



House of Commons  
Justice Committee

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# Crown Dependencies: developments since 2010

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**Tenth Report of Session 2013–14**

*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).

All publications of the Committee (including press notices and further details can be found on the Committee's webpages at [www.parliament.uk/justicecommittee](http://www.parliament.uk/justicecommittee).

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# Contents

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<b>Report</b>	<i>Page</i>
<b>Summary</b>	<b>3</b>
<b>1 Introduction</b>	<b>5</b>
<b>2 Relationship between the UK Government and the Crown Dependencies</b>	<b>7</b>
Role of the Ministry of Justice	7
Parliamentary Questions	9
Relationship with other UK Government departments	10
The constitutional relationship going forward	13
<b>3 Insular legislation and treaty extension</b>	<b>15</b>
Insular legislation	15
Pro-active requests for treaty extension	18
<b>4 Consultation by UK Departments</b>	<b>21</b>
<b>5 International relations</b>	<b>25</b>
Conflicts of interest	25
Entrustment	27
<b>6 Good government</b>	<b>30</b>
General	30
Sark	32
<b>7 Conclusion</b>	<b>35</b>
<b>Conclusions and recommendations</b>	<b>36</b>
<b>Appendix</b>	<b>40</b>
<b>Formal Minutes</b>	<b>42</b>
<b>Witnesses</b>	<b>43</b>
<b>Published written evidence</b>	<b>44</b>

## Summary

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This Report considers the progress which has been made by the Ministry of Justice to implement the recommendations of the Justice Committee's Report of 2009-10 on the Crown Dependencies. It concludes that the Ministry of Justice has taken positive action to give effect to almost all of the Committee's recommendations, that the recommendations have worked well in practice, and that the Crown Dependencies themselves have played a constructive role in this process.

As a result, the relationship between the UK and the Crown Dependencies has improved considerably. The process for granting Royal Assent for Crown Dependency legislation is much quicker; and the Islands are, in general, better consulted about UK legislation and international measures affecting them. Where tensions do arise, the Ministry of Justice works effectively to facilitate resolution as far as possible. It is important that the Crown Dependencies are consulted about policy changes which affect them in time to put their point of view.

Looking to the future, the Ministry of Justice must maintain and renew the procedures put in place to improve co-operation, to ensure the relationship continues to function smoothly. In addition, there are two outstanding areas on which we would like the Ministry to focus: speeding up the process for extending treaties to the Crown Dependencies at their request; and international representation. We recognise that the primary duty of the UK Government is to negotiate in the UK's interest, but we reiterate our view that, where the Crown Dependencies have a distinct view on a matter which is significant to them, the UK Government has a duty to ensure that their case is heard in the negotiations.

In the final chapter of our Report, we consider the UK Government's responsibility for ensuring good government of the Crown Dependencies. We acknowledge that a number of individuals have issues and grievances which they believe should be the basis for intervention by the UK Government on good government grounds. However, we remain of the view that the threshold for UK intervention is a high one, and we are satisfied that there is no complacency on the part of the UK authorities and that complaints are properly considered; and that mechanisms are in place in the Crown Dependencies to test and rectify such concerns.

The process of change and the development of the system of government in Sark is unfortunately made more difficult because of the intense disputes between the largest investor on the island, the Barclay brothers, and the Island's elected representatives in the Chief Pleas. The Minister has, as we recommended, maintained a watching brief and made assistance available, with help from other Crown Dependencies. We deeply regret the apparently intractable discord on Sark, but conclude that this should not be allowed to get in the way of the responsibility of the authorities on Sark to continue to implement democratic processes and plan a sustainable future for the Island. The UK Government

must continue to encourage and support them in achieving this.

In conclusion, we agree with Lord McNally that the Committee's previous inquiry and recommendations, and the positive response to them made by the Ministry, are a good model for interaction between select committees and the departments they scrutinise.

# 1 Introduction

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1. The Bailiwicks of Jersey and Guernsey (including the islands of Alderney and Sark) and the Isle of Man are Dependencies of the Crown, with Her Majesty The Queen as Sovereign. However, they are not part of the United Kingdom and are autonomous and self-governing with their own independent legal, administrative and fiscal systems. The Crown's responsibilities towards the Dependencies include:

- ultimate responsibility for the "good government" of the Islands;
- the ratification of Island legislation by Order in Council following scrutiny by the relevant privy counsellor;
- 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.<sup>1</sup>

The Ministry of Justice is tasked with the administration of the constitutional relationship and the Lord Chancellor and Secretary of State for Justice is the Privy Counsellor with special responsibility for Island Affairs.

2. The previous Justice Committee undertook an inquiry into the constitutional relationship between the UK and the Crown Dependencies, and the role of the Ministry of Justice in administering that relationship, in the 2009-10 session.<sup>2</sup> The inquiry highlighted several aspects of the conduct of the relationship which were causing difficulties, and suggested mechanisms for improvement. Because the Committee reported at the very end of the last Parliament, it was the current Government that responded to the Report, in November 2010.<sup>3</sup> They accepted the majority of the Committee's recommendations.

3. Where feasible, we make it our practice as a Committee to follow up our recommendations to see how effectively they have been implemented. In March 2013, we decided to examine the extent to which the Government had gone on to implement our recommendations concerning the Crown Dependencies. We therefore published a call for evidence seeking views on how action taken in response to the Committee's report had affected the operation of the constitutional relationship between the Crown Dependencies and the UK Government, particularly in relation to:

- Scrutiny of insular legislation by the Ministry of Justice;

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

2 Justice Committee, Eighth Report of Session 2009–10, *Crown Dependencies*, HC 56, 30 March 2010

3 Government Response to the Justice Select Committee's Report: Crown Dependencies, November 2010, [Cm 7965](#)

- Consultation of the Dependencies by Government Departments on UK legislation in which they have an interest;
- Issues relating to good government; and
- International representation of the Dependencies by the UK Government.<sup>4</sup>

4. We received 20 pieces of written evidence from the Ministry of Justice, the Isle of Man, Jersey, Alderney and Guernsey Governments, the Chief Pleas of Sark, and a number of residents of those jurisdictions. We visited Jersey and the Isle of Man in June 2013, and Guernsey and Sark in September 2013,<sup>5</sup> in order to talk to a range of interested parties. We concluded the inquiry by taking oral evidence from the Minister of State with responsibility for the Crown Dependencies, Lord McNally, and the lead civil servant in the Crown Dependencies, Overseas Territories and Visits Team at the Ministry of Justice, Cathryn Hannah, in November 2013. In this Report, we take each of the 2010 recommendations in turn, outline the Government's original response to them,<sup>6</sup> assess the progress that has been made subsequently, and set out our conclusions and recommendations for further action.

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4 Justice Committee website, Crown Dependencies: development since 2010 [inquiry page](#)

5 We also intended to visit Alderney but, owing to fog disruption of air traffic, we held our meetings with elected representatives on the Island by telephone instead.

6 For the sake of brevity, we reproduce only the most directly relevant passages in our Report. To view the Government's Response in its entirety, see [Cm 7965](#).

## 2 Relationship between the UK Government and the Crown Dependencies

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### Role of the Ministry of Justice

**2010 Recommendation:** 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)

**2010 Government Response:** *We agree with the Committee's recommendation that the Ministry of Justice should prioritise its core constitutional duties and should disengage from areas of work which do not directly engage this primary role.*

5. The Ministry of Justice is responsible for administering formal contact between each of the Crown Dependencies and the UK Government.<sup>7</sup> At the time of the 2009–10 inquiry, the team in the Ministry of Justice dedicated to the Crown Dependencies comprised three operational staff dealing with Island legislation, Crown appointments and honours; three policy officials dealing with policy issues and providing advice and support to the Crown Dependencies; and four lawyers, who advised the policy team and other UK Government Departments. The authorities in the Crown Dependencies believed the team to be under-resourced, causing it to be reactive, rather than proactive, and to create bottlenecks.<sup>8</sup> However, the team was also engaging in activity which duplicated work done by the Island authorities themselves, and in our predecessors' view, went beyond constitutional requirements. Therefore rather than recommending an increase in team capacity, the Committee recommended more effective use of existing resources.

