

A CONSTITUTIONAL HISTORY
OF JERSEY.

F. DE L. BOIS, O.B.E., M.A.,
FORMER DEPUTY BAILIFF OF JERSEY.



STATES' GREFFE, JERSEY

1972.

SECTION 12.

INTERNATIONAL AFFAIRS.

12/1. International affairs, as in the United Kingdom, come within the prerogative of Her Majesty.

12/2. Agreements between Her Majesty and the Government of a foreign country may apply to Jersey in several ways—

- (a) they may be entered into on behalf of the United Kingdom and other countries for whose international relations Her Majesty is responsible ;
- (b) they may be entered into on behalf of the United Kingdom and other named countries of which Jersey is one ;
- (c) they may be entered into on behalf of the United Kingdom and may include a provision for a declaration to be made extending the agreement to countries for whose international relations Her Majesty is responsible or for named countries of which Jersey is one ;
- (d) they may be entered into on behalf of Jersey alone.

12/3. Until 1950, the United Kingdom Government regarded treaties and international agreements which applied to the United Kingdom as also applying to the Channel Islands and the Isle of Man, unless, in the case of any particular treaty or agreement, the contrary had been expressly stated in the instrument itself.

12/4. Following consultation with the Insular Authorities, it was recognised by the Government that that practice had given rise to practical difficulties in the Islands, and, further, that, having regard to the fact that in municipal law the Islands were not part of the United Kingdom, it would be more consistent with the constitutional position of

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the Islands if in future they were to be regarded for international purposes as not forming part of the United Kingdom, but as being included among the (non-metropolitan) territories for whose international relations the United Kingdom Government was responsible. The Government particularly had in mind that many international agreements contain an article enabling States which became parties to the agreement to extend its application to dependent territories "for whose international relations" those States "are responsible".

12/5. In implementation of those views, on 16th October, 1950, a Circular entitled: "Position of the Channel Islands and Isle of Man in relation to treaties and international agreements", and addressed to Her Majesty's representatives abroad, was issued by the Foreign Office. A copy of the Circular was transmitted to the Insular Authorities under cover of a letter from the Home Office dated 8th March, 1951.⁽¹⁾

12/6. Paragraph 4 of the Foreign Office Circular and paragraph 3 of the Home Office letter say that in future—

- (a) a treaty or international agreement to which the United Kingdom was a party was not to be considered as applying to the Channel Islands or the Isle of Man "by reason only of the fact that it applies to the United Kingdom of Great Britain and Northern Ireland";
- (b) any signature, ratification, acceptance or accession on behalf of the United Kingdom was not to be considered as extending to the Islands "unless they are expressly included"; and
- (c) the Channel Islands and the Isle of Man would, unless the contrary was expressly stated in each case, be included among the territories for whose international relations

the United Kingdom Government was responsible.

12/7. The purpose and effect of the decision conveyed in the Home Office letter of 8th March, 1951, was therefore—

- (a) to ensure that the Islands would be regarded for treaty purposes, not as part of the metropolitan territory of the United Kingdom, but as "territories for whose international relations Her Majesty's Government are responsible"; and
- (b) in the case of international agreements, such as the International Labour Conventions, which contain an article enabling States which become parties to the agreement to extend its application to dependent territories "for whose international relations" those States "are responsible", to enable the Insular Authorities to decide at leisure whether or not they wished the Islands to be bound by any such agreement, and to make it possible for the United Kingdom Government, at the request of the Insular Authorities, at any time to make a declaration accepting the obligations of that agreement on behalf of the Islands.

12/8. As the result of the changes to which paragraphs 12/3 to 12/7 refer, the class of agreement referred to in paragraph 12/2 (c) came into being.

12/9. The first agreement of the class referred to in paragraph 12/2 (d) was a social security agreement with France entered into in 1952.⁽²⁾

12/10. Agreements with countries of the Commonwealth are entered into direct. The first agreement of this nature was an income tax agreement with Guernsey entered into in 1949.⁽³⁾

12/11. Legislation for the implementation of agreements with other countries can come within

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any of the classes of legislation applicable in the Island (paragraph 3/2).

12/12. Representation of Jersey on international organisations can be through the Government of the United Kingdom or direct. Jersey has been a member of the European Plant Protection Organization since its inception in 1951. Jersey is also a member of the International Social Security Association which it joined in 1957.

12/13. The matter of national status is regulated under legislation of the Parliament at Westminster (paragraph 4/5).

