



House of Commons
Justice Committee

Crown Dependencies

Eighth Report of Session 2009–10



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Report, together with formal minutes

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The Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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Summary

Following our previous inquiry into the representation of the Crown Dependencies during the Icelandic banking crisis, we decided to investigate the relationship between the UK and the Crown Dependencies, and the role of the Ministry of Justice in administering that relationship. During our investigations, we took both written and oral evidence and visited Jersey, Guernsey, Sark, Alderney and the Isle of Man.

The Ministry of Justice is the UK Government department responsible for the administration of the UK's relationship with the Crown Dependencies, although the overall responsibility for that relationship is shared across Whitehall. The 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.

The Crown Dependency governments are, with some important caveats, content with their relationship with the Ministry of Justice. We found that the Crown Dependencies team at the Ministry of Justice carried a considerable workload, the burden of which sometimes appeared to prevent the efficient and timely administration of legislative and other business from the Crown Dependencies. We recommend that the Ministry of Justice reappraise the priorities for its Crown Dependencies work; focus more on its constitutional duties; and spend less time on issues for which it is not formally responsible.

The Ministry of Justice should give clearer guidance to other Whitehall departments who conduct business affecting the Crown Dependencies. Such departments should be made aware of the constitution position of the Islands, their essential independence from the UK, their independence from each other, and the fact that their interests need to be considered routinely in any area of UK policy-making and legislation likely to affect them. We consider that secondments of officials between UK Government departments and the Crown Dependencies would help to increase mutual understanding.

The UK Government is responsible for ensuring the good government of the Crown Dependencies. Some witnesses to this inquiry indicated a desire for the Ministry of Justice to step in to address certain grievances they have in relation to the governance of the Islands. However, we consider that the Crown Dependencies are democratic, self-governing communities with free media and open debate. The independence and powers of self-determination of the Crown Dependencies are, in the view of both the UK Government and the Island authorities, only to be set aside in the most serious circumstances, such as a fundamental breakdown in public order or of the rule of law, endemic corruption in the government or the judiciary or other extreme circumstance. However, we note that, in very small jurisdictions, it is possible for the existence of very significant economic, legal or political power to skew the operation of democratic government and this is a possibility in respect of which the Ministry of Justice should

remain vigilant.

We found that there was duplication of effort in the processes relating to the scrutiny of insular legislation prior to Royal Assent, with several sets of lawyers sometimes reviewing legislation for the same purposes. In addition, we found that Ministry of Justice and other UK Government 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. This is inappropriate, both in terms of a non-essential use of scarce resources and in terms of the constitutional autonomy of the insular legislatures in relation to domestic matters. We recommend that the judgement of the insular Law Officers should normally be relied upon for laws which are of domestic application only, with a reduced level of scrutiny by Ministry of Justice and other UK Government lawyers. Where increased scrutiny is required for more complex legislation, the Ministry of Justice should endeavour to ensure that such scrutiny is carried out expeditiously so as to give timely effect to the will of the democratically elected insular parliaments.

We were told that the Islands sometimes find themselves in the position of having to acquiesce in or agree to UK legislation, EU and other international measures affecting them without sufficient time or opportunity for reflection, discussion or negotiation. We recommend that the Ministry of Justice set out clear guidelines on the need for UK Government consultation with the Crown Dependencies as early as possible; and that including the consideration of the interests of the Crown Dependencies on UK legislative checklists may be a useful measure.

The Crown Dependencies expressed concern that their interests were sometimes not effectively represented by the UK Government on the international stage. This is especially problematic where the interests of the UK and the Crown Dependencies are in direct conflict. We note that the duty of the UK Government to represent the interests of the Crown Dependencies faithfully—reflected in the Framework for developing the international identities of the Crown Dependencies agreed between the UK and the Islands—is just that: a duty and not an option. In cases of conflict, the Ministry of Justice should endeavour to find more creative ways of representing the interests of both parties. Appropriate mechanisms may include designating certain officials, either from the UK or from the Islands, within the UK delegation as representing the Islands in international negotiations; and the increased use of Letters of Entrustment, which permit the Island authorities to conclude their own international agreements in specified areas.

1 Introduction

Background to the inquiry

1. At the start of the 2008-09 Session, we conducted a short inquiry into the Ministry of Justice's performance in representing the interests of the Crown Dependencies within the UK Government's overall response to problems arising as a result of the Icelandic banking crisis.¹ That inquiry highlighted some of the problems that can arise when one partner in a relationship is charged with representing, not only its own interests, but also those of the other partners, especially in circumstances where those interests may conflict. Such was arguably the case during the negotiations with the Icelandic government which followed the collapse of that country's banks.

2. Our inquiry into the representation of the Crown Dependencies during the Icelandic banking crisis threw up broader, constitutional issues about the precise relationship between the UK and the Crown Dependencies and the role of the Ministry of Justice in administering that relationship. The current inquiry was, therefore, intended to pursue these broader questions.

3. We issued the terms of reference for the inquiry and a call for written evidence on 5 August 2009. We have been advised during this inquiry by Professor Andrew Le Sueur, of the Department of Law, Queen Mary, University of London; and by Professor St John Bates, Visiting Professor and Director of the Centre for Legislative and Parliamentary Studies at the University of Strathclyde, Associate Senior Research Fellow at the Institute of Advanced Legal Studies, and Visiting Professor at the Isle of Man International Business School.

4. Between December 2009 and March 2010, we took oral evidence from Professor Alastair Sutton, an expert in the Crown Dependencies' international relations; officials from the Ministry of Justice and HM Treasury; and Lord Bach, Parliamentary Under Secretary of State for Justice. In February 2010, we visited Jersey, Guernsey, Sark, Alderney and the Isle of Man in order to gather first-hand information from the Crown Dependencies and add depth to our thinking and, ultimately, to our report.

5. We wish to thank our specialist advisers, those who submitted written and oral evidence to the inquiry, and all those we met on our visits to the Islands. Their cooperation and assistance during the course of this inquiry has been invaluable.

Scope of this inquiry

6. This inquiry considers the administration of the relationship of the Crown Dependencies with the Crown. For reasons explained below, the Ministry of Justice is tasked with the administration of this relationship.

1 *Crown Dependencies: evidence taken*, First Report of the Justice Committee Session 2008-09, HC 67

7. The Bailiwicks of Jersey and Guernsey and the Isle of Man are Dependencies of the Crown, with Her Majesty The Queen as Sovereign.² The Sovereign is represented in each jurisdiction by a Lieutenant Governor. Although they are proud of their British associations, the Crown Dependencies are not part of the United Kingdom and are autonomous and self-governing, with their own, independent legal, administrative and fiscal systems. The Island parliaments legislate for themselves. UK legislation and international treaties are only extended to them with their consent. It has been argued that Westminster retains a residual legislative power over the Islands in order to avoid “the impossible position of having responsibility without power”.³ We are not aware of any example in recent times of such a power being exercised. The Crown Dependencies are to be distinguished from the UK’s Overseas Territories, which have a different constitutional relationship with the UK.⁴ The Crown Dependencies are not part of the EU or EEA but they are in the Customs territory of the EU by virtue of Protocol 3 to the UK’s Act of Accession 1972 so that they can benefit from free movement of industrial and agricultural goods.⁵ They are also part of the Common Travel Area (CTA), along with the UK and the Republic of Ireland, which permits movement without immigration controls for all CTA nationals.⁶

8. Her Majesty the Queen is Sovereign in each of the Crown Dependencies for historical reasons which are different for each Island.⁷ In each case, however, she executes her responsibilities for the Crown Dependencies on the advice of her Privy Council and her executive responsibilities are carried out by Her Majesty’s Government. Within HM Government, the Ministry of Justice is the point of contact for the Crown Dependencies, and communications in both directions are passed through its offices. Whilst this inquiry deals with the relationship between the Ministry of Justice and the Crown Dependencies, it is important to realise that their relationship is technically with the Crown and that HM Government’s responsibilities are derived from this fact. As Jack Straw told us on 7 October 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.⁸

9. Part XI of Volume 1 of the Report of the Royal Commission on the Constitution, published in 1973 and known as the Kilbrandon Report, sets out an account of the duties of the Crown in relation to its Dependencies.⁹ The Crown’s responsibilities include:

2 See Appendices 1 and 2 for an overview of the geography, people, government, economy and constitutional position of each jurisdiction.

3 *Part XI of Volume 1 of the Report of the Royal Commission on the Constitution, 1969-1973*, Cmnd 5460, paras 1370-1372; paras 1430-1434

4 Foot, M., (2009) *Final report of the independent Review of British offshore financial centres*. Available at http://www.hm-treasury.gov.uk/indreview_brit_offshore_fin_centres.htm

5 Ev 69

6 See UK Borders Agency’s *Final Impact Assessment of Common Travel Area Reform*, available at http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/strengtheningthecommontravelarea/final_ia_of_cta_reform.pdf?view=Binary; see also <http://www.ukvisas.gov.uk/en/ecg/commontravelarea>

7 See Appendix 2 for a short summary of the historical position.

8 Q 15, oral evidence on *The Work of the Ministry of Justice*, 7 October 2008, HC 1076-i

- ultimate responsibility for the “good government” of the Islands;
- the ratification of Island legislation by Order in Council (Royal Assent) following scrutiny by the relevant Privy Councillor (at the time of the Kilbrandon Report the Home Secretary, now the Justice Secretary);
- international representation, subject to consultation with the insular authorities prior to the conclusion of any agreement which would apply to them;
- ensuring the Islands meet their international obligations; and
- defence.¹⁰

The precise extent, and limitations, of these responsibilities are unclear, however, and we have sought clarification on these issues throughout our inquiry. This Report focuses, not only on the Ministry of Justice’s administration of these responsibilities, but also on its management of the UK’s relationship with the Crown Dependencies more widely, including the Ministry of Justice’s role in the interactions between the Crown Dependencies and other Whitehall departments. We make recommendations about the changes which are required, in terms of both policy and practice, in order to improve the Ministry of Justice’s management of the relationship between the United Kingdom and the Crown Dependencies.

9 *Part XI of Volume 1 of the Report of the Royal Commission on the Constitution, 1969-1973, Cmnd 5460*

10 *Part XI of Volume 1 of the Report of the Royal Commission on the Constitution, 1969-1973, Cmnd 5460, paras 1360–1363; Ev 86*

2 Relationship between the Ministry of Justice and the Crown Dependencies

10. The Ministry of Justice is the Department charged with administration of the relationship between the UK Government, on behalf of the Crown, and the Crown Dependencies.¹¹ In evidence to us on 7 October 2008, the Justice Secretary, the Rt Hon Jack Straw MP, described the responsibilities of the Ministry of Justice as including international relations; defence; ensuring that the Crown Dependencies meet their international obligations, including human rights obligations; and the “good government” of the islands.¹² The limits of these responsibilities in relation to its Dependencies have never been tested, and this contributes to the Justice Secretary’s description of the constitutional relationship as a “subtle one”.¹³

11. The Ministry of Justice has outlined the broader work of the Crown Dependencies Branch, which sits inside the International Directorate of the Ministry of Justice.¹⁴ The Crown Dependencies Branch:

- holds the policy responsibility for the UK’s relationship with the Crown Dependencies;
- provides the main channel of communication between the Crown Dependencies and the UK Government on a full range of policy concerns and issues raised by both the Crown Dependencies and the UK;
- ensures the development of UK policy takes the interests of the Crown Dependencies into account, where appropriate;
- processes legislation submitted for Royal Assent by the Crown Dependencies (in the case of the Isle of Man, the Lieutenant Governor possesses a delegated power to grant Royal Assent for many types of legislation and the Ministry of Justice will signal to him whether or not it is appropriate for him to use that power) consults with the Islands on extending international instruments and UK legislation to them; where appropriate;
- recommends crown appointments in the Islands.¹⁵

The Ministry of Justice emphasises the extent to which the relationship with the Crown Dependencies is a shared responsibility across government, with the Ministry relying on other departments for advice, assistance and international representation.¹⁶

11 Prior to the creation of the Ministry of Justice, both the Home Office and the Department for Constitutional Affairs have had responsibility for the relationship with the Crown Dependencies.