6. Such an approach was given added impetus by the requirement on Government Departments to make spending cuts. Lord McNally told us that:

Since 2010 the Ministry of Justice has had to cut back, initially, in the first spending review by 23%, and in a subsequent review by 10%. That has meant that we have had to employ a leaner team, able, we hope, to deliver more for less, but I do not think that there have been pressures on delivery that have affected our performance.<sup>9</sup>

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7 See paragraph 11 of the [Committee's 2010 Report](#) for a more detailed explanation of what this entails.

8 Justice Committee, Eighth Report of Session 2009–10, [Crown Dependencies](#), HC 56, paras 12, 16

9 [Q 1](#)

The Crown Dependencies team now consists of four policy officials, supplemented by three lawyers who work on the Crown Dependencies and other policy areas.<sup>10</sup> Cathryn Hannah explained that:

We have tried to streamline our focus on the areas where we, as the Ministry of Justice, demonstrably add value and are the core of the constitutional relationship. It is a team that works well and is adequately resourced for what we are doing.<sup>11</sup>

This view was supported by the Crown Dependencies.<sup>12</sup>

7. As part of this process, and in line with the direction suggested in the 2010 [Report](#), the MoJ has encouraged the development of direct relationships between the Crown Dependencies and other UK Government Departments.<sup>13</sup> According to the Policy Council of the States of Guernsey, this has “reduced its reliance on the MoJ acting as an intermediary”, although the MoJ remains the channel of formal communication and assists when relationships with Departments become strained;<sup>14</sup> the Jersey and Isle of Man Governments reported similarly positive experiences.<sup>15</sup> Lord McNally explained that:

We have become very adept at identifying the individual and the Department where the solution to a problem is, directing the Crown Dependency there, and making sure that the response is a positive one.<sup>16</sup>

8. These new ways of managing the relationship appear to have been successful. Elected representatives and officials in all the Crown Dependencies described a considerable improvement in the relationship and we explore the various manifestations of this elsewhere in this Report. The Jersey Government, for example, said that its relationship with the MoJ is “strong, due to good communications between the Minister and officials in the MoJ and their counterparts in the Island.”<sup>17</sup> The Crown Dependencies gave credit to our predecessor Committee’s recommendations for this improvement.<sup>18</sup> Lord McNally considered that our work in this area provided a good model for interaction between select committees and the departments they scrutinise and told us that:

Your 2010 report set a number of tasks [and] made it easier for me to know where my priorities should be.<sup>19</sup>

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10 [Further written evidence](#) from the Ministry of Justice

11 [Q 1](#)

12 Policy Council of the States of Guernsey ([CDF 06](#)), Government of Jersey ([CDF 09](#)), Isle of Man Government ([CDF 11](#)), Policy Council of the States of Alderney ([CDF 23](#))

13 Ministry of Justice ([CDF 01](#))

14 Policy Council of the States of Guernsey ([CDF 06](#))

15 Government of Jersey ([CDF 09](#)), Isle of Man Government ([CDF 11](#))

16 [Q 1](#)

17 Government of Jersey ([CDF 09](#))

18 See, for example, Policy Council of the States of Guernsey ([CDF 06](#))

19 [Q 16](#)

9. This improvement was also to a large extent attributed to the personal commitment of Lord McNally and Cathryn Hannah. We sought assurance that the success or otherwise of the relationship was not too dependent on personalities, with the potential for back-sliding in the future. Lord McNally reassured us that:

I do think that we have set in place contacts and relationships and a template for working, which anybody following me or following Cathryn will be able to take forward.<sup>20</sup>

10. **We welcome the general improvement in the relationship between the UK and the Crown Dependencies, as attested to in this follow-up inquiry. We are pleased that the conclusions and recommendations of the previous Committee's Report provided the basis for this shift, and we pay tribute to the way in which they have been implemented by the Ministry of Justice, with particular credit due to Lord McNally and Cathryn Hannah. The Ministry team dedicated to dealing with the Crown Dependencies is operating with fewer resources than in the past. However, in our estimation it is using them more effectively, in line with the Committee's recommendation that the Ministry limit its activities to key constitutional duties, and the Department's reduced budget has not caused tangible difficulties.**

## Parliamentary Questions

**2010 Recommendation: 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 falls within his constitutional responsibilities. (Paragraph 15)**

***2010 Government Response: The Ministry of Justice will restrict its responses to those questions which relate to the Ministry of Justice's constitutional responsibilities in respect of the Crown Dependencies. For domestic matters that are the responsibility of the governments of the Crown Dependencies, the Ministry of Justice will now simply state the matters are outside the Department's remit.***

11. We did not receive any evidence expressly on this point. However, analysis of the answers to questions tabled under the current Government indicates that it appears to be acting in line with the recommendation. Where questions have concerned the relationship or actions of the UK Government in respect of the Crown Dependencies, they have been answered substantively; where questions relate to internal matters for the Crown Dependencies and are therefore not the responsibility of UK Government Ministers, they have not. The following example demonstrates this dual approach:

### Channel Islands: Dietary Supplements

**Jim Dobbin:** To ask the Secretary of State for Justice (1) when Ministers in his Department next plan to discuss the implementation of the Food Supplements Directive and the Nutrition and Health Claims regulation with the (a) Chief Minister of Guernsey and (b) Chief Minister of Jersey; [113785] (2) what his policy is on the desirability of Crown Dependencies implementing EU legislation that applies to the rest of the UK. [113786]

**Mr Kenneth Clarke:** The Minister of State (Lord McNally) and officials are in regular contact with the Jersey and Guernsey authorities on a range of matters, including the implementation of EU legislation in general and this directive and regulation in particular. Both Crown Dependencies have confirmed they are taking steps to implement these specific measures at the earliest opportunity.

The Crown Dependencies' relationship with the EU is governed by Protocol 3 of the UK's Treaty of Accession to the European Community. The Crown Dependencies use their domestic legislation to implement EU legislation falling within the parameters of this Protocol. Under Protocol 3, the Islands are part of the customs territory of the Community and the common customs tariff, levies and agricultural import measures apply to trade between the Islands and non-member countries.

However, other EU legislation does not generally apply. The Crown Dependencies are not part of the UK and it is for their own Governments to decide whether they wish to introduce such measures within their jurisdictions.<sup>21</sup>

**12. We welcome the fact that, as a general rule, the Ministry of Justice is no longer providing substantive answers to Parliamentary Questions on issues pertaining to the Crown Dependencies for which their own governments are responsible, in line with the Committee's recommendation. This more accurately reflects the constitutional relationship.**

### Relationship with other UK Government departments

**2010 Recommendation:** [UK Government Departments] should be left in no doubt about the limits of legitimate intervention in Island policy and legislation and about their duties in considering [the Crown Dependencies'] 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)

**2010 Government Response:** *We agree that secondments by Crown Dependencies staff to central Government Departments could bring benefits in terms of increased mutual*

21 HC Deb, 25 June 2012, [Col 56–57W](#)

*understanding and would be happy to help facilitate these.*

13. As noted above, the MoJ now facilitates direct contact between the Crown Dependencies and UK Government Departments more frequently and this is judged to be a success. The MoJ has also taken steps to remind Departments of their responsibilities to the Crown Dependencies. Lord McNally advised that:

Within a few weeks of taking office as the Minister in 2010, the Prime Minister gave me clearance to write to every ministerial lead to say that it was expected that they should have cognisance of the problems or issues relating to the Crown Dependencies and should be expecting to give them access. In the main that has worked.<sup>22</sup>

