.gov.gg](http://www.alderney.gov.gg)

Sark Chief Pleas: [www.gov.sark.gg](http://www.gov.sark.gg)

Royal Family: <https://www.royal.uk/crown-dependencies>

UK Government:

Crown Dependencies Team

International and Rights Directorate

Ministry of Justice

102 Petty France

London SW1H 9AJ

Email: [crown.dependencies@justice.gov.uk](mailto:crown.dependencies@justice.gov.uk)

### Publications

Darryl Ogier, *The Government and Law of Guernsey*, St Peter Port: States of Guernsey, 2005

Derek Winterbottom, *Governors of the Isle of Man*, Douglas: Manx Heritage Foundation, 1999

HMSO, "Part XI: The Channel Islands and the Isle of Man", in *Royal Commission on the Constitution 1969-1973 Volume I Report*, Cmnd 5460, October 1973, pp405-66

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