12 Qq 14, 17, oral evidence on *The Work of the Ministry of Justice*, 7 October 2008, HC 1076-i

13 Q 15, oral evidence on *The Work of the Ministry of Justice*, 7 October 2008, HC 1076-i; *Crown Dependencies: evidence taken*, First Report of the Justice Committee Session 2008-09, HC 67, Ev 6

14 Q 45

15 Ev 87

16 Q 87; Ev 88

12. Within the Ministry of Justice policy team dedicated to the Crown Dependencies, three operational staff deal with Island legislation, Crown appointments and honours. A further three policy officials deal with a range of policy issues and provide practical advice and support to the Crown Dependencies when required. It is their responsibility to ensure that the Islands' interests are taken into account in UK policy development and they work with the Islands on the development of their own policies, particularly where these have relevance to the UK or an international dimension. This team is supported by four lawyers, who advise the policy team and other UK Government departments. They also work directly with the Islands, for example, when working on the extension of UK enactments to the Crown Dependencies by Order-in-Council or to resolve questions about insular law submitted for Royal Assent.¹⁷

13. The Crown Dependency governments are, with some important caveats, content with their relationship with the Ministry of Justice.¹⁸ When we visited the Channel Islands and the Isle of Man, we were told that Ministry of Justice officials generally understood the constitutional position of the Crown Dependencies with respect to the UK; understood that there were differences between the Islands in terms of their constitutions, politics and interests; worked hard to support the Crown Dependencies; and that relationships with Ministry of Justice officials were generally good. We heard some concerns about the extent to which the Justice Secretary was engaged with and understood issues relating to the Crown Dependencies, but it was accepted that Lord Bach, Under Secretary of State for Justice, did take an active role in the relationship.¹⁹

14. We note that the Justice Secretary agrees to answer parliamentary questions on matters which might be considered domestic issues for the Crown Dependencies and nothing to do with the Ministry of Justice. He acknowledges that some people argue that he should not do so and should leave such matters for the Islands themselves.²⁰ Nevertheless, he told us that:

... No-one has ever said to me, "You should not answer this parliamentary question because the Crown Dependencies are not part of the United Kingdom" because it is part of my ministerial responsibility. It does not directly arise from being Lord Chancellor, it is the distribution of business. I did it when I was Home Secretary because it used to be in the Home Office.²¹

The problem with the Justice Secretary's justification is that it does not distinguish between his constitutional responsibilities for the Crown Dependencies—which are limited to certain issues including good government, international relations, international obligations and defence—and other, more general matters which may be of policy relevance to the UK but are not within his responsibilities as Justice Secretary and Lord Chancellor. This can give rise to an expectation amongst some Islanders that the Justice Secretary has responsibilities and powers in areas which are, in fact, outwith his constitutional duties.

17 Ev 87

18 ~~Ev 46; Ev 50; Ev 71; Ev 92~~

19 See also HC Deb 23 March 2010 Col 123

20 Q 15, oral evidence on *The Work of the Ministry of Justice*, 7 October 2008, HC 1076-i

21 Q 19, oral evidence on *The Work of the Ministry of Justice*, 7 October 2008, HC 1076-i

15. **We believe that, in agreeing to answer Parliamentary Questions on topics which are essentially domestic matters for the Crown Dependencies, the Justice Secretary is clouding the issue of what, constitutionally speaking, is properly the responsibility of the UK Government and what should properly be left to the Island governments. The Justice Secretary should make explicit in his answers to Parliamentary Questions whether or not he considers the matter addressed to fall within his constitutional responsibilities.**

16. All of the Island governments, either in written evidence or during our visits, have been explicit that they believe the Ministry of Justice Crown Dependencies team to be under-resourced.²² As a result, the Guernsey government considers the team to be reactive, rather than proactive, and suspects it of creating “bottlenecks” in transmitting information to the Island.²³ This is manifested in two ways. First, there are sometimes serious delays in processing Island legislation prior to Royal Assent.²⁴ Second, there are sometimes delays in communicating to the Islands matters which require their attention or consent, leaving them with a very limited amount of time to consider the issues and with a feeling that they have been pressured into making a decision quickly against their interests. The Isle of Man government, for example, states that the UK Government has, on occasion, failed to leave adequate time for consultation on international treaties which are to be applied to it.²⁵ It calls for greater awareness across the UK Government of the need to consult the Crown Dependencies in a timely manner on issues affecting them.²⁶ The authorities in both Alderney and Sark have told us that communication between them and the UK Government is sometimes very slow or even non-existent, either because they are forgotten or because communication with them may be routed through Guernsey.²⁷

17. **Given that the Crown Dependencies team at the Ministry of Justice appears to struggle with the resources it has, we suggest that a reappraisal of the constitutional duties of the Ministry of Justice might be a timely step in the right direction. The Ministry of Justice should prioritise those duties and restrain itself from engaging in areas of work which are outwith its constitutional remit.**

Relationship between other Whitehall departments and the Crown Dependencies

18. The Crown Dependencies team at the Ministry of Justice is responsible for ensuring that other Whitehall departments have the necessary advice and information about the constitutional position of the Crown Dependencies and are aware of their responsibility to take the Islands’ interests into account in formulating UK policy and legislation.²⁸ The Ministry of Justice told us that the team takes a “proactive approach to this, engaging key stakeholders across government on issues concerning the [Crown Dependencies] and

22 Ev 71; Ev 93-94

23 ~~Ev 93-94~~

24 Ev 46

25 Ev 70

26 Ev 71

27 Ev 96; Ev 104; see also Qq 76-77

28 Q 84

using opportunities such as the recent seminars organised by DEFRA to explain the constitutional position of the [Crown Dependencies]”.²⁹

19. There are other resources which provide UK Government departments with information about the Crown Dependencies. For example, the Cabinet Office provides a *Guide to Making Legislation*, which includes a checklist of tasks to be completed by departments in preparation for the introduction of a Bill.³⁰ This checklist refers to the constitutional position of the Crown Dependencies; the need to obtain consent from the insular authorities in appropriate cases; and the need to make contact through the International Directorate of the Ministry of Justice.³¹ Departments can also access a *Background Briefing* and a *Guide to Government Business involving the Channel Islands and the Isle of Man* prepared by the former Department for Constitutional Affairs.³² Both these documents set out similar information about the constitutional position of the Crown Dependencies; the considerations Whitehall departments much take into account when conducting business which may affect the Crown Dependencies; and the correct lines of communication when making contact with the insular authorities.

20. If the insular authorities wish to discuss policy in a particular area with the relevant Whitehall department, or vice versa, the Ministry of Justice is charged with mediating that contact.³³ The lack of an established relationship with the policy department, coupled with the need to communicate through the Ministry of Justice, means that the insular authorities often feel at a significant disadvantage and unable to put across their point of view effectively. The Guernsey government has stated that it would like more direct contact with other UK Government departments in order to ensure that its position is represented accurately and believes that awareness of Crown Dependencies issues across the UK Government is inadequate.³⁴ It told us that:

On occasions, it appears that other UK Departments [other than the Ministry of Justice] overlook seeking input from Guernsey until comparatively late in the formulation of their positions, meaning that the consultation process is not as effective as it should be.³⁵

21. Nevertheless, there are occasions when the insular authorities talk directly to Whitehall departments with which they have an established relationship, usually at official level. Where this works, the insular authorities say they find it helpful as they are able to present their interests and views directly to those charged with the relevant policy area, rather than relying on the advocacy of the Ministry of Justice.

29 Ev 88

30 Q 105; http://www.cabinetoffice.gov.uk/secretariats/economic_and_domestic/legislative_programme/guide_html.aspx

31 http://www.cabinetoffice.gov.uk/secretariats/economic_and_domestic/legislative_programme/guide_html/preparing_the_bill.aspx;
http://www.cabinetoffice.gov.uk/secretariats/economic_and_domestic/legislative_programme/guide_html/crown_dependencies.aspx

32 <http://www.dca.gov.uk/constitution/crown/bg-info-crown-dependencies.pdf>

33 Q 85

34 Ev 94

35 Ev 93

22. The Island governments expressed serious reservations about the extent to which their constitutional position is understood across Whitehall, arguing that this lack of understanding had led to some unfortunate consequences.³⁶ First, there is concern that the UK Government is interfering illegitimately with policy formulated by the democratically elected governments of the Crown Dependencies. Second, the Island governments are frustrated that the Islands' interests are not always taken into account in the formulation of UK policy, either at all or in sufficient time for them to have significant input into the outcome of the policy-making process. Third, where the interests of the UK and the Crown Dependencies conflict, the insular governments have a sense that their interests will always be subordinate to those of the UK.

23. These factors are major barriers to an effective relationship between the Crown Dependencies, the relevant Whitehall policy departments and even, to a certain extent, the Ministry of Justice itself. The Islands have a highly developed sense of their own independence as democracies and, what is more, they see significant differences between themselves in terms of constitution, government and interests. There is an additional layer of complexity: within the Bailiwick of Guernsey, there are three democratically elected bodies—the States of Guernsey, the States of Alderney and Chief Pleas in Sark—each with varying degrees of legislative and executive power.

24. Representatives of all five democratically-elected authorities have expressed to us frustration that those they are dealing with in the UK Government sometimes fail to distinguish between them, confuse their interests—which may be different—and even confuse them with the Overseas Territories. The latter is a particularly sore point in relation to the financial services sector, where the insular authorities are at pains to point to the conclusions of the Foot Report that the Crown Dependencies are, in fact, extremely well regulated, whereas the same could not universally be said of the Overseas Territories.³⁷

25. The question of “identity” is of great concern to the Crown Dependencies and its presentation, both within the UK and internationally, is of the highest importance to them. Whilst it is the express duty of the Ministry of Justice to inform others across Whitehall of the constitutional position of the Crown Dependencies and the appropriate approach of the UK Government towards them and their interests, the Justice Secretary himself told us that:

... although they are self-governing Crown Dependencies, plainly, it is quite complicated to explain that. It is quite complicated to explain it here to the cognoscenti, it is still more complicated to explain it to perhaps abroad or to international organisations ...³⁸

26. There is no doubt that the Ministry of Justice is trying, with the resources it has at its disposal, to raise awareness about Crown Dependency issues in Whitehall. It is true that the constitutional position of the Crown Dependencies is not obvious, but nor is it as

36 Ev 93; see also Q 68

37 Foot, M., (2009) Final report of the independent Review of British offshore financial centres. Available at http://www.hm-treasury.gov.uk/indreview_brit_offshore_fin_centres.htm; see Appendix 3 for a summary of the main recommendations.

38 Q 25, oral evidence on *The Work of the Ministry of Justice*, 7 October 2008, HC 1076-i

complex as the Justice Secretary seems to suggest. In spreading the message, it would be helpful if more use were made of secondments of officials between UK Government departments and the Crown Dependencies, which would assist in spreading understanding in each of how the other functions.

27. We recommend that the Ministry of Justice redoubles its efforts to produce a simple account of the constitutional position of the three Crown Dependencies. This should highlight their essential independence from the UK, their independence from each other, and the fact that their interests need to be considered routinely by all UK Government departments in any area of policy-making likely to impact on them. Those departments should be left in no doubt about the limits of legitimate intervention in Island policy and legislation and about their duties in considering their interests. In achieving these aims, we believe that it would be helpful if more use were made of secondments of officials between UK Government departments and the Crown Dependencies in order to increase mutual understanding.