14. There have been various initiatives since 2010 aimed at improving mutual understanding between the Crown Dependencies and UK Departments, including the use of “road shows”, whereby officials from the Crown Dependencies explain who they are and how they work to UK civil servants, and secondments between the MoJ and the Islands, as recommended by the Committee. The first “road show” was held in December 2012 at the FCO and was judged to have been a success.<sup>23</sup> The first full secondment—from Jersey to the MoJ—took place between October 2012 and April 2013. The MoJ has said it is open to further secondments.<sup>24</sup> Lord McNally said that:

Cathryn [Hannah] has worked extremely hard at [...] making sure that there have been seminars and workshops with the Crown Dependency civil servants and civil servants coming into Whitehall to get a better understanding of how Whitehall works. That is a process that I would like to see continue and develop, because the more they have civil servants who understand how the Whitehall machine works the better.<sup>25</sup>

15. However, there have been a number of occasions since 2010 where the UK has acted in ways which the Crown Dependencies judged to be inappropriate, wrong or unfair, and which have strained the relationship. These include instances where the UK has made decisions which impacted on the Islands without prior consultation (explored in more detail in chapter four); the decision by HM Treasury to disapply Low Value Consignment Relief;<sup>26</sup> the refusal of HMG to allow the Crown Dependencies to sign up to the US Foreign Account Tax Compliance Act (FATCA) unless they concluded a similar agreement with the UK (see chapter five); rhetoric from 10 Downing Street and HM Treasury about the

22 [Q 1](#)

23 Policy Council of the States of Guernsey ([CDF 06](#))

24 Government of Jersey ([CDF 09](#)), MoJ ([CDF 01](#))

25 [Q 9](#)

26 Jersey and Guernsey judicially reviewed this decision. In 2012 the court ruled that use of LVCR was a legitimate trading opportunity and that selective disapplication was discriminatory against the Islands, however its application was within the discretion of the UK. The Channel Islands argue this has had a negative impact on genuinely local businesses, such as flower growers, as well as those businesses which took advantage of the regime to offer goods to the UK market without the tax which UK retailers had to levy.

Islands' financial services and taxation regimes which they claim had seriously misrepresented them; and pressure applied to the Crown Dependencies to sign up to taxation-related agreements in the lead-up to the G8 summit. The Channel Islands and the Isle of Man are quite different from UK Overseas Territories not only in being part of the British Isles but also in their distinct constitutional status as Crown Dependencies, and the high rating accorded to their compliance with international regulatory standards.

16. Lord McNally agreed that the Crown Dependencies feel justifiably aggrieved in relation to some of these cases. However, he added that:

What has been good is that, since we had a couple of incidences where the Prime Minister was showing you his determination to address financial service regulation globally and the Crown Dependencies thought that they were being unnecessarily fingered, No. 10 and the Treasury have become much more aware and the Chief Ministers of the Crown Dependencies were invited over for discussions.<sup>27</sup>

Lord McNally described the relationship as “like a good marriage; it has to be worked at. It is not a finished product; it is work in progress.”<sup>28</sup> He also explained the MoJ’s mediation role. Where the Crown Dependencies seem to be overlooked, he has intervened “either by phoning or writing to Ministers concerned, saying, “Can I remind you that the Prime Minister has asked that you give this priority?” Usually, that little nudge has been enough to get the wheels turning.”<sup>29</sup> This chimed with what we were told by the Crown Dependencies themselves.

**17. The Ministry of Justice, in partnership with the Crown Dependencies, has taken a number of initiatives aimed at improving mutual understanding amongst officials in UK Government Departments and the Crown Dependencies about their respective roles and responsibilities, the impact of which we explore further in the following chapters. Although there have continued to be occasions where the Crown Dependencies have felt poorly treated by the UK, often with some justification, we are content that the Ministry of Justice has mechanisms in place to fix the relationship.**

*18. Owing to the general rate of turnover in the civil service, the Ministry of Justice must ensure that efforts to raise awareness of the Crown Dependencies across Government are ongoing, and we would like to be kept updated on this point. In our view, Lord McNally’s communication with Ministers across Government after the last election to remind them of their obligations in relation to the Crown Dependencies, as sanctioned by the Prime Minister, has proved particularly helpful and we hope that this process will be replicated by future Governments.*

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27 [Q 8](#)

28 [Q 5](#)

29 [Q 2](#)

## The constitutional relationship going forward

**2010 Recommendation:** 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. (Paragraph 27)

**2010 Government Response:** *The Ministerial foreword to this response answers the Committee's recommendation that we produce a simple account of the constitutional position. We intend it to be a blueprint for UK engagement with the Crown Dependencies and to bolster the recognition of their separate identities.*

19. The Ministerial foreword is appended to this Report. It sets out “how the Government believes the relationship between the Crown Dependencies and the United Kingdom should operate to meet current needs, taking into account the growing ability of the Islands to represent their own interests within the UK and abroad”, but “is not intended to change or challenge the existing constitutional relationship”. Guernsey’s Policy Council described it as one of the “helpful reference documents” available to assist them “when explaining the constitutional relationship” and which are “regularly used when dealing with UK Government officials”.<sup>30</sup>

20. The relationship has evolved over time; most recently the Crown Dependencies have each been pursuing a greater international presence and the MoJ said that their desire “to develop a more mature, arm’s length relationship on some aspects of their business with the UK [...] fits well with our own position.”<sup>31</sup> However, certain changes affecting the relationship—such as the UK’s membership of the EU, to which the Crown Dependencies do not belong—as well as the unhappiness alluded to in paragraph 15, have led to calls by some groups in the Crown Dependencies for a more radical re-evaluation. There has been public debate in Jersey about the potential for independence, promoted by Sir Philip Bailhache, previously Assistant Chief Minister and now the Island’s first External Relations Minister; and the States of Guernsey resolved in September 2013 to form a Constitutional Investigation Committee to examine the relationship with the UK.

21. The Ministry of Justice has been clear that the extent to which it can apply a lighter touch approach is limited, and that it has to take its responsibilities seriously. For example, speaking in reference to scrutiny of insular legislation, which is carried out by the Ministry of Justice and which we explore in the next chapter, Lord McNally said that:

We also have to remember that, if we had got this wrong in terms of UK terms, in Westminster terms, you would have the relevant Minister down here immediately to ask why this was not spotted or why we allowed this to

30 Policy Council of the States of Guernsey ([CDF 06](#))

31 MoJ ([CDF 01](#))

go through. It is a mutually dependent relationship and what happens in the Crown Dependencies does splash over into our reputation, so we have a responsibility to make sure that their legislation passes muster but with as light a touch as we possibly can.<sup>32</sup>

When asked if he saw the need for a review of the constitutional relationship, Lord McNally replied:

No, it works, and I believe it is as strong as or stronger than it ever was. As long as the Westminster Government appreciate and understand the nature of that relationship—that they are not colonies and cannot be browbeaten and bullied but have to be taken into account and discussed with—and as long as they realise that they have responsibilities both to the United Kingdom and the global community in the observance of treaties, agreements and such, it is a solid relationship and one that I do not see needs any tinkering with in any fundamental way.<sup>33</sup>

**22. We note the pressure from some groups in the Crown Dependencies towards re-defining the constitutional relationship in a way that allows the Islands even greater independence from the UK. While the relationship has evolved over time and will rightly continue to do so, its very nature imposes certain responsibilities on the UK which it cannot ignore. We are therefore not convinced that any attempt to achieve a fundamental re-balancing would be fruitful. We welcome the Ministry of Justice’s response to our recommendation that it produce a simple account of the constitutional position of the three Crown Dependencies by publishing such an account in the Ministerial foreword to the Government’s response to the 2010 report. The Ministry’s exposition generally reflects our understanding of the position both in theory and in practice, although we consider that the final paragraph on international representation should place a stronger onus on the Government to consult the Crown Dependencies, as we discuss in chapter five.**