12/14. An Act of the States of 8th July, 1841,⁽⁴⁾ shows that Her Majesty's Government had questioned the validity of Acts of naturalization granted by the States since the promulgation of the Order in Council of 28th March, 1771, (paragraph 6/11), and that the States, considering that any doubt in that respect might be harmful to those who had been naturalised, had decided to ask for the Royal sanction to the Acts of Naturalization. Sanction was granted by an Order in Council of 21st August, 1841.⁽⁵⁾

12/15. The admission of aliens to the Island is controlled under a Law of 1937, which was confirmed by Order in Council of 16th April, 1937.⁽⁶⁾

12/16. The admission and deportation of aliens are within the purview of the Lieutenant-Governor and the grant of labour permits and the power of banishment and repatriation are within the purview of the insular authorities.

12/17. There is no control on the movement of aliens within the British Islands which for this purpose are known as a "common travel area".

12/18. The subject of commonwealth immigrants is controlled under an Order in Council⁽⁷⁾ extending the Commonwealth Immigrants Act, 1962, (10 & 11 Eliz. 2. c. 21) to Jersey by which functions of the

Secretary of State are assigned to the Lieutenant-Governor and of the Ministry of Labour are assigned to the Defence Committee.

REFERENCES TO SECTION 12.

- (1) Appendix III.
- (2) R. & O. No. 3154.
- (3) RdL. Tome 1949 p. 327.
- (4) OdC. Vol. 6 p. 139.
- (5) OdC. Vol. 6 p. 137.
- (6) RdL. Tome 1937 p. 69.
- (7) RdL. Tome 1961 p. 505.

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APPENDIX III.

POSITION OF THE CHANNEL ISLANDS AND ISLE OF
MAN IN RELATION TO TREATIES AND INTERNATIONAL
OBLIGATIONS.

STATES OF JERSEY.

13th March, 1951.

THE BAILIFF presented to the Assembly copy of a letter dated 10th March, 1951, addressed to him by His Excellency the Lieutenant-Governor, enclosing copy of a letter No. 929,451, dated 8th March, 1951, addressed to His Excellency by direction of the Secretary of State, forwarding copy of Foreign Office Circular No. 0118, dated 16th October, 1950, regarding the position of the Channel Islands and the Isle of Man in relation to treaties and international agreements.

THE STATES ordered that the said documents be lodged au Greffe.

F. DE L. BOIS,
Greffier of the States.

In your reply
Please quote No. T.7.

GOVERNMENT OFFICE,
JERSEY.
10th March, 1951.

Sir,

I forward herewith two copies of Home Office letter 929,451 of 8th March, 1951, dealing with the position of the Channel Islands and the Isle of Man in relation to treaties and international agreements, and forwarding a copy of Foreign Office Circular No. 0118 of 16th October, 1950, on the same subject.

The Home Office for some time past have been endeavouring to obtain the agreement of the Foreign Office to making a change in the position of the Channel Islands in regard to international agreements, in order that their position may be more in keeping with their constitutional status. As you are aware, the Secretary of State for Home Affairs is always jealous that there should be no encroachment upon the constitutional position and rights of the Channel Islands, and I feel sure the Insular Authorities will be pleased that this new arrangement has been brought into force.

You will note that the Foreign Office Circular is dated 16th October, 1950, and the reason why this Circular was not forwarded earlier was owing to the fact that it was desired by the Home Office to clear up what the position of the Channel Islands will be in relation to what are described as "Paris Agreements", which involve numerous international treaties and obligations which in present times are being negotiated in Paris. This has now been cleared up to the satisfaction of the Home Office and the Foreign Office and accordingly the Circular No. 0118 is now released.

The full meaning of paragraph 5 is rather obscure and I am informed that a further letter on this subject will be despatched at no very distant date.

I have the honour to be,

Sir,

Your obedient Servant,

A. E. GRASSETT,
Lieutenant-Governor of Jersey.

The Bailiff of Jersey,
Royal Court House,
Jersey.

8th March, 1951.

929,451

Sir,

1. I am directed by Mr. Secretary Ede to say that in recent years he has become somewhat concerned about the position of the Channel Islands and the Isle of Man in relation to treaties and international agreements applicable to the United Kingdom relating to matters affecting the domestic legislation of the Islands. These treaties and international agreements have hitherto been regarded as applying to the Islands unless in a particular case the contrary was expressly stated. This conception has given rise to various difficulties.

2. Mr. Ede has been striving to ensure that the Insular Authorities are always given an opportunity to observe on any agreement that may apply to the Islands before the signature of the agreement, but this has the disadvantage that the time for consultation is frequently very limited, with the result that the Law Officers and other members of the Island administration all too often have to study complicated draft texts at very short notice, even though the subject matter of the agreement may be of small concern to the Islands.