The Reciprocal Health Agreements

28. In 2008, the Department of Health decided to terminate the 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.³⁹ This was, apparently, on the ground that the Agreements did not represent value for money for the UK taxpayer. The Department of Health judged that more was spent by the UK on treating Crown Dependencies visitors to the UK than was spent by the Crown Dependencies on UK visitors to the Islands. Following termination of the Agreements, emergency treatment will remain free, but further treatment will be subject to charge.

29. At some point in the first half of 2008, Jersey and Guernsey were informed that their Reciprocal Health Agreements with the UK would be terminated. The Ministry of Justice was told by the Department of Health on 4 June 2008 that the future of the Reciprocal Health Agreements with the Crown Dependencies was “about to be considered by Department of Health ministers”. The Ministry of Justice was then made aware of the final decision on 30 June 2008, the day before a meeting between Department of Health officials and representatives of the Crown Dependencies.⁴⁰ At that meeting, Jersey and Guernsey were given formal notice that their Reciprocal Health Agreements would end and the Isle of Man was told for the first time that its Reciprocal Health Agreement would also be terminated.⁴¹ No Ministry of Justice official was present at that meeting and the Ministry of Justice accepts that this was unfortunate, but denies that it would have affected the outcome.⁴²

39 The Agreements with Jersey and Guernsey have already come to an end; the Agreement with the Isle of Man was due to terminate with effect from 1 April 2010 but has recently been extended for a further six months pending further negotiations. Repatriation costs following illness were not covered under the Reciprocal Health Agreements, so termination has no effect on repatriation costs incurred by patients. In addition, the termination of the Reciprocal Health Agreements does not affect the arrangements by which the Islands purchase treatment on the UK mainland for Island patients whose medical needs cannot be met on the Island.

40 Q 117

41 Report to Tynwald October 2009: The ending of the Reciprocal Health Agreement between the United Kingdom and the Isle of Man, available from http://www.gov.im/dhss/reciprocal_agreement/

42 Q 121. See also Ev 82.

30. The Reciprocal Health Agreements with Jersey and Guernsey were terminated with effect from 1 April 2009; the Reciprocal Health Agreement with the Isle of Man was due to be terminated with effect from 1 April 2010, but an extension of a further six months was negotiated at the last minute pending further talks.⁴³

31. Island residents have been advised to obtain health insurance for travel to the UK from now on. This has caused serious concern to Island residents, particularly the very elderly or those with pre-existing conditions who find it hard or impossible to obtain health insurance yet wish to visit friends and relatives on the mainland. The same is true for UK residents wishing to visit the Crown Dependencies. However, the UK Government has emphasised that it does not fund healthcare for UK residents travelling abroad and visits to the Crown Dependencies should, in its view, be no different.

32. Islanders have expressed outrage to us at the abrupt ending of the Reciprocal Health Agreements and have called for them to be reinstated.⁴⁴ Particularly vocal have been Isle of Man residents who have served in the UK's armed forces, many of them conscripts in the Second World War. Unless they receive a war disability pension, they will not receive free treatment in the UK following termination of the Agreements. They argue that, since they have in the past risked their lives for the UK, the very least they are entitled to is free healthcare when they visit that country.⁴⁵

33. The issue for us is not so much the substance of the decision itself, but the way in which the proposal was developed, considered and executed. All three Island governments have complained that the decision was taken summarily by the Department of Health, without consultation. The Island governments have said that the decision to terminate the Agreements was imposed on them in a high-handed manner, with no opportunity given for discussion about alternative resolutions or financial packages.⁴⁶ We have been told that the Ministry of Justice tried to assist the Islands in setting up meetings with the Department of Health, to no avail. The Isle of Man government did eventually meet with the Health Secretary, but this meeting was set up following the intervention of Andrew Mackinlay MP, not with the assistance of the Ministry of Justice.⁴⁷

34. This case is a good example of how relations between the Crown Dependencies and the UK Government can be badly damaged by insensitive handling of an important issue. We say nothing about the decision itself. However, the Department of Health should have been aware, and the Ministry of Justice should have made it aware, that the issue of healthcare is an emotive one for islanders, many of whom have strong family links with the UK mainland. The need to obtain medical travel insurance will present a real obstacle to elderly or infirm islanders who wish to visit friends and family on the mainland, and vice versa. This was a decision which required sensitivity of approach and, at the very least, an opportunity for discussion about alternative options such as a new financial package which would redress the financial balance to remove the burden from the UK taxpayer.

43 HC Deb 23 March 2010 Col 32WS

44 Ev 101

45 Ev 48

46 Lord Bach disagreed that the manner of the Department of Health was "high-handed": Q 119

47 Q 123

35. We believe the lack of consultation, and discussion of possible options, with each Crown Dependency was a failing in the UK Government's approach to its responsibilities in deciding the future of the Reciprocal Health Agreements. The fault appears to lie primarily with the Department for Health but we are left with the clear impression that the Ministry of Justice failed to take responsibility for intervening to ensure that a proper procedure was followed. It is simply unacceptable for the Isle of Man to be told, without warning, at a meeting on 1 July 2008 that the Reciprocal Health Agreement would be terminated; and this in the absence of an official from the Ministry of Justice, the department charged with ensuring representation of the Island interests within the UK Government. Nevertheless, we welcome the extension of the Reciprocal Health Agreement with the Isle of Man for a further six months pending further negotiations.

3 Good government

The Crown has ultimate responsibility for the good government of the Islands.

— Kilbrandon Report, para 1361

36. Kilbrandon explains that the basis on which the Crown has ultimate responsibility for the good government of the Crown Dependencies stems partly from the fact that, with the UK, they are all part of the British Isles. Whilst this did not make uniformity essential, it was “nevertheless highly desirable that the institutions and the practices of the Islands should not differ beyond recognition from those of the United Kingdom”. All parties were in favour of the Crown Dependencies expressing their individuality, but it was recognised that “the British Islands were an entity in the eyes of the world, and the United Kingdom Government would be held responsible internationally if practices in the Islands were to overstep the limits of acceptability”.⁴⁸

37. There is a high degree of consensus amongst academics, legal advisors, politicians and officials about the meaning of the term “good government” used in the Kilbrandon Report.⁴⁹ 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.⁵⁰ Such circumstances are likely to include a fundamental breakdown in public order or endemic corruption in the government, legislature or judiciary. Kilbrandon himself gives a restrictive view of the circumstances which would legitimately give rise to the duty of the UK Government to intervene in insular affairs on the ground of good government, whilst recognising that those circumstances need not be too tightly defined:

There is room for difference of opinion on the circumstances in which it would be proper to exercise that power. Intervention would certainly be justifiable to preserve law and order in the event of grave internal disruption. Whether there are other circumstances in which it would be justified is a question which is so hypothetical as in our view not to be worth pursuing. We think that the United Kingdom Government and Parliament ought to be very slow to seek to impose their will on the Islands merely on the grounds that they know better than the Islands what is good for them; there is ample evidence in the differences between United Kingdom and Island legislation in social matters to show that this policy has in fact been followed for very many years.⁵¹

48 *Part XI of Volume 1 of the Report of the Royal Commission on the Constitution, 1969-1973*, Cmnd 5460, para 1431

49 Qq 3-5, 15

50 After allegations about corruption in the Turks and Caicos Islands, a Commission of Inquiry was set up in July 2008, under Sir Robin Auld, to examine the conduct of past and present elected members of the legislature. On 31 May 2009, Sir Robin reported confirming a high probability of systemic corruption and/or serious dishonesty and clear signs of political amorality and immaturity and of general administrative incompetence. He recommended the urgent suspension in whole or in part of the territory’s constitution and other legislative and administrative reforms. An Order in Council (Turks and Caicos Islands Constitution (Interim Amendment) Order 2009) suspended Ministerial government and the House of Assembly from 14 August 2009. The Governor is leading a programme of reform.

51 *Part XI of Volume 1 of the Report of the Royal Commission on the Constitution, 1969-1973*, Cmnd 5460, para 1502

Kilbrandon suggests that intervention to preserve law and order or in the event of grave internal disruption would be justifiable, but that an attempt to define the circumstances further would be essentially pointless. He points to ample evidence of a policy of restraint in the use of power on the part of the UK Government as a reason for not pursuing the matter.

38. The current ministerial team are clearly following this non-interventionist policy. The Justice Secretary told us that he has the power to intervene in insular affairs on the ground of good government, but that he had not found it necessary to do so. He favoured a collaborative approach, whereby the UK Government and the Crown Dependencies worked together to anticipate any problems which might conceivably arise and deal with them in good time in order to prevent the need for active intervention.⁵² Closely following the Kilbrandon formulation, Lord Bach stated in the House of Lords that intervention in circumstances of “grave breakdown or failure in the administration of justice or civil order” would be justified. However, he added—paraphrasing the Kilbrandon Report—that “It is unhelpful to the relationship between Her Majesty’s Government and the Islands to speculate about the hypothetical and highly unlikely circumstances in which such intervention might take place.”⁵³

39. Some people have argued that certain events, such as those arising out of the historic child abuse inquiry in Jersey, are serious enough to warrant intervention in insular affairs by the UK Government.⁵⁴ Underlying these calls for UK intervention is a belief either that UK responsibility for domestic affairs in the Crown Dependencies has been engaged by events serious enough to fall within the definitions set out in the Kilbrandon Report; or that the UK’s responsibilities are actually much wider than the definitions set out in the Kilbrandon Report. Either way, such beliefs create expectations of UK intervention which are not fulfilled.

40. Calls for the UK Government to intervene have been declined by the Justice Secretary:

You have to be very careful about exercising [the power to intervene on the ground of good government] and it will be known that I have had representations in respect of certain criminal proceedings ... and I have declined to intervene in those, as far as I am concerned, on good grounds.⁵⁵

41. We note the depth of feeling of some witnesses to this inquiry who have indicated serious grievances with various aspects of the governance of the Crown Dependencies and their desire for the UK Government to step in to address their concerns. However, the Crown Dependencies are democratic, self-governing communities with free media and open debate. The independence and powers of self-determination of the Crown Dependencies are, in our view, only to be set aside in the most serious circumstances. We note that the restrictive formulation of the power of the UK Government to intervene in insular affairs on the ground of good government is accepted by both the

52 Q 34, oral evidence on *The Work of the Ministry of Justice*, 7 October 2008, HC 1076-i

53 HL Deb 3 May 2000 Col WA180

54 Ev 29; Ev 34; Ev 50

55 Q 17, oral evidence on *The Work of the Ministry of Justice*, 7 October 2008, HC 1076-i

UK and the Crown Dependency governments: namely, that it should be used only 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, and we see no reason or constitutional basis for changing that formulation.

Sark

42. Sark is part of the Bailiwick of Guernsey. It has its own legislative and executive body, the Chief Pleas, and legislation from the States of Guernsey can only be applied to Sark with its consent. Chief Pleas has legislative competence in relation to domestic matters except for criminal law, which is reserved for the States of Guernsey.

43. Until 2008, Sark’s government was based on a feudal system. The Seigneur, a hereditary position, was the head of government. Chief Pleas was made up of the feudal landholders—the Tenants—and twelve deputies of the people. The Seneschal was the presiding officer and Chief Judge. This arrangement came to be considered untenable in the light of human rights law, and the long process of reform was started.