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32 [Q 15](#)

33 [Q 10](#)

### 3 Insular legislation and treaty extension

#### Insular legislation

**2010 Recommendation:** We do not see the need for multiple layers 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)

For more complex legislation [...] scrutiny should be carried out expeditiously. To this end, the Ministry 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. (Paragraphs 66)

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. (Paragraph 67)

*2010 Government Response: In completing the scrutiny process, the Ministry of Justice does not generally check for congruence with UK policy unless divergence would demonstrate risk of breaches of the ECHR or breaches of EU or international law, and we would not accept that we carry out scrutiny beyond what is constitutionally legitimate. [But] we accept the Committee's view that this can, on occasion, amount to a duplication of effort with both the Islands' Law Officers and UK Officials undertaking a similar analysis. We consider that if the Islands' Law Officers provided a detailed report of their analysis of a Law and how it might touch upon international or constitutional issues then the need for such questioning from the Ministry of Justice would be substantially reduced [...] We will work with the Crown Dependencies Law Officers to put an appropriate procedure in place.*

*We are confident that the guidance currently being developed between the Crown Dependencies Law Officers and the Ministry of Justice will clarify and improve arrangements for handing Crown Dependency legislation [...] The new guidance should, as the Committee suggests, 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.*

23. Primary legislation passed by the Crown Dependencies requires Royal Assent. The MoJ examines each piece of legislation to ensure that there is no conflict with international

obligations or with any fundamental constitutional principles, in order to advise the Privy Council whether Her Majesty should make an Assenting Order. Seventy-one Crown Dependency Laws received Royal Assent in 2012.<sup>34</sup> Lord McNally acknowledged that in the past, as highlighted by our predecessors' inquiry, "we had lawyers second-guessing Crown Dependency lawyers. One of the things that has struck me is the very high quality of lawyers and civil servants within the Crown Dependencies. In reality, second-guessing them was paternalistic and unnecessary."<sup>35</sup> This duplication of effort frequently led to long delays in insular legislation coming into effect.

24. A trial arrangement for processing legislation has been in place since September 2012, along the lines suggested in the 2010 Report and in the Government's Response. It involves a more detailed analysis of the legislation being provided to the MoJ by the Crown Dependencies via a revised form of Explanatory Memorandum, which concentrates on areas relating to international obligations, such as the risk of successful challenge under the ECHR.<sup>36</sup> According to the MoJ, it will now only refer a law to another Department, which can slow the process, where absolutely necessary. The Crown Dependencies agreed there is less evidence that this is happening than in the past. We also found no evidence that the present UK Government has used the Royal Assent process as a bargaining lever over other matters, as had happened in earlier years, and Lord McNally said he "would not support such a way of going about business."<sup>37</sup> Finally, a new process of prioritising legislation has been introduced, whereby the Crown Dependencies provide advance notice of legislation so the MoJ can prioritise legal resources accordingly and advise the Crown Dependencies on which meeting of the Privy Council their laws will go to.<sup>38</sup>

25. These reforms have contributed to a substantial reduction in the average time taken for a law to be processed. Cathryn Hannah advised that:

There is no backlog of Crown Dependency legislation any more. Legislation is dealt with in an average of 20 working days and usually for the next Privy Council sitting, and that is something that the team and lawyers and Ministers are very keen to continue, so we have that kind of process that works. Because there is no backlog, it is a lot easier to deal with legislation as and when it comes in.<sup>39</sup>

All parties appeared satisfied with the new processes and the progress they had achieved.<sup>40</sup>

26. At a meeting we held with Members of the Sark Chief Pleas (known as *conseillers*), it was suggested that—although only three of their laws were awaiting Royal Assent at the

34 MoJ (CDF 01)

35 Q 6

36 The Justice Secretary can recommend that Assent be withheld 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, including the ECHR.

37 Q 17

38 MoJ (CDF 01)

39 Q 6

40 See, for example, Policy Council of the States of Alderney (CDF 23)

time of our visit—where delays did occur, the UK was not sufficiently transparent about the cause of the delay. When asked about this in evidence, Cathryn Hannah said:

I hope there are not too many cases where that is not the case. We definitely encourage them [to pick up the phone and talk to officials]. In fact our lawyers [...] are in contact with lawyers in the Crown Dependencies and, if we do have an issue with a law, the first step is to pick up the phone to the law officers in the Crown Dependencies and get them to talk through and explain where they are coming from on the law.<sup>41</sup>

27. The 20 day period referred to in paragraph 25 above does not include the subsequent time taken by the Privy Council to consider the MoJ's recommendation. This has improved; for example the Government of Jersey reported in May 2013 that it was taking around 2-3 months for its laws to gain Royal Assent, whereas previously it could take as long as 12-18 months.<sup>42</sup> However, delays can still occur during periods where the Privy Council meets infrequently. Cathryn Hannah told us:

What does delay [Royal Assent] and where there is a slight difference is the fact that for a lot of Jersey and Guernsey legislation it has to go through the Privy Council time scales, which are roughly nine a year, and over the summer and the winter period there can be quite a gap between the Privy Councils.<sup>43</sup>

28. Isle of Man legislation receives Royal Assent under a different system: by prerogative order the Island's Lieutenant-Governor can sign off for Royal Assent certain legislation that does not affect the constitutional relationship and the MoJ informs the Lieutenant-Governor directly when the Secretary of State is content that he may exercise this delegated authority. The MoJ has suggested to Jersey and Guernsey that they consider adopting the same system to avoid Privy Council-related delays; it is ultimately a matter for each jurisdiction to decide and both are currently giving it consideration.<sup>44</sup>

29. Other than this further potential change, Cathryn Hannah told us that:

In terms of our role, we have streamlined it as far as it can go. Our lawyers do need to review the legislation. The Royal Assent memorandums are incredibly useful for them in terms of showing how the legislation is compatible with ECHR requirements and also how it fits in with constitutional relationships, which enables an effective review from our lawyers, but that process still needs to happen.<sup>45</sup>

**30. Frequent long delays in recommending legislation made in the Crown Dependencies for Royal Assent were a particular concern highlighted in the 2010**

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41 [Q 7](#)

42 Government of Jersey ([CDF 09](#))

43 [Q 14](#)

44 *Ibid.*

45 [Q 15](#)

**Report. In our view, the Ministry of Justice and the Crown Dependencies have carried out our recommendations by implementing a more appropriate and proportionate system for scrutinising insular legislation, with significant success. It is for Guernsey and Jersey to decide for themselves whether to adopt the system used in the Isle of Man, whereby Royal Assent is largely delegated to the Island’s Lieutenant-Governor, but we agree that it could help to avoid the remaining delays that can occur during periods when the Privy Council does not sit.**

### Pro-active requests for treaty extension

31. While the situation in relation to insular legislation appears to have been satisfactorily resolved, we were alerted to an outstanding issue in relation to processing requests for treaty extension, which was not discussed in the 2010 Report. The Crown Dependencies are not recognised internationally as sovereign states in their own right but as “territories for which the United Kingdom is responsible”. As such they cannot sign up to international agreements under their own aegis but can have the UK’s ratification of such instruments extended to them. They are reliant on the UK for this.

32. We heard that the Crown Dependencies are proactively requesting treaty extension far more often than they used to, and are experiencing frequent delays in such requests being met. For example, Guernsey’s request in October 2011 to extend the Protocol of 2003 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage was not actioned until February 2013. The Government of Jersey also cited “significant delays”<sup>46</sup> and during our visit treaty ratification was described as a huge cause of frustration, with one outstanding request dating from 2006.

