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## **A Guide to Government Business involving the Channel Islands and the Isle of Man August 2002**

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### **Introduction**

This guidance is directed specifically at those in Government Departments or Agencies who deal, or are likely to deal, with matters affecting the Islands.

### **Who's responsible for what?**

Click here for a list of [officials in the Crown Dependencies Branch of the Devolution and Crown Dependencies Division](#).

Click here for a [list of the Branch's areas of responsibility](#).

### **In Brief**

**Departments and agencies are asked to:**

- a. consult the Department for Constitutional Affairs before briefing Ministers to make statements or to answer Parliamentary Questions about the Islands;
- b. consult the Department for Constitutional Affairs during the drafting process where a proposed Bill appears relevant to the Islands, and before including in any published Bill any provision relating to the Islands;
- c. consult the Department for Constitutional Affairs about proposed visits to the Islands by officials or Ministers;
- d. assist the Department for Constitutional Affairs by considering and commenting promptly on Island Laws;
- e. notify the Department for Constitutional Affairs at the first opportunity of proposals for international agreements that might apply to the Islands and of any proposals to make Orders specifying such agreements as Community Treaties.
- f. Ensure that copies of Westminster legislation - whether primary or subordinate - which extends to the Islands are sent to the Department for Constitutional Affairs for formal dispatch to the Island authorities so that they may be registered in the Islands.

**Departments and agencies are asked *not* to:**

- i. state or imply that the Islands are part of the United Kingdom (or of Great Britain or of England) or act on that assumption;
- ii. contact the Island Authorities direct unless, exceptionally, such contact has been agreed in advance by the Department for Constitutional Affairs.

**Status of the Islands**

1. *The Islands are not part of the United Kingdom and have no representation in Parliament at Westminster. The "Crown Dependencies" comprise:*
  - the Bailiwick of Guernsey (including Alderney, Sark and Herm)

- the Isle of Man
  - the Bailiwick of Jersey
2. They are internally self-governing "Dependencies" of the Crown included in the term "British Islands". They are "British Possessions" but not "colonies" (schedule 1 to the Interpretation Act 1978). To distinguish them from the United Kingdom Overseas Territories (which term has replaced "Dependent Territories"), they should be referred to as "Crown Dependencies". You should ensure that any consultative or other process for overseas territories takes in all the Crown Dependencies.

### **Constitutional position**

3. The constitutional relationship of the Islands with the United Kingdom is not enshrined in a formal constitutional document. It is rather the outcome of historical processes and accepted practice. The most recent statement of the relationship between the United Kingdom and the Islands is to be found in Part XI of Volume 1 of the Report of the Royal Commission on the constitution, published in 1973 (known as the Kilbrandon Report). The Report, however, acknowledged that there were areas of uncertainty in the existing relationship which itself was complex. It did not purport to draw up a fully authoritative statement and the Islands are known to be particularly sensitive to the need to obtain their consent, in accordance with democratic principle, to any decision taken in the United Kingdom which has legal implications for them.

### **The government of the Islands**

4. The Islands have their own legislative assemblies, administrative, fiscal and legal systems and their own courts of law (see our useful [website links](#)). The Judicial Committee of the Privy Council is the ultimate court of appeal.
5. The Channel Island legislatures pass primary legislation which requires approval by The Queen-in-Council (Royal Assent).
6. The Isle of Man Lieutenant Governor (The Queen's representative), subject to the consent of the Secretary of State for Constitutional Affairs and Lord Chancellor, grants Royal Assent to most

primary legislation passed by the Island's legislature (Tynwald). In the case of a minority of Bills, Royal Assent is reserved to The Queen-in-Council.

7. The Island legislatures are:

- Isle of Man - The Court of Tynwald
- Jersey - States of Jersey
- Guernsey - The States of Deliberation
- Alderney - The States of Alderney
- Sark - The Chief Pleas

Tynwald comprises the House of Keys (the Lower House) with 24 popularly elected members and the Legislative Council (the Upper House) with eight members elected by the House of Keys, together with the Attorney General and the Bishop of Sodor and Man. Tynwald Court and the Legislative Council are presided over by the President of Tynwald who is elected by the Members of Tynwald. The States of Jersey, the States of Deliberation and the States of Alderney are elected. In Sark, a proportion of the Chief Pleas are elected. There are no political parties in the Islands.