44. Without setting out the minutiae of the tortuous reform process, it is sufficient to note that, since the Sark Reform Law 2008, Chief Pleas has been a democratically elected body. It is made up of 28 Conseillers, elected by universal adult suffrage for the first time on 10 December 2008, the Seneschal, who remains presiding officer and Chief Judge, and the Seigneur.

45. For the purposes of this Report, Chief Pleas is interesting for two reasons. First, during the reform process, the Justice Secretary rejected the first formulation of the new legislature after it had been passed by Chief Pleas but before it received Royal Assent. He declined to recommend the proposed law for Royal 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.⁵⁶ In other words, Royal Assent was withheld on the basis that the law was not compatible with the UK’s duty to ensure compliance with international obligations. Our impression is that the Justice Secretary also regarded this as a “good government issue”.⁵⁷ 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.⁵⁸ Refusal of Royal Assent is a relatively rare occurrence as most inconsistencies are normally addressed through dialogue and collaboration before an Island parliament passes a law.⁵⁹

46. Second, although Sark now has a democratically elected government which is judged to comply with international human rights obligations by both the Justice Secretary and the Supreme Court⁶⁰, a question mark has been placed over its continued ability to function properly. When we visited Sark, we were told of the considerable economic and political power exercised by Sir David and Sir Frederick Barclay. They are major employers on Sark

56 Qq 52, 90; Qq 14, 17 & 34, oral evidence on *The Work of the Ministry of Justice*, 7 October 2008, HC 1076-i

57 Q 91; Q 17, oral evidence on *The Work of the Ministry of Justice*, 7 October 2008, HC 1076-i

58 Q 15, oral evidence on *The Work of the Ministry of Justice*, 7 October 2008, HC 1076-i

59 Q 18

60 *R (Barclay and others) v The Lord Chancellor and Secretary of State for Justice and others* [2009] UKSC 9

and own a considerable amount of land and businesses there. It follows that the livelihoods of many Sark's people depend on them.

47. This was amply demonstrated by the events which followed the first democratic election on Sark in December 2008. In the poll, all but two of the Barclays' publicly preferred candidates for election to Chief Pleas were rejected, whereas nine of the successful candidates had, prior to the election, appeared on the brothers' published list of candidates described as "dangerous to Sark's future". The following day, the Barclays closed down a number of businesses they owned and stopped their building projects on the Island. As many as 140 (estimates differ) of the 600 inhabitants were out of work until the Barclays reopened most of their businesses a few weeks later.⁶¹

48. We were also told that the Barclays were engaged in a long-running battle of attrition with individuals, particularly Members of Chief Pleas, whereby the Barclays repeatedly instructed their lawyers to write to individuals demanding retractions or apologies in order to protect their interests and reputation.⁶² We were told that such legal action rarely comes to court because the Islanders involved often cannot afford to defend themselves and simply capitulate, however unwillingly. We have not tested these allegations in evidence and we do not intend to take sides or make judgement on these issues.

49. As a matter of general principle, we note that, in a very small jurisdiction, there must always be the possibility that individuals wielding very significant economic, legal and political power may skew the operation of democratic government there. Just as the establishment of democratic government in Sark was a matter of good government, any threat to the ability of that system to operate fairly and robustly has the potential to raise good government issues which might require UK Government intervention. This is a matter on which the Ministry of Justice needs to keep a watching brief.

61 *Barclay brothers lose court battle against old ways of ruling Sark*, The Guardian 2 December 2009; *Return to Sark*, The Guardian, 23 March 2009; *Barclays reinstate Sark staff sacked after poll*, The Independent 30 January 2009; *It's the Siege of Sark as islanders keep the Barclay brothers at bay*, The Times, 20 December 2008; *Leading article: Sark: No island is an island*, The Guardian, 15 December 2008; *Barclay twins freeze Sark operations*, Financial Times 12 December 2008; *Feudal state poll unlikely to end feuding*, Financial Times 8 December 2008

62 *Growing power of Barclays stirs unease*, Financial Times 8 December 2007

4 Legislation and treaties

Island legislation

The [Privy] Council's main business in connection with the Island is to deal with legislative measures submitted for ratification by Order in Council. The [Justice] Secretary is the member of the Council primarily concerned with the affairs of the Islands and is the channel of communication between them and the Crown and the United Kingdom Government. He has the duty to see that the Islands' legislative measures are scrutinised and that there is consultation with any other Ministers who may be concerned, including, if necessary, the Law Officers of the Crown, before the measures receive the Royal Assent.

— Kilbrandon Report, para 1361

50. Legislation passed by an Island parliament is then passed to the UK for scrutiny prior to the granting of Royal Assent.⁶³ The Sovereign (or the Lieutenant Governor in the case of much Manx legislation) grants Assent on the advice of her Privy Council. For these purposes the Justice Secretary is the relevant Privy Councillor.

51. The Justice Secretary can recommend that Assent be withheld, although the grounds for doing this are not entirely clear and it is a rare occurrence.⁶⁴ It would certainly be legitimate to withhold Assent if the legislation would put the relevant Island in breach of an international obligation which applies to the Island and for which the UK is responsible. Island legislation must comply with international human rights obligations, for example, and it was on this basis that Sark's first attempt at a Reform Law was refused.⁶⁵ The need to ensure "good government" of the Islands is another possible ground for legislative intervention, although more difficult to determine. The UK Parliament also appears to have competence to 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. Nor are these areas thought to be exhaustive.⁶⁶

52. It is clear is that the UK has, on occasion, leant heavily on Island governments to modify legislation at stages prior to submission for Royal Assent. This may have been on the grounds that the legislation was in some sense constitutionally defective, although we have been told about cases where intervention was clearly on policy grounds. In practice, it is informal dialogue, rather than the formal withholding of Royal Assent, which is usually the mechanism for bringing about a change in Island legislation.⁶⁷ The Isle of Man has gone a step further than the Channel Islands and has formalised the process of passing

63 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 purposes. The Ministry of Justice will still review the legislation prior to indicating to the Lieutenant Governor that he may grant Assent.

64 Q 90

65 Qq 14, 17, 34, oral evidence on *The Work of the Ministry of Justice*, 7 October 2008, HC 1076-i

66 Young, R., (2001) *Jersey Law Review* 5(2), available at <http://www.jerseylaw.je/>

67 Qq 11, 47

draft legislation to the Ministry of Justice before it is passed by the Manx legislature, although it is still scrutinised again by the Ministry of Justice afterwards.

53. The Ministry of Justice told us that, in 2008, it processed over 100 Island Laws to Royal Assent. For each piece of insular legislation, there are multiple layers of scrutiny. First, legislation is checked for compliance with international and other obligations by the Attorney General of the relevant Island jurisdiction. It is then checked again by lawyers at the Ministry of Justice. Where there are particular policy issues which are within the remit of another Whitehall department, the legislation is then passed to the lawyers in that department for further, specialist, scrutiny.⁶⁸

54. The processing of Island legislation prior to the granting of Royal Assent is sometimes subject to significant delay and this is a matter of considerable concern to the insular authorities.⁶⁹ Within the Bailiwick of Guernsey, delays are sometimes exacerbated for Alderney and Sark because their legislation has an additional level of scrutiny from Guernsey before it goes to the UK for Royal Assent.

55. The Guernsey government told us that, under normal circumstances, it is expected that Royal Assent will take between 16 and 20 weeks. However, where it takes considerably longer than this, there is sometimes no “adequate communication explaining the reasons”.⁷⁰ There may be practical consequences for Island residents of delays in getting legislation on the statute book, for example they may be unable to solve a problem or close a loophole until the law is passed. More fundamentally, however, the Island governments state that insular legislation represents the will of an independent parliament, democratically elected by its people; and delays in obtaining Assent frustrate the will of that parliament. The government of both Jersey and the Isle of Man make similar calls for a formalised agreement on processing times for legislation, tracking procedures and an annual assessment of performance.⁷¹

56. It is worth noting that an application by Guernsey for Royal Assent was rejected in relation to primary legislation which contained provisions which would have allowed the States of Guernsey to amend by way of ordinance (secondary legislation) provisions contained in primary legislation. Such provisions are commonly known as “Henry VIII clauses”. Since ordinances are not subject to the need for Royal Assent and, therefore, scrutiny by the UK Government, such a mechanism would have reduced substantially the delay between a law being passed by the States of Guernsey and its coming into effect. The Ministry of Justice did not agree that this was appropriate, although we note that the use of Henry VIII clauses in UK legislation is not uncommon.⁷² A side-effect of this dispute was that Royal Assent for Laws passed by Chief Pleas in Sark and the States of Alderney was held up pending resolution of the issue with Guernsey.

68 Ev 89

69 Q 99; Ev 46; Ev 89

70 Ev 94

71 Ev 47

72 Qq 51, 95; Ev 40

57. There are several factors which may contribute to delay in the scrutiny process within the UK Government. First, officials in the Ministry of Justice and other Whitehall departments are extremely busy and, where the scrutiny of insular legislation is competing for resources against urgent UK policy and legislation, the latter is likely to be prioritised.

58. Second, it is argued by the insular authorities that the process of vetting by UK Government officials is inefficient because three separate sets of lawyers are essentially performing the same function. They suggest that delays could be cut significantly if the certificate of the insular Attorney General that the legislation does not breach international obligations were relied upon, without detailed scrutiny by UK Government lawyers (Ministry of Justice and policy department), particularly where the legislation is of domestic application only. Indeed, the vast majority of insular legislation passed for assent is domestic in nature, so a considerable amount of time and resources might be saved in this manner.

59. Third, there is suspicion that UK Government officials, both in the Ministry of Justice and in relevant policy departments, are not clear on the constitutional grounds for UK Government intervention in Island legislation and are, in fact, checking the legislation for congruence with UK policy. In doing so, they are actually doing more work than is strictly necessary or, indeed, constitutionally legitimate. However, despite the Ministry of Justice's efforts to educate other Whitehall departments, we were told during our visits that the Island governments believe that the strict constitutional position is not widely understood.

60. Even where the position was understood, the Ministry of Justice itself admits that balancing UK and Island interests, which may conflict, when reaching a policy decision "can be a difficult and involved process in which the [Crown Dependencies] concerns cannot always take priority".⁷³ This suggests that, where there are conflicting interests, interference by the UK Government in the policy of the Crown Dependency administrations may be motivated by wider political concerns, even though it is not legitimate on constitutional grounds. This is particularly so where there is an international dimension to the issue and there is a risk of an adverse reputational impact on the UK which arises out of the lack of international understanding of the independence of the Crown Dependencies.⁷⁴

61. There are other areas of Island policy which, whilst not having a reputational impact on the UK, may affect the ability of the UK to carry out its own policies. An example would be the e-gaming legislation in Alderney, which allows the provision of a gambling service based in Alderney which is accessible by UK residents but is not subject to UK gaming regulation. As a jurisdiction, Alderney is almost completely dependent on its e-gaming industry as a source of income and so it has a very strong interest in the continuation of that business. A further example is the controversial sale of "health foods" by mail order to UK residents. We were told that the retailers of these products appear to be based in a third country, but correspondence is through a Jersey Post Office Box which, to its embarrassment, the Jersey government finds itself unable to close down for legal reasons. The controversy arises out of the fact that UK retailers of health foods are subject to UK

73 Ev 88

74 Q 25, oral evidence on *The Work of the Ministry of Justice*, 7 October 2008, HC 1076 i

and EU regulations which do not apply in the Channel Islands. The claim is, therefore, that the UK retailers are experiencing unfair competition from companies operating through the Channel Islands: first, because those companies are able to make claims for their products that UK retailers would be prevented from making; and, second, because they are selling products containing ingredients which would be illegal if sold in the UK. It is claimed that companies operating through the Channel Islands are also subject to a more beneficial tax regime which means that they can undercut the prices offered by UK companies.⁷⁵

62. Such cases do not raise constitutional issues, but do raise questions of whether the Islands are “good neighbours”.⁷⁶ The need for and legitimacy of discussions between the UK and the Crown Dependencies on such issues was recognised by the Island governments, particularly in the Isle of Man, but the Island governments may not always appreciate that what is financially beneficial to them and creates local jobs may have a disproportionately adverse effect on UK social policies and UK business.