33. It was suggested to us that this is due, at least in part, to a failure of the Foreign and Commonwealth Office to accept what the MoJ has accepted about the capability of the islands to carry out the necessary legal scrutiny themselves. When we put this to Cathryn Hannah, she considered that:

It is not the Foreign Office so much as the fact that treaties are owned by different Departments, so a treaty on intellectual property would be IPO [Intellectual Property Office] and BIS [Department for Business, Enterprise and Skills].<sup>47</sup>

Lord McNally also made the point that:

What the Crown Dependencies do and how they do it, particularly in the international sphere, carries a reputational risk for the United Kingdom as a whole. Therefore, I suspect that in the international dimension there will

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46 Government of Jersey ([CDF.09](#))

47 [Q 18](#)

always be a little bit of time delay as opposed to the purely insular legislation that we do.<sup>48</sup>

34. However, while it may be true that processing treaty requests will take longer than insular legislation, it should be possible to reduce the current delays. Guernsey's Policy Council suggested that, as both parties become more accustomed to the process, a 'presumption of consent' be introduced for the extension of treaties (and the processing of legislation).<sup>49</sup> Jersey Ministers proposed that the matrix of compliance prepared by its law officers in respect of treaties be accorded the same status as the explanatory memorandum prepared to accompany legislation, to prevent duplication of effort which can lead to delays. They gave an example of a treaty relating to intellectual property, in respect of which the UK Intellectual Property Office asked Jersey to pay them to carry out the same legal scrutiny they had already carried out themselves.

35. In response to these suggestions, Cathryn Hannah replied that:

One of the things we are doing at the moment is working with the Crown Dependencies to try and work out what information they need to provide to Departments to make sure it is consistent in terms of their legislation—it makes them compliant with international treaties so it can be extended. [A member of] my team ran a workshop over the summer with the Crown Dependencies to look at this issue and work out what information Departments need and how the Crown Dependencies can best give their Departments that information. We are trying to take a very collaborative approach with the Crown Dependencies so that we can agree a process that the Departments will be happy with and that gives them that important ability to check that the Crown Dependencies are compliant with an international treaty, but, equally, does not second-guess and does not end up being a forensic redoing of the work that the law officers within the Crown Dependencies have done.<sup>50</sup>

She went on to argue that:

The UK is ultimately responsible for any treaty that is entered into and then extended to the Crown Dependencies. So we, as the UK Government, need to satisfy ourselves that the Crown Dependency concerned is suitably compliant. We might not be fully satisfying ourselves with a presumption of consent, but we want to ensure that it is a risk-based proportionate response to that compliance check and it is not redoing the work that very competent law officers within the Crown Dependencies have done.<sup>51</sup>

**36. We recognise the frustration that exists in the Crown Dependencies about the length of time it can take to extend treaties to them, and support the Ministry of**

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48 [Q 23](#)

49 Policy Council of the States of Guernsey ([CDF 06](#))

50 [Q 18](#)

51 [Q 23](#)

Justice's efforts to establish exactly what is required of them by Government Departments, in order to speed up the process. *We understand the Ministry's caution about a "presumption of consent", given the UK's international obligations, but we recommend that the Ministry of Justice explore the potential to streamline the process for granting treaty extension so that it is more risk-based and proportionate, perhaps via the matrix of compliance prepared by Dependency law officers, who are Crown officials, as suggested to us by Jersey.*

## 4 Consultation by UK Departments

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**2010 Recommendation:** 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)

*2010 Government Response: The Ministry of Justice will ensure that the relevant government lawyers and officials are reminded of their responsibilities when considering legislation from the Crown Dependencies. We will ensure that additional guidance on the Crown Dependencies is available via the Government Legal Services. The Ministry of Justice will write to other Government Departments reinforcing the previous encouragement given to officials across government to familiarise themselves with best practice for handling Crown Dependency legislation and UK legislation with an impact on the Crown Dependencies.*

*We will make every effort to ensure that the Crown Dependencies feature more prominently on the legislative checklists consulted by UK Government Departments when drawing up proposals for new legislation.*

*We fully appreciate the difficulties which late consultation causes for the Islands [...] That said, it must be recognised by the Crown Dependencies that UK officials themselves are very frequently working to extremely tight deadlines.*

37. As explained more fully in paragraphs 68 and 69 of the 2010 Report, it is not entirely clear whether Acts of the UK Parliament can only be extended to the Islands with their express consent, or whether Acts of Parliament only apply to the Islands where this is expressly stated or by necessary implication. In either case, it is normal practice that consent is sought. Almost invariably, UK legislation intended to take effect in the Crown Dependencies will do so by Order in Council under an enabling provision, known as a permissive extent clause, contained in the Act of Parliament. Only in rare cases will an Act be expressed to apply directly.<sup>52</sup> The 2010 [Report](#) highlighted instances where UK Government Departments had not consulted the Crown Dependencies in good time, or at all, about proposed legislative or policy changes which would affect them, the most notable example being in relation to the decision to end long-standing Reciprocal Healthcare

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52 Annex A, *How To Note: Extension of UK legislation to the Crown Dependencies*, Ministry of Justice

Agreements with the Crown Dependencies under which Island visitors to the UK and UK visitors to the Islands received free health care.<sup>53</sup>

38. Paragraphs 7 and 13 to 18 of this Report refer to the efforts which have been made by the Ministry of Justice and the Crown Dependencies to improve this state of affairs, including reminding Ministers and officials of their responsibilities in accordance with the recommendation, as well as some of the continuing sticking points. In addition, three “how to” notes<sup>54</sup> were published in February 2013 to provide step-by-step advice to Government Departments on how to engage with the Crown Dependencies on UK legislation which may impact on them, as well as on the extension of international instruments. These include suggested timescales, in line with the Committee’s recommendation. For example, a minimum of 6 weeks’ consultation is recommended in the case of extension of international instruments at the UK’s initiation.

39. The Crown Dependencies were positive about the “how to” notes and Cathryn Hannah said she had had feedback both from them and from UK Departments that they find them “really useful”.<sup>55</sup> The Policy Council of the States of Guernsey said that there had been “a surge in referrals of Bills” to the Crown Dependencies following their publication, although it was too early to assess whether this constituted a “sustainable change”.<sup>56</sup> More recently they alerted us to examples where consultation had been lacking, including:

- a failure on the part of HMRC to consult the Crown Dependencies prior to issuing new *Directions on passenger information*, which impose a 12 hour notice period for travel on passengers in and out of the Islands; and
- a failure on the part of the Department for Transport to consult the Crown Dependencies about their intention to transfer the cost of investigating air accidents in their air space to them under the Chicago Convention 1944.

40. The Isle of Man Government said it experienced “no particular problems [...] at present”.<sup>57</sup> The Government of Jersey said the situation was “better than it used to be” and Departments had become quicker to realise that they needed to ask the Crown Dependencies about consent. During its visit to Jersey in June 2013, we were advised that the Committee’s recommendation for Crown Dependencies to be included more prominently in legislative checklists consulted by Departments when drawing up legislation had not been implemented, with the result that this step was occasionally missed out and there had been a recent occasion where a UK law was extended to Jersey without consent.

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53 See paragraphs 28–35 of the Committee’s 2010 [Report](#) for more information.

54 The “how to” notes can be accessed here: [Annex A](#), [Annex B](#), [Annex C](#)

55 [Q 11](#)

56 Policy Council of the States of Guernsey ([CDF 06](#))

57 Isle of Man Government ([CDF 11](#))

41. In response, Cathryn Hannah argued that the most recent version of the Cabinet Office’s legislative checklist, published in July,<sup>58</sup> does alert Departments to their obligations to Crown Dependencies in relation to consulting on UK legislation:

There is an obligation, therefore, to show that they have consulted the Crown Dependencies before a bit of legislation can go through Parliament.<sup>59</sup>

Chapter 16 of this document explains the constitutional position and how Departments should go about their responsibilities.