3. It therefore appeared to Mr. Ede to be desirable to revise the existing procedure in such a way as to secure that the Islands were not bound by treaties on which they had not been consulted or which, when they were consulted, they did not wish to have applied to the Islands; that adequate time for consultation should be available; and that the inability or reluctance of any of the Islands to adhere to a particular agreement should not prevent the participation of H.M. Government in the United Kingdom. He has accordingly conferred with Mr. Secretary Bevin, who agrees with him that it would be more consistent with the constitutional position

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of the Channel Islands and the Isle of Man if they were regarded for international purposes as not forming part of the United Kingdom of Great Britain and Northern Ireland. All foreign Governments and all international bodies concerned have therefore been informed that any treaty or international agreement of the kind mentioned in paragraph 1 of this letter to which H.M. Government in the United Kingdom become a party after 16th October, 1950, will not be considered as applying to the Channel Islands or the Isle of Man by reason only of the fact that it applies to the United Kingdom of Great Britain and Northern Ireland and that any signature, ratification, acceptance or accession on behalf of the United Kingdom will not extend to the Islands unless they are expressly included. In the signatures of international agreements the Channel Islands and the Isle of Man will normally be included among the territories for whose international relations H.M. Government are responsible. In such a case it will be open to the Insular Authorities to accede to an agreement if after examination of its provisions at their leisure they should at any time desire to do so.

4. Two copies of Foreign Office Circular No. 0118 (TF 11/5) dated 16th October, 1950, by means of which His Majesty's Representatives abroad have been informed of the new arrangements, are enclosed. It is requested that one copy may be transmitted to the Insular Authorities.

5. Mr. Ede desires to point out that one consequence of the new arrangements will be that the Islands will be severally regarded for the purposes of any international Labour Convention ratified by H.M. Government after 16th October, 1950, as non-metropolitan territories for whose international relations H.M. Government is responsible, and that the obligations imposed by Article 35 of the Constitution of the International Labour Organisation will

apply accordingly. A further communication on this subject will be sent to you in due course.

I am, Sir,

Your obedient Servant,

H. A. STRUTT,

The Lieutenant-Governor,
Government Office,
Jersey,
Channel Islands.

(TF/11/5)

FOREIGN OFFICE, S.W.I.

16th October, 1950.

Circular No. 0118.

POSITION OF THE CHANNEL ISLANDS AND ISLE OF
MAN IN RELATION TO TREATIES AND INTERNATIONAL
AGREEMENTS.

Sir,

1. I have to inform you that His Majesty's Government in the United Kingdom and Northern Ireland have recently had under consideration the position of the Channel Islands and the Isle of Man in relation to treaties and international agreements applicable to the United Kingdom.

2. Although in municipal law the Channel Islands and the Isle of Man do not form part of the United Kingdom, His Majesty's Government have hitherto regarded such treaties and international agreements as applying to those Islands unless, in the case of any particular treaty or agreement, the contrary has been expressly stated in the instrument itself.

3. His Majesty's Government have come to the conclusion that it would be more consistent with

the constitutional position of these Islands to regard them for international purposes as not forming part of the United Kingdom of Great Britain and Northern Ireland.

4. Accordingly, any treaty or international agreement to which His Majesty's Government in the United Kingdom may become a party after the date of the present despatch will not be considered as applying to the Channel Islands or the Isle of Man by reason only of the fact that it applies to the United Kingdom of Great Britain and Northern Ireland, and any signature, ratification, acceptance or accession on behalf of the United Kingdom will not extend to the Islands unless they are expressly included. For the purpose of any treaty or international agreement to which His Majesty's Government may become a party hereafter, the Channel Islands and the Isle of Man will unless the contrary is expressly stated in each case, be included among the territories for whose international relations His Majesty's Government are responsible.

5. I have to request that you will notify the Government of the country in which you reside of this decision, conveying to them the information contained in the preceding paragraphs of this despatch. You should also inform them that a note in similar terms bearing this day's date has been addressed to their diplomatic representative in London and that all other foreign Governments with whom His Majesty's Government are in diplomatic relationship, the United Nations, the International Labour Office and other international organisations concerned have been similarly informed.

6. I have to add that you should explain, if the question is asked as to the position of the Channel Islands and the Isle of Man under existing treaties,

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that the step now being taken does not affect the application of existing treaties to those Islands.

I am, with great truth and regard,

Sir, Your obedient Servant,

ERNEST BEVIN.

To His Majesty's Representative
at

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STATES OF JERSEY.

30th May, 1951.