63. Returning to the constitutional grounds for UK scrutiny of Island legislation, Farida Eden, a constitutional law specialist at the Ministry of Justice, explained the process of scrutinising Island legislation to us:

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. It is perhaps a more fluid process than just simply refusing Royal Assent to a piece of legislation.⁷⁷

The Justice Secretary also told us that there is sometimes intervention on a drafting point and gave the example of provisions relating to criminal offences which he considered rather broad and which he did not think “would have had an easy passage” in the UK.⁷⁸ We considered that these two answers gave a rather broad account of the circumstances in which the Ministry of Justice considered it legitimate to intervene in Island legislation. It is the informality of this process, together with these rather broad responses, which leads us to suspect that the UK Government does, indeed, influence Island legislation at the policy level. There seems to be a rather paternalistic approach to Island legislation, almost as if the UK Government is unwilling to let its junior Island partner make a slip. This is not, however, the Ministry of Justice’s role. **The Islands are more than adequately advised by their own Law Officers and parliamentary counsel. It seems a strange use of Ministry of Justice resources which, we are told, are stretched, to engage in a kind of legislative oversight which does not restrict itself to the constitutional grounds for scrutiny.**

75 Ev 61; Ev 90

76 Q 45

77 Q 92

78 Q 26, oral evidence on *The Work of the Ministry of Justice*, 7 October 2008, HC 1076-i

64. The Ministry of Justice is currently working on a revised set of protocols for processing Island legislation in order to make the process more efficient and timely, although we understand that this work is being held up by a lack of consensus amongst the Crown Dependencies themselves.⁷⁹

65. We do not see the need for multiple levels of intense scrutiny of insular legislation, prior to Royal Assent, for laws which are obviously of domestic application only. In such cases, the judgement of the insular Law Officers should normally be relied upon, with a reduced level of scrutiny by Ministry of Justice lawyers.

66. For more complex legislation where it is desirable to have further scrutiny by the Ministry of Justice and other Whitehall departments, such scrutiny should be carried out expeditiously, so as not to frustrate the will of a democratically elected parliament. To this end, the Ministry of Justice should endeavour to educate the relevant officials in other departments in relation to their precise responsibilities and, importantly, the constitutional limits on any intervention they may feel inclined to make.

67. We urge the Ministry of Justice and the governments of the Crown Dependencies to redouble their efforts to agree a revised set of protocols for the scrutiny of insular legislation. We consider that this is an ideal opportunity to set out with clarity the means by which the UK's responsibilities for insular legislation may be discharged; the constitutional grounds on which insular legislation may be challenged; the responsibilities of ministers and officials at each stage of the scrutiny process; and appropriate time limits for processing legislation prior to Royal Assent. In streamlining the system, best use can be made of the limited resources available within the UK Government in general and the Ministry of Justice in particular.

UK legislation and international treaties applying to the Crown Dependencies

The Islands are not represented in Parliament. Acts of Parliament do not extend to them automatically, but only if they expressly apply to the islands or to all your Majesty's dominions or do so by necessary implication. ... By convention Parliament does not legislate for the Islands without their consent in matters of taxation or other matters of purely domestic concern.

— Kilbrandon Report, para 1362

It is the practice for the insular authorities to be consulted before an international agreement is reached which would apply to them. This is particularly necessary in any case in which application of the agreement to the islands would require legislation of a kind which would ordinarily be enacted in the Island legislatures.

— Kilbrandon Report, para 1363

68. Some say that Acts of the UK Parliament can only be extended to the Islands with their express consent.⁸⁰ The Kilbrandon Report seems to suggest a somewhat different position,

79 Q 75; Ev 89

80 Ev 38; Ev 46

whereby Acts of Parliament apply to the Islands where this is expressly stated or by necessary implication. However, the Report adds that, by convention, Parliament does not legislate for the Islands on domestic matters, including taxation, without their consent.⁸¹ This formulation of the constitutional position fits with the idea that the UK should not have responsibility without power, an argument made forcefully by the Home Office, then the department with responsibility for the Crown Dependencies, to Kilbrandon.⁸²

69. Nevertheless, it is normal practice that consent is sought and the process is generally unproblematic.⁸³ However, the insular authorities have expressed concern that they have, on occasion, not been informed in a timely manner of important measures affecting them.⁸⁴ In general, the relevant legislation has been within the remit of a Whitehall department other than the Ministry of Justice. This lack of consultation has been characterised as disrespectful and arrogant, although an alternative view would be that it is simply a function of ignorance in Whitehall of the constitutional position of the Crown Dependencies rather than any particular malice towards them.

70. In cases where the Crown Dependencies have been made aware of measures affecting them at a very late stage, there has been limited, if any, opportunity for consultation and negotiation on the terms of the relevant measure. The Island administrations have, therefore, felt as if these measures were imposed by the UK Government in a clumsy manner.

71. A good recent example was a clause introduced into the Borders, Citizenship and Immigration Bill (later the 2009 Act) which would have modified the terms of travel within the Common Travel Area⁸⁵ so that residents of the Crown Dependencies would legally be subject to immigration controls when entering the UK, even if those controls were not universally applied.⁸⁶ The Government introduced this clause and, although it was ultimately removed, the manner of its introduction caused offence in the Crown Dependencies, a large majority of whose residents are, after all, British citizens. It is interesting to note that the UK Border Agency states that “We remain committed to seeking [the introduction of these measures] at some point in the future”.⁸⁷

72. The Island administrations also express concern about late notification of EU measures which, whilst not applicable to them directly, nevertheless have a practical effect on their administration and policy. The same is true of international treaties, particularly where the Crown Dependencies are not at the negotiating table. The international dimension will be discussed further in the next chapter, but the point to be made here is simply that the constitution dictates, and common courtesy demands, that the Crown Dependencies be consulted in good time in relation to UK and international measures which are to apply to them.

81 *Part XI of Volume 1 of the Report of the Royal Commission on the Constitution, 1969-1973*, Cmnd 5460, para 1362

~~82 *Part XI of Volume 1 of the Report of the Royal Commission on the Constitution, 1969-1973*, Cmnd 5460, para 1433~~

83 Q 55

84 Ev 92; see also Q 103

85 The Common Travel Area includes the UK, the Republic of Ireland, and the Crown Dependencies.

86 Ev 83

87 <http://www.bia.homeoffice.gov.uk/>

73. We recommend that the protocols currently being developed by the Ministry of Justice set out clear guidelines for consultation with the Crown Dependencies on UK legislation, EU measures and international treaties affecting them. Reasonable time limits should be built into the system so that the Island governments do not find themselves rushed into important decisions without an appropriate amount of time for reflection, discussion and negotiation. It may be helpful to include the category of Crown Dependencies more prominently on the legislative checklists consulted by UK Government departments when drawing up proposals for new legislation.

5 International relations

In international law the United Kingdom Government is responsible for the Islands' international relations. ... The United Kingdom Government is also responsible for the defence of the Islands.

— Kilbrandon Report, para 1363

The constitutional position

74. The Ministry of Justice told us that the Crown Dependencies are not sovereign states and, therefore, the UK Government is responsible for representing them internationally and for their defence. Although the Ministry of Justice is responsible for the UK Government's relationship with the Crown Dependencies, the responsibility for their international representation is shared across the UK Government. The Ministry of Justice considers that "the policy-holding department is best equipped to take forward negotiations which the Ministry of Justice would have neither the expertise nor access to the correct channels to carry out." In cases where other departments are involved, the Ministry of Justice provides a channel of communication between the Islands and the relevant department and ensures that the latter understands the constitutional position.⁸⁸

75. The Crown Dependencies are not part of the EU or EEA. However, under Protocol 3 to the UK's Act of Accession 1972 they are in the Customs territory of the EU, so that they can benefit from free movement of industrial and agricultural goods, and they are subject to the duty to apply the same treatment to all natural and legal persons of the Union. Protocol 3 has not been affected by the Lisbon Treaty.

76. Professor Alastair Sutton, an expert in European law who has worked with and advised the Crown Dependencies, considers that, since Protocol 3 was introduced, the importance to the Crown Dependencies of trade in goods has diminished, with financial services being far more important in economic terms. He describes four phases in Crown Dependency relations with Europe. First, from the adoption of Protocol 3, although free movement of goods was facilitated, there was little or no engagement on either side. Second, the creation of the Single Market in the European Community in 1985 did not have much impact on the Crown Dependencies, although they did monitor the situation. Third, from 2000 to 2005, there were significant developments in the taxation field, including the tax on savings Directive and the Code of Conduct on harmful business taxation. Although tax policy was outside Protocol 3, the Council of Ministers decided that these measures would apply to the Crown Dependencies, a view encouraged by the UK Government according to Professor Sutton. Under pressure from the UK Treasury, the Crown Dependencies negotiated bilateral agreements implementing the Directive with all 27 EU Member States and modified their corporate tax structure to conform to the Code of Conduct. Fourth, since 2005, there has been a period of "constructive engagement" between the Crown Dependencies and the EU, during which contacts have increased, market access

possibilities have been explored and the Islands have continued to develop their “external personalities”.⁸⁹

77. There is a particular issue for the Crown Dependencies in relation to the EU in terms of both receiving important information about EU activity which is likely to have an impact on them; and in terms of increasing their profile with the EU and enhancing their “external personality”. It is, strictly speaking, the role of the Ministry of Justice to feed back to the Crown Dependencies information on international measures likely to affect them. However, as noted in Chapter 4, this does not always happen and, when it does, the information may come too late for anything meaningful to be done to influence the outcome. During our discussions with the Island governments, it was suggested that one solution to this particular problem would be for the Crown Dependencies to establish offices, either together or separately, in Brussels, along the same lines as the Brussels offices of the devolved administrations of the UK. The Crown Dependencies’ offices would be in a position to work closely with UKRep and benefit from proximity to the decision-making heart of the EU in Brussels.⁹⁰

78. We support the desire of the Island governments to set up representative offices in Brussels. We consider that such a step would be valuable, both in terms of acquiring better access to information about EU measures which might affect them and in terms of raising their own international profiles.