42. As indicated in its response to the 2010 Report, the Government is wary about its ability to eliminate late consultation completely, given the timescales in which Departments sometimes have to work. Lord McNally told us that:

I appreciate that, if a Department is working on a massive piece of legislation such as a 180-clause Bill dealing with all of the UK or even England and Wales, the priority it gives to how that legislation may affect the Crown Dependencies will not be at the top of their list or at the top of ministerial lists, but in the Crown Dependencies it is at the top of their list. Therefore, it is about how we get them both together without the Department saying, “Who are these people? Why are they bothering us?”, making them understand that part of their key core responsibilities is to make sure that that legislation works with the Crown Dependencies and has a point of entry early enough in the development of policy to have awareness.<sup>60</sup>

43. Where things do go wrong, Cathryn Hannah described the approach taken by the MoJ to mitigate the consequences:

we are trying to ensure that remedies happen as quickly as possible so, if a mistake has been made, you deal with it and make sure that it does not have any lasting damage. A good example of where it has worked well, for example, is the Home Office Bill at the moment on immigration, which obviously is being done to a tight time scale. The Home Office officials met very early with the Crown Dependencies, explained what they are doing, explained how it is going to work and explained what time scale they had to engage with the Crown Dependencies, which was tight, but at least the Crown Dependencies knew about it, knew it was coming, and knew who to engage with.<sup>61</sup>

In relation to the first of the examples given in paragraph 39, the Directions on Passenger Information, she noted how quickly the Home Office and HMRC realised that this was an issue and engaged with the Crown Dependencies, and she understood they were

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58 Cabinet Office, *Guide to Making Legislation*, July 2013

59 [Q 11](#)

60 [Q 7](#)

61 [Q 12](#)

approaching a resolution.<sup>62</sup> The MoJ provided further written evidence in relation to the second example, air accident investigation costs.<sup>63</sup>

44. We were interested to note that Jersey is in the process of setting up a London office, which it hopes will facilitate closer links with UK Departments. This had also been a subject of debate in Guernsey, who decided not to share in this venture at this stage.

**45. Clearly there will be occasions when a policy change in the UK has adverse consequences for one or more of the Crown Dependencies: what is important is that the Dependencies are not “bounced” by such decisions without having had the opportunity to present their case, to ask for further consideration, or to suggest modifications which might meet their concerns. The Ministry of Justice has taken steps to implement the Committee’s recommendation on consultation, which has led to significant improvement, but failures to undertake early consultation do still arise and will no doubt continue to do so, as happens within the UK Government itself.**

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62 [Q 31](#)

63 The further written evidence from the MoJ ([CDF 026](#)) described consultation on this issue as “ongoing”: “Following further consideration and consultation with the Crown Dependencies, DfT now consider that it would be unreasonable to expect an Overseas Territory or Crown Dependency to pick up the (potentially very high) costs of investigating an accident in their waters. Given the very low likelihood of such an event and the high premiums, DfT’s view is that it would be unreasonable for the Islands to purchase insurance. DfT are therefore exploring the option of accepting responsibility for these costs in the unlikely event of an accident occurring within the territorial waters of an Overseas Territory or Crown Dependency.”

## 5 International relations

### Conflicts of interest

**2010 Recommendation:** 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)

We recommend that the Ministry of Justice considers alternative models for the representation of the interests of the Crown Dependencies internationally [...] 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. (Paragraph 92)

*2010 Government Response: The Crown Dependencies are not sovereign States and cannot represent themselves; the UK represents the Crown Dependencies internationally [...] it is difficult to envisage how equal billing could be given to the interests of a Crown Dependency if they are incongruent with those of the UK. We do not think that it would be appropriate for the Crown Dependencies' position to be separately represented in international negotiations. It would be unrealistic to expect a UK official to put the interest of a Crown Dependency above that of the UK and in extreme circumstances this may hamper the ability of the UK to operate effectively on the international stage. Where international issues do engage the Crown Dependencies' interests their views can be taken on board as the UK line is developed [...] and we will encourage Government Departments to seek to identify matters which engage such interests, and to consult with the Crown Dependencies, at an early stage.*

46. The role of the UK Government in representing the Crown Dependencies internationally was the only recommendation on which there was significant disagreement between the previous Committee and the Government. In 2007, the UK Government signed a framework agreement with each of the Crown Dependencies stating that the UK will not act internationally on their behalf without prior consultation; the UK recognises their interests may differ from those of the UK; and that the UK will seek to represent any differing interests when acting in an international capacity.<sup>64</sup> The Ministerial foreword to its Response to the 2010 Report reiterates this point that “it should be recognised that the Crown Dependencies do have an international identity which is different from that of the United Kingdom.”

64 Justice Committee, Eighth Report of Session 2009–10, *Crown Dependencies*, HC 56, para 81

47. However, the 2010 Report cast doubt on the way in which this was operating in practice in relation to events which had previously occurred. A particular example was the perceived conflict of interest on the part 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. As far as we can tell, there has been no comparable incident since 2010, but the potential exists for a similar conflict of interest to reoccur in future. There are also occasionally treaties that the Crown Dependencies would like to join to which, for domestic political reasons, the UK Government does not want to sign up to or negotiate on their behalf.

48. The Government's position remains unchanged. In oral evidence, Lord McNally explained further that:

I would hope that, in forming a United Kingdom view, it would take on board the interests of the Dependencies. What I do not think we could do and what we could not concede is that in major international negotiations the Crown Dependencies had a separate role. I think that would cause considerable confusion in terms of what are often very crucial international negotiations. You are going down a very dangerous road, in my opinion, if you are going to say that the Crown Dependencies are going to be separately represented in such talks. The Government would resist that, but the counter to that is to make sure that their interests are taken on board by those undertaking those negotiations. This is not unusual in all kinds of countries and federations and the rest, but in the end there has to be only one message from the United Kingdom.<sup>65</sup>

49. Cathryn Hannah noted that there are occasions on which it is possible for the Crown Dependencies to have separate input into international negotiations and this is considered on a case-by-case basis. For example, the Crown Dependencies are able to engage in the MONEYVAL anti-money laundering and terrorist finance organisation. Lord McNally said that:

I am all in favour, if some specialists are gathering and they are looking at an area where the Crown Dependencies have specialist knowledge, that we make room for them in the teams that go to that gathering, but in the G20, G8 and the European Council it is not possible.<sup>66</sup>

All three Crown Dependencies said they had welcomed the opportunity to attend a number of international conferences in this way, as part of the UK delegation. On other occasions, the Crown Dependencies are consulted in advance, for example their Chief Ministers attended pre-G8 talks earlier this year in London. The Crown Dependencies also have a limited ability to represent themselves via Letters of Entrustment, which we discuss in the next section.

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65 [Q 32](#)

66 [Q 33](#)

50. The Crown Dependencies also appreciated the MoJ's support in continuing to develop their international identities, including via the establishment of their representative offices in Brussels, which were under discussion at the time of the previous inquiry. As a further example, Jersey agreed in 2012 its first Common Policy on External Relations and it appointed its first Minister for External Relations in September 2013. However, Guernsey's Policy Council argued that "there are still issues to be resolved relating to how the UK represent the Island's interests where they may be not congruent with its own interests", that this "is likely to become increasingly problematic", particularly "if Guernsey develops an enhanced international personality but does not have the equivalent voice" and that the MoJ had suggested "no viable alternative".<sup>67</sup> The Government of Jersey agreed that the MoJ has not found "a mechanism for representation which serves the interests of both parties", as recommended by the Committee.<sup>68</sup> The Isle of Man Government acknowledged some of the inherent difficulties, for example where engagement is sought with multilateral bodies which have a formal constitution which does not allow for the formal participation of dependencies or non-sovereign states and said it took a "practical and pragmatic approach to its own self-representation".<sup>69</sup>

51. We note the Government's continued opposition to the Committee's recommendation that it find a means by which the Crown Dependencies' position can be represented separately from that of the UK, where their positions differ, in international negotiations. We agree with Ministers that it is preferable for agreement to be reached on a common position through consultation, and we recognise that the primary duty of the UK Government is to negotiate in the UK's interest, but it remains our view that, where the Crown Dependencies have a distinct view on a matter which is significant to them, the UK Government has a duty to ensure that their case is heard in the negotiations. We welcome the fact that the Crown Dependencies have been given more opportunities to have input into certain international negotiations, such as the G8.