8. In the Channel Islands, there are no Government Ministers (in the United Kingdom sense). The administration of public services in Jersey, Guernsey, Alderney and Sark is carried out by Committees, accountable to the legislatures. The Presidents of Committees discharge many duties and functions which in the UK are discharged by Ministers. The Committees are served by Island civil servants. In Jersey, changes in principle to the structure of government have been agreed and the Island will be moving towards a ministerial system of government.
9. The Isle of Man has adopted a Cabinet-style Government with a Chief Minister elected by the Isle of Man Parliament (Tynwald), and up to nine Ministers chosen by the Chief Minister from members of Tynwald.

## History

10. The Channel Islands were part of the Duchy of Normandy when Duke William, following his

conquest of England, became King William I of England. Since 1204 they have been subject to the English Crown as successor to the Dukes of Normandy.

11. The Channel Islands comprise two main administrative units: the Bailiwick of **Jersey** and the Bailiwick of **Guernsey**. The latter comprises the Island of Guernsey (with the adjacent islets of Herm and Jethou), Alderney and Sark (which includes Brecqhou).
12. In each of the Bailiwicks, as in the Isle of Man, the Lieutenant Governor is the personal representative of Her Majesty and fulfils an important role as an impartial adviser. The Bailiff and Deputy Bailiff in each Bailiwick share the duties of presiding over the Royal Courts of Jersey and Guernsey. They are also nominally President of the Legislatures where they share the duties, with others, of Speaker. They have no vote except in cases where the votes are tied (when they vote conventionally in favour of the status quo). The Attorney General and Solicitor General are the legal advisers to both the Crown and the States. Committees of the States seek legal advice from the Attorney General's department, although external legal advice is sometimes obtained by agreement between the Attorney General and the Committee in question.
13. **The Isle of Man** first came under the English Crown in the fourteenth century following periods under the suzerainty of the Kings of Norway and Scotland. In 1405 the Island - with its "regalities" - was granted to Sir John Stanley and his heirs. From then up to 1765 it was ruled by the Earls of Derby, and later the Dukes of Atholl, as Kings or Lords of Man. By Acts of Parliament passed in 1765 and in 1825, the rights of the Lords of Man reverted to the Crown, and for a time the Island was very largely governed from London.
14. In addition to the Lieutenant Governor, other Crown Officers in the Isle of Man are the First and Second Deemster (the judges of the High Court) and Attorney General. The latter - like the Law Officers in the Channel Islands - is legal adviser to both the Crown and the Island government.

## Relationship with the United Kingdom

15. The United Kingdom is responsible for the Islands' international relations and for their defence and the Crown is ultimately responsible for their good government. This means that, in the circumstances of a grave breakdown or failure in the administration of justice or civil order, the residual prerogative power of the Crown could be used to intervene in the internal affairs of the Channel Islands or the Isle of Man.

## The European Union

16. The Channel Islands and Isle of Man are not Member States nor are they part of the UK Member State.
17. The relationship of the Islands to the European Community is governed by Article 299(6)(c) of the Treaty establishing the European Community and by Protocol 3 to the UK's Act of Accession to the Community. By virtue of Article 299(6)(c), the EC Treaty applies to the Islands only to the extent described in Protocol 3. This provides that Community rules on customs matters and quantitative restrictions apply to the Islands under the same conditions as they apply to the UK; the Islands are inside the Community Customs Territory and certain aspects of the Common Agricultural Policy are applicable in order to allow free movement in agricultural products.
18. Community provisions on the free movement of persons and services do not apply to the Islands. Islanders benefit from these provisions within the rest of the Community only if they have close ties with the UK (i.e. if they, a parent or grandparent were born, adopted or naturalised in the UK or have at any time been ordinarily resident in the UK for five years).
19. The Islands neither contribute to nor are eligible to benefit from Community funds. They are not subject to Community measures on taxation, nor are they for any purposes within the EU's fiscal territory.
20. Protocol 3 also provides for the application in the Islands of the European Coal and Steel Community unified tariff. The European Atomic

Energy Community (Euratom) Treaty applies to persons and undertakings established in the Islands.

21. Although measures on police and criminal judicial co-operation adopted under Title 6 of the Treaty on European Union do not apply to the Islands, the United Kingdom has undertaken to consult the Islands fully about such measures in order that the Islands can consider whether, and if so to what extent, they wish to adopt legislation or administrative practices to improve police and criminal judicial co-operation with Member States.

### **Immigration and Nationality**

22. The Islands, together with the United Kingdom and the Republic of Ireland, form a common travel area with immigration control at the periphery. There are no immigration controls between the United Kingdom and the Islands. The Lieutenant Governors issue passports in the Islands. Under the British Nationality Act 1981, Islanders are entitled to full British citizenship.