79. The Islands’ “external personality” continues to develop in other areas. The Crown Dependencies, through dealings with the OECD, IMF and others, have increasingly ensured that their legislation on tax, corporate governance and economic crime conforms to international standards. Through the negotiation of Tax Information Exchange Agreements with third countries, they have been placed on the OECD “white list” as Jurisdictions which have substantially implemented the internationally agreed tax standard.⁹¹ The international standing and reputation of the Crown Dependencies as financial centres were further reinforced by the findings of the Foot Report: that they had adopted high standards of tax transparency and financial regulation and that they should, therefore, benefit from improved international acceptance”.⁹²

80. The UK has agreed with each Crown Dependency an “International Identity Framework” as a modern statement of the relationship between the UK and each jurisdiction (see Appendix 4 for the text of the Guernsey Framework).⁹³ Prior to this the most recent articulation of the relationship was in the Kilbrandon Report.⁹⁴ The Ministry of Justice confirmed that the Framework does not replace Kilbrandon, but aims to describe in plain language to third parties how the relationship works in practice. As the Justice

89 Q 12; Sutton, A., (April 2008), *The evolving legal status of the Crown Dependencies under UK, European and International Law*, White & Case: Brussels

90 Q 34; Ev 47

91 Ev 45; Ev 69; <http://www.oecd.org/dataoecd/38/14/42497950.pdf>

92 Foot, M., (2009) Final report of the independent Review of British offshore financial centres, Chapter 1. Available at http://www.hm-treasury.gov.uk/indreview_brit_offshore_fin_centres.htm

93 Qq 14, 111

94 *Part XI of Volume 1 of the Report of the Royal Commission on the Constitution, 1969-1973*, Cmnd 5460

Secretary told us, “This is the description of the relationship rather than an establishment of the relationship”.⁹⁵

81. The Framework includes an 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.

82. The Framework is, perhaps, the formal expression of a process of increasing international independence which has been underway for a number of years. For example, the Islands are now occasionally party to treaties in their own right through the mechanism of Letters of Entrustment issued by the UK. The Tax Information Exchange Agreements, referred to above, were agreed by the Islands themselves on this basis.⁹⁶

Concerns of the Crown Dependencies about international representation by the UK

83. Despite the specific undertaking in the Framework that the UK will seek to represent differing interests, in cases where there is a potential or actual conflict between those interests, the Crown Dependencies feel that their interests are of subsidiary importance to those of the UK and that the end result is more than likely to favour the latter.⁹⁷

84. A recent example was the role of HM Treasury in representing the interests of the UK on the one hand, and Guernsey and the Isle of Man on the other, in its negotiations with the Icelandic authorities during the banking crisis.⁹⁸ In its written evidence, the Guernsey government stated that the UK Government apparently prioritised its own interests over those of Guernsey in negotiations with the Icelandic government. In order that they might put their case directly to the Icelandic government, the Ministry of Justice stated that HM Treasury facilitated direct contact between the Islands and the Icelandic authorities.⁹⁹ The Guernsey government, however, criticised HM Treasury for a delay in sending a letter to the Icelandic authorities requesting that they meet with a delegation from Guernsey, this

95 Q 21, oral evidence on *The Work of the Ministry of Justice*, 7 October 2008, HC 1076-i

96 Ev 46

97 Ev 70; Ev 95

98 We have reported elsewhere on the facts of the conflict of interest which arose between the UK and two of the Crown Dependencies—Guernsey and Isle of Man—as a result of the Icelandic banking crisis. See *Crown Dependencies: evidence taken*, First Report of the Justice Committee Session 2008-09, HC 67. See also Ev 73 & Ev 81.

99 Ev 89

delay resulting in the letter being sent only after the Guernsey representatives had made their visit to Iceland.¹⁰⁰ On a more general level, the Guernsey government expressed serious concerns about the extent to which its interests are represented internationally, given that its representatives are normally excluded from relevant negotiations.¹⁰¹

85. The Isle of Man government has expressed similar concerns in cases where the interests of the UK and the Island conflict. It describes the support of the UK in such cases as insufficiently robust and the Isle of Man government is concerned about “the intractable position of not being able to represent itself, but also not being able to gain the full support of its “representative”.”¹⁰² It calls for the inclusion of an Isle of Man representative in international negotiations where there is a conflict of interest between the UK and the Isle of Man.¹⁰³

86. We were told that, in areas of policy which the UK has ceded to the EU, there is an additional problem for the Crown Dependencies. In the case of the World Trade Organisation, for example, the UK is represented by the EU and does not send a delegation of its own. Given that the Crown Dependencies are neither members of the EU nor represented by a UK delegation, they remain essentially unrepresented in that forum.¹⁰⁴

87. In evidence to us in December 2008, Lord Bach confirmed that the UK Government “looks after the interests in international affairs of the Crown Dependencies”, but then appeared to suggest that the Government’s duties in this respect were subsidiary to the interests of the UK.¹⁰⁵ In relation to the situation with the Isle of Man and the Icelandic banking crisis, he told the Committee that:

We represent the interests of the Isle of Man where it is appropriate to do so but we are part of Her Majesty’s Government, and of course that is our prime responsibility. The Isle of Man runs its own fiscal affairs, as it runs its own legal system and it runs everything itself; it runs its own parliament. Our position, under this set-up, is to be the department in the United Kingdom Government that has the closest relationship with the Crown Dependencies and looks after its interests where appropriate, particularly in the international forum. ...

... This is an issue that the Isle of Man Government has, and [it] is quite capable of talking to the Treasury itself. We talk to the Treasury too, of course. In the end, however, we are not dealing here with a sort of colony; we are dealing here with a Crown Dependency that, in the case of the Isle of Man, is self-governing, has its own systems, has its own financial systems. It is not our job to nanny the Isle of Man in

100 Ev 95

~~101 Ev 95~~

102 Ev 70

103 Ev 72

104 An analogous case occurred when the Guernsey Post was in dispute with the Royal Mail. The Guernsey Post wished to take its grievance to the Universal Postal Union for a resolution, but this was not possible: within the Universal Postal Union, the Guernsey Post is represented by the Royal Mail because it cannot afford its own membership.

105 *Crown Dependencies: evidence taken*, First Report of Session 2008-09, HC 67, Q3

any sense. Our job is, in the broadest sense, to have a close relationship with them and to assist.¹⁰⁶

88. This explanation of the UK Government's role appears to ignore the fact that Crown Dependencies have no external personality in the international community. It is for this reason that the Crown Dependencies pay an annual sum to the UK Government in return for international representation and defence.¹⁰⁷ Lord Bach's statement would also appear to put the UK Government at odds with the International Identity Framework, within which the UK Government undertakes to "seek to represent any differing interest when acting in an international capacity".¹⁰⁸

89. The representation of the interests of the Crown Dependencies on the international stage by the UK Government is not optional, according to whether or not the interests of the Islands are congruent with those of the UK: it is the UK Government's duty. 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.

Possible solutions to the issue of international representation

90. During our visits, we discussed a variety of possibilities to address the Island governments' concerns that their interests were not being represented on the international stage. The Island governments appear to have taken a pragmatic view that the UK has been unreliable in its representation of their interests internationally and that the time has come for them to take a more active role on the international stage themselves. This approach is supported by the International Identity Framework referred to above.¹⁰⁹ Although the legal status of agreements made directly by the Crown Dependencies with third countries, without the intermediary of the UK Government, is unclear, Professor Sutton points out that they are practical arrangements which have not, so far, given rise to any disputes requiring resolution under public international law.¹¹⁰

91. All representatives of the Island governments agreed that the current processes did not serve their interests in cases of conflict and recognised the extreme difficulty in one individual or negotiating team seeking to represent two conflicting interests simultaneously with any degree of credibility. This conceptualisation of the problem led to the conclusion that a separate individual or negotiating team should be designated with specific responsibility for representing the interests of the Crown Dependencies.¹¹¹ This might be achieved in several ways:

- The Ministry of Justice could appoint an official to a negotiating team whose sole responsibility is to present the view of the Crown Dependencies, possibly supported by Island officials.

¹⁰⁶ Qq 7, 9

~~¹⁰⁷ *Crown Dependencies: evidence taken, First Report of Session 2008-09, HC 67, Ev 6*~~

¹⁰⁸ *International Identity Framework*, para.1

¹⁰⁹ *Framework*, Paragraph 3.

¹¹⁰ Sutton, A., (April 2008), *The evolving legal status of the Crown Dependencies under UK, European and International Law*, White & Case: Brussels.

¹¹¹ Ev 72

- Island officials could be included in the UK delegation so that they can put their own case directly to other negotiating parties.¹¹²
- Increased use of Letters of Entrustment, either for specific issues or for a category of issues, which have the effect of delegating legal power to the Islands to conclude agreements on their own behalf. This mechanism has been used successfully in the past and the Crown Dependencies would like its use to be extended further to give them increased autonomy and an ability to engage directly with international partners.¹¹³

92. We recommend that the Ministry of Justice considers alternative models for the representation of the interests of the Crown Dependencies internationally. It is imperative that a means is found by which the Islands are represented effectively and we strongly recommend that certain officials, either from the UK or from the Islands, be specifically designated as representing the Islands in international negotiations. Clear and unambiguous representation of the Crown Dependencies' interests on the international stage will assist them in building their relationships with third countries and international organisations and, consequently, help them to develop their international identities, as envisaged in the Framework document agreed with the UK.

93. For the same reasons, in cases where international activity leads to the creation of legal relations, we strongly support the increased use of Letters of Entrustment in appropriate circumstances, allowing the Crown Dependencies to enter into binding agreements themselves without the need for direct ratification from the UK.

112 Q 34

113 Qq 79, 109

Appendix 1

Geography, People, Government and Economy

Bailiwick of Jersey

| | |
|----------------------------|---|
| Geography | Area: 116 km ² Coastline: 70 km |
| People | Maritime claims: territorial sea 3 nm; exclusive fishing zone 12 nm Population: 91,626 (July 2009 est) National origins: Jersey 51.1%, Britons 34.8%, Irish, French, and other white 6.6%, Portuguese/Madeiran 6.4%, other 1.1% (2001 census) |
| Government | Chief Minister Terry Le Sueur (12 December 2008); Bailiff Michael Birt (since 9 July 2009) |
| Judiciary and legal system | Cabinet: ministerial government since December 2005 Elections: ministers of the Cabinet including the Chief Minister are elected by the Assembly of States; Lieutenant Governor and Bailiff appointed by the monarch. Legislature: unicameral Assembly of the States of Jersey (53 are elected, 12 are senators elected for six-year terms, 12 are constables or heads of parishes elected for three-year terms, 29 are deputies elected for three-year terms. Non-elected and non-voting members are the Bailiff and the Deputy Bailiff (the presiding officers), the Dean of Jersey, the Attorney General, and the Solicitor General. Elections last held 15 October 2008 for senators and 26 November 2008 for deputies (next to be held in 2011). |
| Economy | The principal court is the Royal Court of Jersey. Bailiff and Deputy Bailiff appointed by the Crown; Jurats (lay judges of fact) elected by an electoral college. Judges of the Jersey Court of Appeal appointed by the Crown. The Bailiff presides over the Royal Court and is head of the judiciary. Appeals from the Royal Court are to the Jersey Court of Appeal (comprising the Bailiff of Guernsey, judges and senior counsel appointed from the United Kingdom). There is a further appeal to the Judicial Committee of the Privy Council. Qualification for the Jersey legal profession requires candidates to have obtained a law degree from the United Kingdom and to enrol on a course of tuition at the Institute of Law in Jersey. GDP (purchasing power parity): \$5.1 billion (2005 est) GDP per capita: \$57,000 (2005 est) |
| | |

| | |
|----------------------------|---|
| | <p>Revenues: \$829 million (2005) Expenditure: \$851 million (2005)</p> <p>Industries: tourism, banking and finance, dairy, electronics Jersey's economy is based on international financial services, agriculture, and tourism. In 2005, the finance sector accounted for about 50% of the island's output. Potatoes, cauliflower, tomatoes, and especially flowers are important export crops, shipped mostly to the UK. The Jersey breed of dairy cattle is known worldwide and represents an important export income earner. Milk products go to the UK and other EU countries. Tourism accounts for one-quarter of GDP. In recent years, the government has encouraged light industry to locate in Jersey, with the result that an electronics industry has developed, displacing more traditional industries. All raw material and energy requirements are imported, as well as a large share of Jersey's food needs.</p> <p style="text-align: center;">Bailiwick of Guernsey</p> |
| Geography | <p>Area: 78 km² Coastline: 50 km</p> |
| People | <p>Maritime claims: territorial sea 3 nm; exclusive fishing zone 12 nm</p> <p>Population: 65,484 (July 2009 est.) National origins: UK and Norman-French descent with small percentages from other European countries</p> |
| Government | <p>Chief Minister Lyndon Trott (since 1 May 2008); Bailiff Sir Geoffrey Rowland (since June 2005)</p> |
| Judiciary and legal system | <p>Cabinet: Policy Council elected by the States of Deliberation Elections: Lieutenant Governor appointed by the monarch; Chief Minister is elected by States of Deliberation. Legislature: unicameral States of Deliberation (45 seats; members are elected by popular vote for four years); note: Alderney and Sark have separate parliaments, although Alderney also has two representatives in States of Deliberation.</p> <p>The principal court is the Royal Court of Guernsey. Bailiff and Deputy Bailiff appointed by the Crown; Jurats (lay judges of fact) elected by an electoral college. Judges of the Guernsey Court of Appeal appointed by the Crown. The Bailiff presides over the Royal Court and is head of the judiciary. Appeals from the Royal Court are to the Guernsey Court of Appeal (comprising the Bailiff of Jersey, judges and senior counsel appointed from the United Kingdom). There is a further appeal to the Judicial Committee of the Privy Council. Qualification for the Guernsey Bar requires candidates to obtain</p> |

academic qualifications in law from a French university and a UK university and to have qualified as legal practitioner in the United Kingdom.