## Entrustment

**2010 Recommendation:** [...] 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)

**2010 Government Response:** *The Government agrees with the Committee's views on the increased use of entrustment [...] Over the years the scope of the terms of entrustment has been broadened to equip the Crown Dependencies for their rising international profile and need to match prevailing international standards. We see no reason why the Crown Dependencies should not expect that scope to continue to evolve to reflect*

67 Policy Council of the States of Guernsey (CDF 06)

68 Government of Jersey (CFD 09)

69 Isle of Man Government (CDF 11)

*their needs and achievements [...] The use of entrustment could be widened so as to permit the Crown Dependencies to represent themselves where the UK and the other State or States concerned are content for them to do so. This could help mitigate the potential difficulties on occasions where the Crown Dependencies need to pursue interests which are separate from those of the UK.*

52. The MoJ agreed with the Committee about the potential to increase the use of Letters of Entrustment, by which, in certain circumstances, the Crown Dependencies may be authorised to conclude their own international agreements. The Ministerial foreword states that the United Kingdom “supports the use of entrustments as a way to enable the Crown Dependencies to represent their own interests on the international stage”. Entrustment is currently used for agreements which provide for the exchange of information on tax matters with EU Member States, the OECD and the G20. At the time at which the MoJ submitted written evidence to us, Jersey had signed 31 Tax Information Exchange Agreements (TIEAs) and 8 Double Taxation Agreements (DTAs), Guernsey 40 TIEAs and 6 DTAs and the Isle of Man 27 TIEAs and 9 DTAs. Furthermore, the MoJ had:

[...] begun discussions with the Crown Dependencies, FCO and BIS to identify any further policy areas where they would like entrustments in (with the onus on the Crown Dependencies to define what they want, their objectives and how they would manage any risks to the UK from such agreements).<sup>70</sup>

The Isle of Man Government said that the Committee’s recommendation had “been the subject of positive consideration and ongoing discussion with the MoJ to explore areas where this may be possible.”<sup>71</sup>

53. A major subject of discussion concerns Bilateral Investment Treaties, for which the UK has recently ceded competence to the EU via the Lisbon Treaty. Guernsey, for example, has 37 of these treaties extended to it and has outstanding requests to have a number of the remaining treaties extended. As these agreements are replaced by EU agreements, given the fact that the Crown Dependencies are not part of the EU, there will be a need to establish a mechanism to keep the existing treaties and find a new way to conclude new treaties.<sup>72</sup> Cathryn Hannah told us that:

[...] in BIS this is really quite prioritised. An official from BIS who is working on this issue came, probably about a year ago now, to one of our Crown Dependencies’ officials meetings to discuss bilateral investment treaties and the changes that were happening, as you say, with the ceding of competency. They are now in a very close working relationship with the Crown Dependencies on what can happen after this and whether the Crown Dependencies might need to be entrusted to enter into bilateral treaties in

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70 MoJ ([CDF 01](#))

71 Isle of Man Government ([CDF 11](#))

72 Policy Council of the States of Guernsey ([CDF 06](#))

their own right. It is a three-way discussion between BIS, the Crown Dependencies and the EU Commission.<sup>73</sup>

54. As alluded to in paragraph 15 above, the process for negotiating entrustment recently caused a problem in the relationship between the UK and the Crown Dependencies. In 2012, the Crown Dependencies sought to conclude an intergovernmental agreement with the US in relation to the Foreign Account Tax Compliance Act, under entrustment. HM Treasury made clear that consent would only be forthcoming if a similar automatic exchange agreement was entered into with the UK. The individual case was resolved but the Crown Dependencies remain unhappy with the way in which they were treated and concerned about the potential for the UK to use entrustment as a bargaining chip in this way. However, Lord McNally was unrepentant:

[...] in my candid friend role, I said to the Dependencies that it really would be intolerable if a foreign Government—in this case the United States—was given access to information that was being denied to the United Kingdom Government. In the FATCA case it was a perfectly legitimate stand-off to say that we wanted equality of treatment.<sup>74</sup>

**55. We are pleased that the Ministry of Justice and the Crown Dependencies have been exploring greater use of Letters of Entrustment, by which the Crown Dependencies may be authorised to conclude their own international agreements, in accordance with the Committee’s recommendation. We urge the Ministry of Justice to work with the Crown Dependencies to develop expeditious arrangements to deal with Dependency access to Bilateral Investment Treaties, now that the UK has ceded competence for these to the EU.**

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73 [Q 27](#)

74 [Q 29](#)

## 6 Good government

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### General

**2010 Recommendation: 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)**

***2010 Government Response: We respect the right of the Crown Dependencies to self-determination and agree that it would take a very serious circumstance indeed for the UK Government to contemplate overriding these powers.***

56. The 2009–10 inquiry prompted much speculation about the circumstances in which the UK might exercise its constitutional responsibility to enforce good government in the Islands. The Government agreed with the position taken by our predecessors, as described above. In evidence, Lord McNally confirmed that:

[...] both this Committee and Kilbrandon<sup>75</sup> set out a very high line to clear before the British Government would intervene. Tempting as it sometimes is to say, “We will go in and put them right,” I would say this Committee has been very wise and the Government will still hold to the fact that, unless there is real evidence of a breakdown either in the policing or the integrity of the judiciary or general law and order, we would not.<sup>76</sup>

57. However, the issue of “good government” is cited by some individuals in evidence to our inquiry to contend that, by not intervening to deal with their grievance the Ministry of Justice has failed to carry out its responsibilities in this area. The calls for intervention generally allege a lack of open media, inadequate separation of powers, disregard for the rule of law and international human rights and related standards, the failure of the police properly to investigate allegations of unlawful activities by officials, and conflicts of interest arising from a small legal profession and judiciary.<sup>77</sup>

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75 The Royal Commission on the Constitution, published in 1973.

76 [Q 35](#)

77 See Deputy Michael Higgins ([CDF 08](#)), Nicholas Le Cornu ([CFD 05](#)), Jonathan Irving ([CDF 12](#)), Michael Dun ([CDF 14](#)), A resident of Jersey ([CDF 15](#)), Ian Evans ([CDF 17](#)) and Maria Le Fustec ([CDF 18](#))

58. In many cases these calls mirror the kinds of concerns raised with us as constituency MPs by our own constituents and on occasion as members of the Justice Committee<sup>78</sup> in relation to institutions and events in the UK. But our constituents cannot look to an external jurisdiction to assess whether there has been a failure of “good government” in the UK. What is important for the issue of good government in the Crown Dependencies is whether adequate democratic and legal processes are in place in each of the jurisdictions to enable grievances to be pursued; and whether the small size of the jurisdictions prevents issues from being properly dealt with.