### **Economic Matters**

23. The Islands are internally self-supporting and neither receive subsidies from, nor pay contributions to, the United Kingdom. The Isle of Man, Jersey and Guernsey make annual contributions towards the cost of common services such as defence and overseas representation.
24. The public revenues of the Islands are raised by income tax, duties on imported goods and by other taxes. The responsibility for prescribing the taxes and their rates and for determining how the revenue should be spent is a matter for the Island legislatures.
25. The Isle of Man maintains most of its indirect taxes at the same level as those of the United Kingdom and there is a common customs area between the two territories. Under the Customs and Excise Agreement with the Isle of Man, which came into operation on 1 April 1980, customs and excise duties and value added tax paid in the Island are collected by the Island's own Customs and Excise Service; and the Island is also allocated that part of the indirect taxation revenue which is collected

in the United Kingdom and attributable to goods and services consumed in the Isle of Man. In view of the Customs and Excise Agreement with the Isle of Man, there are no customs controls on the movement of goods and travellers between the Isle of Man and the United Kingdom.

26. Jersey and Guernsey each have their own Customs & Excise service and operate as separate customs areas, levying their own indirect taxation. There are, therefore, customs controls on the movement of goods and travellers between the Channel Islands and the United Kingdom. No value added tax is imposed in Jersey or Guernsey.

### **How are Island Laws made?**

27. Almost all the Islands' domestic legislation is made by their own legislatures. The Department for Constitutional Affairs (DCA) examines such legislation in order that the Secretary of State for Constitutional Affairs and Lord Chancellor, as the Privy Counsellor primarily concerned with matters relating to the Islands, may advise the Privy Council whether Her Majesty in Council may properly be advised to make an assenting Order. Channel Island Laws always require approval by The Queen-in-Council. The question of whether, and if so when, an Assenting Order may be refused is one of particular sensitivity with the Channel Islands.
28. The Islands legislate for the territorial waters adjacent to them and for the airspace over their territories and over those territorial waters. The Islands do not share the view that the UK Parliament has a residual power to legislate for all those areas, but regardless of the strict legal position, it would be contrary to normal constitutional practice for it to do so in matters that are domestic to the Islands. Occasionally, UK legislation is extended to the Islands by Order in Council after consultation with the Islands and with their consent.
29. Before submitting a proposal to the Secretary of State for Constitutional Affairs and Lord Chancellor that a Channel Island law or a Manx Bill be sent to the Privy Council for Royal Assent (or in the case of the Isle of Man only, returned to the Lieutenant



Governor for the exercise of his delegated powers of Royal Assent), the Crown Dependencies Branch Official at DCA consults those Government departments that have policy responsibility for the matters concerned in the United Kingdom.

30. Most Channel Island Laws have been passed by the Island legislatures before they are sent formally to the Department for Constitutional Affairs. If the Island authorities identify a need for advice from a UK perspective beforehand, appropriate consultation will be undertaken at this stage; in these circumstances, consulted departments are encouraged to comment. Departments and agencies should only draw attention to substantial defects in those laws; comment on points of drafting and provide information about the way in which an Island law differs from United Kingdom legislation in the same field. In the more usual circumstances of submission after Island approval, departments need only draw attention to possible substantial defects. If, however, the departments and agencies consider, in any particular case, that such drafting and information points might be valuable for the Island governments in relation to subsequent legislation, the Department for Constitutional Affairs will pass them on to the appropriate quarter.
31. The Isle of Man almost invariably seeks the Department for Constitutional Affairs's observations on draft Bills or, where that has proved impossible, on Bills as introduced into Tynwald. Departmental or agency comments, including drafting comments, are therefore always welcome, as is information about comparable United Kingdom law. Although refusal of Royal Assent would be wholly exceptional it may, at this stage, be possible to influence the contents of a Bill.

### **The role of the Privy Council**

32. The Privy Council is the parent body of the Cabinet (which, constitutionally, is a Committee of Privy Counsellors). The Crown acts through the Privy Council to fulfil its responsibilities for the Islands. It is the practice at the beginning of each reign to appoint Committees of the Privy Council to

consider petitions from the Channel Islands and the Isle of Man respectively. The Council's main business in connection with the Islands is to deal with legislative measures submitted for ratification by Order in Council (Royal Assent). The Secretary of State for Constitutional Affairs and Lord Chancellor is the member of the Council primarily concerned with the affairs of the Islands. He ensures 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.