THE LIEUTENANT BAILIFF presented to the Assembly copy of a letter, dated 3rd May, 1951, addressed to the Bailiff by His Excellency the Lieutenant-Governor, enclosing copy of a letter No. 929,451/5, dated 25th April, 1951, addressed to His Excellency by direction of the Secretary of State, referring to the letter, dated 8th March, 1951, addressed to His Excellency by direction of the Secretary of State (presented to the Assembly on 13th March, 1951) with regard to the position of the Channel Islands and the Isle of Man in relation to treaties and international agreements applicable to the United Kingdom, in which was set out the clarification referred to in the said letter of 8th March, 1951, as to the position of the Channel Islands and the Isle of Man with reference to the application of the International Labour Conventions ratified by His Majesty's Government after 16th October, 1950, and enclosing copy of the Constitution and Rules of the International Labour Organisation.

THE STATES ordered that the said documents be lodged au Greffe.

F. DE L. BOIS,
Greffier of the States.

GOVERNMENT OFFICE,

JERSEY.

3rd May, 1951.

Sir,

I refer to the last paragraph of my letter T.7 of 10th March, 1951, informing you that a clarification of paragraph 5 of Home Office letter 929,451 of 8th March, 1951, dealing with the position of the Channel Islands and the Isle of Man in relation to the treaties and international agreements would follow.

I now forward for consideration by the Insular Authorities, two copies of Home Office letter 929,451/5, dated 25th April, 1951, providing the clarification referred to as to the position of the Channel Islands and the Isle of Man with reference to the application of International Labour Conventions ratified by His Majesty's Government after 11th October, 1950.

I also forward one copy of the Constitution and Rules of the International Labour Organisation to which reference is made in the Home Office letter quoted above.

I have the honour to be,

Sir,

Your obedient Servant,

A. E. GRASSETT,
Lieutenant-Governor of Jersey.

The Bailiff of Jersey,
Royal Court House,
Jersey.

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HOME OFFICE,
WHITEHALL,
LONDON, S.W.1.
25th April, 1951.

929,451/5
I.L.117/1950.

Sir,

I am directed by the Secretary of State to refer to Mr. Strutt's letter of 8th March about the position of the Channel Islands and the Isle of Man in relation to treaties and international agreements applicable to the United Kingdom, and in particular to paragraph 5 concerning the application to the Islands of International Labour Conventions ratified by His Majesty's Government after 16th October, 1950.

The Secretary of State desires me to explain that in making provision for the application of Conventions ratified by States members to non-metropolitan territories for whose international relations they are responsible Article 35 of the Constitution of the International Labour Organisation differentiates between those cases where the subject matter of conventions lies within the self-governing powers of the territory and those where it does not. The provisions dealing with cases where the subject matter is within the self-governing powers of the territory concerned will normally be appropriate so far as the Islands are concerned, and these provisions will have the following effect :

- (a) If the insular authorities agree, a declaration may be made by His Majesty's Government accepting the obligations of each particular Convention on behalf of the insular authorities. A declaration may specify such modifications of the Convention as may be necessary to adapt it to local conditions. In future when a Convention

has been ratified by His Majesty's Government the insular authorities will be asked whether they wish such a declaration to be made. If at any time after a declaration had been made circumstances arose which made it necessary to cancel or modify the declaration this could be done in accordance with the terms of the Convention.

(b) Where such a declaration has been made all the obligations concerning ratified Conventions will apply. This will involve in particular :

- (i) the effective application, by legislation or other action, of the provisions of the Convention (Article 19(5) (d) of the Constitution of the International Labour Organisation). It will be appreciated that in the United Kingdom it is the normal practice to ratify Conventions only when the position in the United Kingdom is at the date of ratification fully in accordance with their provisions ;
- (ii) the preparation and submission to the International Labour Office of Annual Reports on the measures taken to give effect to the Convention. (Article 22 of the Constitution of the International Labour Organisation).

Annual Reports are called for each year by the International Labour Office which sends to the States Members of the Organisation special report forms approved by the Governing Body of the International Labour Office. Requests for reports accompanied by copies of the report forms will be addressed to the insular authorities by the Secretary of State ;

reports need not be submitted until called for.

- (c) Where a declaration accepting the obligations of the Convention is not made there is an obligation on the part of the Government of the United Kingdom to supply to the International Labour Office a report on the law and practice of the Islands in relation to the subject matter of the Convention showing the extent to which effect has been given or is proposed to be given to the Convention and stating any difficulties which prevent or delay its acceptance. The Governing Body of the International Labour Office has decided that these reports shall be called for at an appropriate interval after the coming into force of the Convention in question and no action on the part of the insular authorities will be necessary until a request for information is received by them.

The Secretary of State will be glad to supply any further information which may be desired on this subject. A copy of the Constitution of the International Labour Organisation is enclosed.

I am,

Sir,

Your obedient Servant,

J. H. WALKER.

The Lieutenant-Governor,
Government Office,
Jersey,
Channel Islands.