| | |
|------------|--|
| Economy | <p>Legal aid is provided on a pro bono rota system by law firms.</p> <p>GDP (purchasing power parity): \$2.742 billion (2005) GDP per capita: \$44,600 (2005)</p> |
| | <p>Revenues: \$563.6 million Expenditure: \$530.9 million (2005 est.) Industries: tourism, banking Financial services - banking, fund management, insurance - account for about 23% of employment and about 55% of total income in this tiny, prosperous Channel Island economy. Tourism, manufacturing, and horticulture, mainly tomatoes and cut flowers, have been declining. Financial services, construction, retail, and the public sector have been growing.</p> <p style="text-align: center;">Alderney</p> |
| Geography | Area: 7.9 km ² |
| People | Population: 2,400 |
| Government | <p>President of the States of Alderney Sir Norman Browse (2002) Elections: 10 States Members, half of which are elected every 2 years for a 4 year term.</p> |
| Economy | <p>Legislature: States of Alderney (two representatives sent to the States of Guernsey). Judiciary: the Court of Alderney has original jurisdiction in civil matters, with appeal to the Royal Court of Guernsey, and limited criminal jurisdiction. The Court sits as a Chairman and at least 3 Jurats.</p> <p>Industry: e-gaming, tourism.</p> |
| | |

Sark

| | |
|----------------------------|---|
| Geography | Area: 5.5 km ² |
| People | Population: 600 (2007) |
| Government | Seigneur John Michael Beaumont, OBE; Seneschal Lt Col RJ Guille, MBE. |
| Economy | Legislature: Chief Pleas, chamber consisting of 28 elected Conseillers, the Seigneur and the Seneschal Judiciary: the Seneschal's Court hears cases at first instance, with appeal to the Royal Court of Guernsey. Industries: tourism, crafts, finance. |
| Isle of Man | |
| Geography | Area: 572 km ² Coastline: 160 km |
| People | Maritime claims: territorial sea 12 nm; exclusive fishing zone 12 nm Population: 76,512 (July 2009 est) National origins: Manx (Norse-Celtic descent), Britons |
| Government | Chief Minister Tony Brown (since 14 December 2006) Cabinet: Council of Ministers |
| Judiciary and legal system | Elections: Lieutenant Governor appointed by the monarch; the Chief Minister is elected by Tynwald for a five-year term; election last held 14 December 2006 (next to be held in December 2011). Legislature: Tynwald consists of the Legislative Council (11 seats; members composed of the President of Tynwald, the Lord Bishop of Sodor and Man, a non-voting Attorney General, and 8 others elected by the House of Keys); the House of Keys (24 seats; members are elected by popular vote to serve five-year terms); and both Houses sit together as Tynwald Court. The principal court is the High Court of Justice. Judges are appointed by the British Lord Chancellor on the advice of the Lieutenant Governor and following public advertisement for applicants. |
| Economy | GDP (purchasing power parity): \$2.719 billion (2005 est) GDP per capita: \$35,000 (2005 est) Revenues: \$965 million Expenditure: \$943 million (FY05/06 est) Industries: financial services, light manufacturing, tourism |

Offshore banking, manufacturing, and tourism are key sectors of the economy. The government offers incentives to high-technology companies and financial institutions to locate on the island; this has paid off in expanding employment opportunities in high-income industries. As a result, agriculture and fishing, once the mainstays of the economy, have declined in their contributions to GDP. The Isle of Man also attracts online gambling sites and the film industry. Trade is mostly with the UK. The Isle of Man enjoys free access to EU markets.

Sources: CIA World Factbook at www.cia.gov; www.worldtravelguide.net

Appendix 2

Summary of the constitutional position of the Crown Dependencies¹¹⁴

| | Jersey | Guernsey | Isle of Man |
|---|--|--|--|
| History | Following the loss of Normandy, the English Islands. King John established the Bailiwicks of Jersey and Guernsey by Royal Charter. The relationship between the Bailiwicks and the UK has, since then, been based on practice, custom, convention, usage and Statute enacted in Westminster and extended by consent to the Islands. | Crown asserted authority over the Channel by Royal Charter. Since then, been based on practice, custom, convention, usage and Statute enacted in Westminster and extended by consent to the Islands. | Ruled by the Vikings from around 800 AD. Ceded to the King of Scotland in 1266. Ownership passed between Scotland and England and sovereignty vested in the British Crown in 1765. |
| Autonomy and constitutional status | Jersey and Guernsey are autonomous jurisdictions. A Lieutenant-Governor represents the Crown in each jurisdiction. The Crown also appoints a Bailiff in each jurisdiction who is both Speaker of the legislature (known as the States Assembly and the States of Deliberation in Guernsey) and the senior judge; and the Law Officers (Attorney General and Solicitor General in Jersey, HM Procureur and HM Comptroller in Guernsey). | Guernsey is a federal jurisdiction, including Alderney and Sark, which both have independent legislative, executive and judicial systems. | The Isle of Man is an autonomous jurisdiction. The Lieutenant-Governor represents the Crown but, since the Constitution Act 1990, this role has been more formal than substantive. |

¹¹⁴ Sources: Sutton, A., (April 2008), *The evolving legal status of the Crown Dependencies under UK, European and International Law*, White & Case; Sutton, A., (2005), *Jersey's changing constitutional relationship with Europe*, Jersey Law Review; R (on the application of Barlay and others) v Secretary of State for Justice, [2009] UKSC 9.

Appendix 3

Main recommendations of the Final Report of the Independent Review of British Offshore Financial Centres

The Review recognises that the following recommendations will require more substantial action in some jurisdictions than in others.¹¹⁶

1. The UK should discuss and consider governance arrangements with the jurisdictions to ensure that there is a shared understanding of respective responsibilities and expectations.
2. The quality and extent of financial planning in the jurisdictions should be aligned with that in the best performers (the Crown Dependencies). In particular, jurisdictions should implement a prudent approach to managing government finances by developing: a diversified tax base to maximise sources of revenue; mechanisms to measure and control public spending; and by building financial reserves during periods of economic growth.
3. The UK should be proactive in satisfying itself that the Overseas Territories in particular have frameworks capable of identifying and responding to external shocks and encouraging local governments to undertake responsible adjustment programmes where these are necessary.
4. To meet international standards, jurisdictions which have not already done so should:
 - meet the international standard on tax transparency set by the OECD and continue, even after meeting the current minimum of 12 [tax information exchange agreements], to negotiate further TIEAs, giving priority to those jurisdictions with which they have significant financial links;
 - set up the administrative procedures necessary to ensure full delivery of the OECD standard, to a level of compliance that will satisfy the peer review process that is being put in place;
 - make an early commitment, with a timetable for implementation, to automatic exchange of tax information under the EU Savings Directive;
 - ensure that the regulatory authorities have the necessary resources and expertise to implement and enforce international financial sector regulatory standards;
 - move to amend laws and procedures as necessary to achieve compliance with the [Financial Action Task Force's] 16 'key and core' Recommendations.
5. At an international level, the UK should press for improvements in 'know your customer' minimum standards and promote moves towards improved transparency of beneficial ownership of companies and trusts and the monitoring of politically exposed persons.

¹¹⁶ Foot, M., (2009) *Final report of the independent Review of British offshore financial centres*, para 1.6. Available at http://www.hm-treasury.gov.uk/indreview_brit_offshore_fin_centres.htm.

6. All jurisdictions should ensure that:

- governance arrangements in their regulatory authorities are sufficient to maintain the integrity and independence of all decisions taken;
- responsibility for promotion of the financial centre is separated from the regulator in both letter and spirit.

7. Those jurisdictions that offer (or propose to offer) protection to retail depositors must ensure that compensation schemes can be understood by those depositors.

8. Jurisdictions that lack an Ombudsman scheme should consider whether one is justified.

9. Any jurisdiction that has not already done so should undertake a thorough examination of the range of powers to resolve a crisis in its financial services sector.

10. Local governments should require the regulator to maintain close oversight of any large locally incorporated financial institutions, the failure of which might lead to requests for financial help from the UK. This should be backed by the option of a periodic independent and external review, paid for by the institution itself, commissioned by the local authorities on their own initiative or at the request of the UK.

11. The UK should discuss with those jurisdictions in need of technical assistance to fight financial crime how that assistance might be delivered and the benefits of assistance secured in the longer-term.

Appendix 4

Text of the Framework for developing the international identity of Guernsey

[Jersey and the Isle of Man have agreed similar terms.]¹¹⁷

Following the statement of intent agreed on 11 January 2006, the Chief Minister of Guernsey and the UK Secretary of State for Constitutional Affairs have agreed the following principles. They establish a framework for the development of the international identity of Guernsey. The framework is intended to clarify the constitutional relationship between the UK and Guernsey, which works well and within which methods are evolving to help achieve the mutual interests of both the UK and Guernsey.

12. The UK has no democratic accountability in and for Guernsey which is governed by its own democratically elected assembly. In the context of the UK's responsibility for Guernsey's international relations it is understood that:

The UK will not act internationally on behalf of Guernsey without prior consultation.

The UK recognises that the interests of Guernsey may differ from those of the UK, and the UK will seek to represent any differing interests when acting in an international capacity. This is particularly evident in respect of the relationship with the European Union where the UK interests can be expected to be those of an EU member state and the interests of Guernsey can be expected to reflect the fact that the UK's membership of the EU only extends to Guernsey in certain circumstances as set out in Protocol 3 of the UK's Treaty of Accession.

13. Guernsey has an international identity which is different from that of the UK.

14. The UK recognises that Guernsey is a long-standing, small democracy and supports the principle of Guernsey further developing its international identity.

15. The UK has a role to play in assisting the development of Guernsey's international identity. The role is one of support not interference.

16. Guernsey and the UK commit themselves to open, effective and meaningful dialogue with each other on any issue that may come to affect the constitutional relationship.

17. International identity is developed effectively through meeting international standards and obligations which are important components of Guernsey's international identity.

¹¹⁷ Jersey's Framework agreement can be found here:

<http://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20InternationalIdentityFramework%2020070502.pdf>; the Isle of Man's Framework agreement can be found here:
<http://www.gov.im/lib/docs/cso/iominternationalidentityframework.pdf>

18. The UK will clearly identify its priorities for delivery of its international obligations and agreements so that these are understood, and can be taken into account by Guernsey developing its own position.

19. The activities of the UK in the international arena need to have regard to Guernsey's international relations, policies and responsibilities.

20. The UK and Guernsey will work together to resolve or clarify any differences which may arise between their respective interests.