### **Treaties/international agreements**

33. Article 29 of the Vienna Convention on the Law of Treaties provides that "unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory".
34. The long-standing practice of the United Kingdom when it ratifies a treaty is to do so on behalf of the United Kingdom of Great Britain and Northern Ireland and such (if any) of its overseas territories as wish the treaty to apply to them. Although in most cases it is not possible to include any overseas territories in the instrument of ratification, the scope of the ratification can be extended later to include them. This practice applies equally to the Crown Dependencies. The practice has been acquiesced in by other States and is regarded by the UN Secretary General as establishing a "different intention" for purposes of Article 29 of the Vienna Convention.
35. Departments and agencies are also requested to inform the Department for Constitutional Affairs of any proposals to make Orders under Section 1 (3) of the European Communities Act 1972 specifying Community Treaties where it appears they may apply either wholly or in part to the Islands under Protocol 3 of the Treaty of Accession.

### **Do United Kingdom Acts apply to the Islands?**

36. Acts of Parliament do not normally extend to the Islands. If they do, they may do so either by virtue

of the Act itself (this may be either expressed on the face of the Act or by necessary implication) or by Order in Council made with the Island's agreement under an enabling provision contained in the Act. For an Act to extend otherwise than by an Order in Council is now very unusual. The Insular Authorities would be fully consulted in the rare event that the former approach was under consideration.

37. An enabling provision for an Order in Council, known as a "permissive extent clause" in a Bill, could take the following form:

**"Her Majesty may, by Order in Council, direct that any provision of this Act shall extend, with such exceptions, adaptations and modifications, if any, as may be specified in the Order, to any of the Channel Islands or the Isle of Man".**

38. Such enabling provisions should be included in published Bills only after the Department for Constitutional Affairs has consulted the Island Governments. Similarly, any Orders that the Islands subsequently agree should only be made under such provisions as are drafted in consultation with them. *It is therefore important that the Department for Constitutional Affairs be consulted at an early stage if the content of a proposed Bill appears relevant to the Islands and before any mention of the Islands is made in a published Bill.* If any Statutory Instruments are to be made under legislation that extends to the Channel Islands, it is important that the Islands be consulted in advance and that their consent be obtained, as would be the position with primary legislation. Direct contact with the Island Authorities should preferably not be made unless the Department for Constitutional Affairs and the Island Government concerned have specifically agreed such action but, in any event, it is essential that the Department for Constitutional Affairs be notified of such contact where it concerns policy matters.

## **Who can communicate with Island governments?**

39. In view of the Secretary of State for Constitutional

Affairs and Lord Chancellor's responsibility for matters relevant to the Islands, all official communications with the Island Governments on matters of policy pass between the Department for Constitutional Affairs and the respective Lieutenant Governors (or, in respect of the Isle of Man, the Chief Secretary). Other departments and agencies should therefore approach Crown Dependencies Branch Official at the Department for Constitutional Affairs about Island matters. Direct contact with the Island Authorities should not be made unless the Department for Constitutional Affairs and the Island Government have specifically agreed such action.

### **Interviews by Ministers or officials**

40. Other departments and agencies should inform the Crown Dependencies Branch Official at the Department for Constitutional Affairs in advance where it is proposed that a Minister, or official, should discuss a matter relating to the Islands with a member of the public or an outside organisation.

### **Visits to the Islands**

41. The Crown Dependencies Branch Official should also be consulted about all official visits to the Islands and about all visits by Ministers in order to ensure that the Island authorities are notified and, where appropriate, that their agreement to the proposed visit is obtained. Crown Dependencies Branch Official will also provide any necessary background briefing.
42. Visits to the Islands by officials, if made specifically at the request of an Island Government for the purpose of providing information or advice, are generally chargeable to that government on the basis of the cost of travel and subsistence for visits of up to four days; and, for longer visits, of travel, subsistence, salary and superannuation. Charges may be waived in those instances where the department/agency concerned regards the visit as being also in the furtherance of a United Kingdom interest. In order to avoid misunderstanding, it should always be made clear to the authorities in the Island concerned (before the visit takes place) whether a charge will be made.

## Island representation at International Conferences

43. Departments and agencies leading for the United Kingdom in international conferences should bear in mind the interests of the Crown Dependencies. Whenever appropriate, consideration should be given to arranging for Island representation, either as a member of the United Kingdom delegation or as an observer.

## Contacts

44. If in doubt, please telephone or e-mail a member of the Crown Dependencies Branch:

Andrew Ashbourne: 020-7210 8953 / [email](#)

Mark Hughes: 020-7210 2603 / [email](#)

Richard Miles: 020-7210 1344 / [email](#)

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