21. Guernsey and the UK will work jointly to promote the legitimate status of Guernsey as a responsible, stable and mature democracy with its own broad policy interests and which is willing to engage positively with the international community across a wide range of issues.

Conclusions and recommendations

Relationships between the Ministry of Justice and the Crown Dependencies

1. We believe that, in agreeing to answer Parliamentary Questions on topics which are essentially domestic matters for the Crown Dependencies, the Justice Secretary is clouding the issue of what, constitutionally speaking, is properly the responsibility of the UK Government and what should properly be left to the Island governments. The Justice Secretary should make explicit in his answers to Parliamentary Questions whether or not he considers the matter addressed to fall within his constitutional responsibilities. (Paragraph 15)
2. Given that the Crown Dependencies team at the Ministry of Justice appears to struggle with the resources it has, we suggest that a reappraisal of the constitutional duties of the Ministry of Justice might be a timely step in the right direction. The Ministry of Justice should prioritise those duties and restrain itself from engaging in areas of work which are outwith its constitutional remit. (Paragraph 17)
3. We recommend that the Ministry of Justice redoubles its efforts to produce a simple account of the constitutional position of the three Crown Dependencies. This should highlight their essential independence from the UK, their independence from each other, and the fact that their interests need to be considered routinely by all UK Government departments in any area of policy-making likely to impact on them. Those departments should be left in no doubt about the limits of legitimate intervention in Island policy and legislation and about their duties in considering their interests. In achieving these aims, we believe that it would be helpful if more use were made of secondments of officials between UK Government departments and the Crown Dependencies in order to increase mutual understanding. (Paragraph 27)
4. We believe the lack of consultation, and discussion of possible options, with each Crown Dependency was a failing in the UK Government's approach to its responsibilities in deciding the future of the Reciprocal Health Agreements. The fault appears to lie primarily with the Department for Health but we are left with the clear impression that the Ministry of Justice failed to take responsibility for intervening to ensure that a proper procedure was followed. It is simply unacceptable for the Isle of Man to be told, without warning, at a meeting on 1 July 2008 that the Reciprocal Health Agreement would be terminated; and this in the absence of an official from the Ministry of Justice, the department charged with ensuring representation of the Island interests within the UK Government. Nevertheless, we welcome the extension of the Reciprocal Health Agreement with the Isle of Man for a further six months pending further negotiations. (Paragraph 35)

Good government

5. We note the depth of feeling of some witnesses to this inquiry who have indicated serious grievances with various aspects of the governance of the Crown Dependencies and their desire for the UK Government to step in to address their

concerns. However, the Crown Dependencies are democratic, self-governing communities with free media and open debate. The independence and powers of self-determination of the Crown Dependencies are, in our view, only to be set aside in the most serious circumstances. We note that the restrictive formulation of the power of the UK Government to intervene in insular affairs on the ground of good government is accepted by both the UK and the Crown Dependency governments: namely, that it should be used only 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, and we see no reason or constitutional basis for changing that formulation. (Paragraph 41)

6. As a matter of general principle, we note that, in a very small jurisdiction, there must always be the possibility that individuals wielding very significant economic, legal and political power may skew the operation of democratic government there. Just as the establishment of democratic government in Sark was a matter of good government, any threat to the ability of that system to operate fairly and robustly has the potential to raise good government issues which might require UK Government intervention. This is a matter on which the Ministry of Justice needs to keep a watching brief. (Paragraph 49)

Legislation and treaties

7. The Islands are more than adequately advised by their own Law Officers and parliamentary counsel. It seems a strange use of Ministry of Justice resources which, we are told, are stretched, to engage in a kind of legislative oversight which does not restrict itself to the constitutional grounds for scrutiny. (Paragraph 63)
8. We do not see the need for multiple levels of intense scrutiny of insular legislation, prior to Royal Assent, for laws which are obviously of domestic application only. In such cases, the judgement of the insular Law Officers should normally be relied upon, with a reduced level of scrutiny by Ministry of Justice lawyers. (Paragraph 65)
9. For more complex legislation where it is desirable to have further scrutiny by the Ministry of Justice and other Whitehall departments, such scrutiny should be carried out expeditiously, so as not to frustrate the will of a democratically elected parliament. To this end, the Ministry of Justice should endeavour to educate the relevant officials in other departments in relation to their precise responsibilities and, importantly, the constitutional limits on any intervention they may feel inclined to make. (Paragraph 66)
10. We urge the Ministry of Justice and the governments of the Crown Dependencies to redouble their efforts to agree a revised set of protocols for the scrutiny of insular legislation. We consider that this is an ideal opportunity to set out with clarity the means by which the UK's responsibilities for insular legislation may be discharged; the constitutional grounds on which insular legislation may be challenged; the responsibilities of ministers and officials at each stage of the scrutiny process; and appropriate time limits for processing legislation prior to Royal Assent. In streamlining the system, best use can be made of the limited resources available

within the UK Government in general and the Ministry of Justice in particular. (Paragraph 67)

11. We recommend that the protocols currently being developed by the Ministry of Justice set out clear guidelines for consultation with the Crown Dependencies on UK legislation, EU measures and international treaties affecting them. Reasonable time limits should be built into the system so that the Island governments do not find themselves rushed into important decisions without an appropriate amount of time for reflection, discussion and negotiation. It may be helpful to include the category of Crown Dependencies more prominently on the legislative checklists consulted by UK Government departments when drawing up proposals for new legislation. (Paragraph 73)

International relations

12. We support the desire of the Island governments to set up representative offices in Brussels. We consider that such a step would be valuable, both in terms of acquiring better access to information about EU measures which might affect them and in terms of raising their own international profiles. (Paragraph 78)
13. The representation of the interests of the Crown Dependencies on the international stage by the UK Government is not optional, according to whether or not the interests of the Islands are congruent with those of the UK: it is the UK Government's duty. 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. (Paragraph 89)
14. We recommend that the Ministry of Justice considers alternative models for the representation of the interests of the Crown Dependencies internationally. It is imperative that a means is found by which the Islands are represented effectively and we strongly recommend that certain officials, either from the UK or from the Islands, be specifically designated as representing the Islands in international negotiations. Clear and unambiguous representation of the Crown Dependencies' interests on the international stage will assist them in building their relationships with third countries and international organisations and, consequently, help them to develop their international identities, as envisaged in the Framework document agreed with the UK (Paragraph 92)
15. For the same reasons, in cases where international activity leads to the creation of legal relations, we strongly support the increased use of Letters of Entrustment in appropriate circumstances, allowing the Crown Dependencies to enter into binding agreements themselves without the need for direct ratification from the UK. (Paragraph 93)

Formal Minutes

Tuesday 23 March 2010

Members present:

Sir Alan Beith, in the Chair

Mr David Heath

Mr Andrew Turner

Rt Hon Alun Michael

Dr Alan Whitehead

Jessica Morden

Draft Report *Crown Dependencies*, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 93 read and agreed to.

Summary agreed to.

Papers were appended to the Report as Appendices 1, 2, 3 and 4.

Resolved, That the Report be the Eighth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report together with written evidence reported and ordered to be published on 2 February and 2 March 2010.

[The Committee adjourned

Witnesses

Tuesday 15 December 2009

Page

Professor Alistair Sutton, White & Case

Ev 1

Tuesday 2 February 2010

Mr Patrick Bourke, Deputy Director, International Division and **Mr Karl Banister**, Assistant Director, Constitutional Law, Ministry of Justice and **Mr Steven Effingham**, Leader of the International Tax Team, HM Treasury

Ev 11

Tuesday 2 March 2010

Lord Bach, Parliamentary Under-Secretary of State, **Mr Patrick Bourke**, Deputy Director, International Division, and **Ms Farida Eden**, Constitutional Law Specialist, Ministry of Justice

Ev 19

List of written evidence

| | | |
|----|--|---------------|
| 1 | Joseph and Micheline Angela | Ev 28 |
| 2 | ATTAC France and ATTAC Saint-Malo Committee | Ev 29 |
| 3 | ATTAC Jersey and the Tax Justice Network | Ev 34 |
| 4 | Sir David and Sir Frederick Barclay | Ev 37 |
| 5 | Paul Carney | Ev 42 |
| 6 | Chief Minister, States of Jersey | Ev 44 |
| 7 | Combined Isle of Man Ex-Service Associations | Ev 48 |
| 8 | Crown Appointments in the Bailiwick of Guernsey | Ev 49 |
| 9 | Deputy St Martin, States of Jersey, States Assembly | Ev 50 |
| 10 | Michael Dun, Jersey | Ev 56 |
| 11 | Health Food Manufacturers' Association | Ev 61 |
| 12 | Isle of Man Government | Ev 68 |
| 13 | Isle of Man Pensioners Association | Ev 72 |
| 14 | Kaupthing Singer & Friedlander Isle of Man Depositors Action Group | Ev 73 |
| 15 | Landsbanki Guernsey Depositors Action Group (The Association) | Ev 81 |
| 16 | Ministry of Justice | Ev 82, 83, 86 |
| 17 | National Association of Health Stores | Ev 90 |
| 18 | Policy Council of the States of Guernsey | Ev 92 |
| 19 | Policy and Finance Committee, States of Alderney | Ev 96 |
| 20 | Positive Action Group, Isle of Man | Ev 97 |
| 21 | Edward John Power | Ev 101 |
| 22 | Seneschal of Sark | Ev 102 |
| 23 | Sark General Purposes and Advisory Committee | Ev 103 |
| 24 | Tomaž Slivnik | Ev 104 |
| 25 | Tax Justice Network | Ev 107 |
| 26 | Lord Wallace of Saltaire | Ev 125 |

Reports from the Justice Committee since Session 2008–09

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2009–10

| | | |
|----------------|---|--------------------------|
| First Report | Cutting crime: the case for justice reinvestment | HC 94 (<i>Cm 7819</i>) |
| Second Report | Work of the Committee in 2008-09 | HC 233 (<i>n/a</i>) |
| Third Report | Appointment of HM CPS Chief Inspector | HC 244 |
| Fourth Report | Appointment of HM Chief Inspector of Prisons | HC354 |
| Fifth Report | Constitutional processes following a general election | HC396 |
| Sixth Report | Draft Civil Law Reform Bill: pre-legislative scrutiny | HC 300 |
| Seventh Report | Justice Issues in Europe | HC162 |

Session 2008–09

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|-----------------|---|--|
| First Report | Crown Dependencies: evidence taken | HC 67 (<i>HC 323</i>) |
| Second Report | Coroners and Justice Bill | HC 185 (<i>HC 322</i>) |
| Third Report | The work of the Information Commissioner: appointment of a new Commissioner | HC 146 (<i>HC 424</i>) |
| Fourth Report | Work of the Committee in 2007–08 | HC 321 (<i>n/a</i>) |
| Fifth Report | Devolution: a decade on | HC 529 (<i>Cm 7687</i>) |
| Sixth Report | Sentencing guidelines and Parliament: building a bridge | HC 715 (<i>Cm 7716</i>) |
| Seventh Report | Constitutional reform and renewal: Parliamentary Standards Bill | HC 791 (<i>HC 1017</i>) |
| Eight Report | Family legal aid reform | HC 714 (<i>HC 1018, and HC 161, Session 2009–10</i>) |
| Ninth Report | The Crown Prosecution Service: gatekeeper of the criminal justice system | HC 186 (<i>HC 244, Session 2009–10</i>) |
| Tenth Report | Draft sentencing guideline: overarching principles—sentencing youths | HC 497 (<i>n/a</i>) |
| Eleventh Report | Constitutional reform and renewal | HC 923 (<i>HC 1017</i>) |
| Twelfth Report | Role of the prison officer | HC 361 (<i>Cm 7783</i>) |