59. We noted Lord McNally’s assessment that the Islands, other than Sark, are governed well. In his judgement:

There will always be criticisms of governance and we would have to take them on board in deciding our own relations.<sup>79</sup> [...] When attacks are made on any particular institution in the Crown Dependencies, there are already in existence machineries to test those accusations and to make judgment on them.<sup>80</sup> [...] There is a regular habit of bringing in expert judicial and policing expertise, which, as you say, gives confidence to the operation of both the judiciary and the police in the Dependencies.<sup>81</sup>

We discussed with each of the Lieutenant-Governors how they assess the various complaints that are made to them about good governance and we are satisfied that they take this part of their role very seriously. The habit of bringing in external expertise is particularly useful in small communities. We asked Lord McNally if he was happy that appropriate steps were taken by the Isle of Man Government following criminal allegations made against their Attorney General. He was.<sup>82</sup>

**60. The Government agreed with the Committee’s interpretation of the circumstances in which the UK Government could intervene in a Crown Dependency on the grounds of “good government”, and we have heard nothing in this follow-up inquiry to convince us that this requires review. We acknowledge that a number of individuals in the Crown Dependencies have genuine concerns about governance, and that conflicts of interest are more of a risk in small jurisdictions. However, we are satisfied by what we have been told publicly and privately that there is no complacency on the part of the UK authorities and that complaints are properly considered. We are also satisfied that mechanisms are in place in the Crown Dependencies to test and rectify such concerns. In particular, we commend the habit of bringing in outside expertise where there may be the possibility or the risk of a perception that the smallness of the political or legal community might prevent a matter being dealt with fairly and impartially.**

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78 Although the Committee is prohibited from considering individual cases.

79 [Q 35](#)

80 [Q 36](#)

81 [Q 40](#). We deal separately in paragraphs 61–68 with Lord McNally’s comments on good government in Sark.

82 [Q 40](#)

## Sark

**2010 Recommendation:** 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)

**2010 Government Response:** *We will continue to keep a watching brief on all relevant matters and maintain our strong relationships with the Islands that will help enable us to resolve any problems which may arise in a collaborative way. We will provide advice and support to the government and Chief Pleas of Sark as the new democratic government matures.*

61. Sark is a beautiful island much of whose charm lies in the fact that it is different, with a slower pace of life, an absence of motor vehicles other than tractors, and a strong sense of its distinctive constitutional history; until recently, it retained an essentially feudal constitution. The need to comply with the European Convention on Human Rights has required constitutional changes to be made, and previous constitutional arrangements have been challenged in the courts by Sir David and Sir Frederick Barclay, who have significant investment on the Island and have a residence on the neighbouring island of Brecqhou. Tension between the Barclay brothers and the Island's elected parliament, the Chief Pleas, was manifest at the time of the previous Committee's report, and has continued. Elected councillors complain that they are subjected to threats of legal action against them as individuals and to abusive and intimidating attacks in the Sark Newsletter, edited by the Barclay brothers' manager on Sark; while the Barclay brothers complain of legislation which they say discriminates against them<sup>83</sup> and pursue legal actions against Island legislation as a consequence of their belief that further constitutional change is necessary. This is a very difficult atmosphere in which to work towards a sustainable economic future for the community on Sark.

62. The particular situation in Sark was discussed in paragraphs 42 to 49 of the 2010 Report. Sark has continued along the path of reform begun in 2008 and has recently appointed a Senior Administrator as the Island's first civil servant, but many challenges remain. In oral evidence to us, Lord McNally commented: "when I say the Dependencies are governed well, I make an exception in terms of Sark. I do not give Sark a clean bill of health."<sup>84</sup> He added that "by any standards I have kept a watching brief on Sark, whilst being conscious of the high hurdle that has to be cleared in terms of direct intervention". The MoJ described how it has implemented this recommendation:

83 Advocate Dawes on behalf of Sir David and Sir Frederick Barclay (CDF 28)

84 Q 35

We have been working to support the efforts of the Chief Pleas in Sark to strengthen itself for the future. Officials have held workshops on strategic planning for the Chief Pleas, as well as supporting them in administering a perception survey of the population and ensuring there was an independent election observer at their recent election. We have also provided advice to Sark on the features of good governance. While the direction Sark takes is, of course, a matter for the people of Sark, the UK Government stands ready to offer support and technical expertise.<sup>85</sup>

63. The Chief Pleas of Sark noted their “much greater engagement” since 2010 with the MoJ, “whose strong level of support has provided welcome and practical encouragement.” However, they were unhappy about occasions when the MoJ has indicated or insisted that certain things must or ought to be done, such as the timing of the split of the dual role of the Seneschal and the late suggestion in 2012 that there should be an external election observer.<sup>86</sup>

64. In response, Lord McNally said:

My only interest in Sark is good governance. I have no missionary zeal to push them one way or the other, other than the fact that, for example, on the question of the Seneschal, the Supreme Court told them that the combination of judge and presiding officer was incompatible with a functioning democracy. To say that we had rushed them when it took them three years to implement it may be “rushing” in Sark terms, but it was a reasonable time to expect action to be taken.

On the election observer, we had had talks for a number of months and I did twist arms a little towards the end, partly because I wanted to avoid having an election where immediately afterwards there would be cries of foul. If they reflect, the fact that they had an external observer avoided that.

I can see the attractions of going back to the quieter, more leisurely, more certain age it has, but it also has to provide a living for people. It has to have some economic future other than for retirees who have pensions that they have already made. It has to give a future for young people and for a working population.<sup>87</sup>

In relation to the conflict between the two points of view prevalent on the Island, he said:

I understand it is going to be a slow process, but I think it would be better if we could take some of the poison on both sides out as well, because, as well as the *Sark Newsletter*, I also see some of the blogs that are alive in the Island, which are equally intolerant of the other point of view. In such a small

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85 MoJ ([CDF 01](#))

86 Chief Pleas of Sark ([CDF 07](#))

87 [Q 37](#)

community, these things hurt, they cause resentment and they make progress more difficult.<sup>88</sup>

65. On a more encouraging note, Cathryn Hannah advised that in October, with colleagues from Guernsey and Jersey, the MoJ organised some economic development workshops on Sark so that the Islanders can start planning for the future. She said:

There is a lot of impetus from some people within the Chief Pleas to take these bits of work forward and to strengthen Sark for the future, and a recognition that in order to keep what is special about Sark it needs to have these governance arrangements in place so that it can function effectively.<sup>89</sup>

66. Since the evidence session, we have been contacted by parties on both sides of the dispute to express their unhappiness with Lord McNally's views on the matter, particularly his assertion that the fault lies on both sides.<sup>90</sup> Their arguments can be found in our written evidence. As our predecessors stated in their 2010 Report, we do not intend to take sides or make judgments on the various allegations made; our role is to assess the UK's Government's role in relation to ensuring "good government".

**67. Lord McNally and his officials at the MoJ have diligently implemented the Committee's recommendation to keep a "watching brief" on good government in Sark. In this they have received welcome assistance from other Crown Dependencies, for example. Sark's progress on the path to democracy and more efficient administration has been slow, but we commend the conseillers in the Chief Pleas who have worked hard to strengthen governance on the Island, without administrative support, and we hope that the appointment of the new Senior Administrator will make their job easier in future.**

**68. We deeply regret the apparently intractable discord on Sark, as witnessed on our visit and in the written evidence we have received. We reiterate our conclusion that, 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. *Disputes between different interest groups on the Island should not be allowed to get in the way of the responsibility of the authorities on Sark to continue to implement democratic processes and plan a sustainable future for the Island, and the UK Government should continue to encourage and support them in achieving this.***

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88 [Q 39](#)

89 [Q 38](#)

90 See Seigneur of Sark ([CDF 24](#)), Paul Arditti ([CDF 27](#)), Advocate Dawes on behalf of Sir David and Sir Frederick Barclay ([CDF 28](#)), Advocate Dawes on behalf of Kevin Delaney ([CDF 29](#)). Lord McNally subsequently wrote an open letter to the Chief Pleas, which we have seen.

## 7 Conclusion

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69. We are very pleased to conclude that the Ministry of Justice has taken positive and effective action to give effect to all of the Committee's recommendations (with the one exception of the recommendation on international representation with which the Government disagreed) and that the recommendations have worked well in practice. The Crown Dependencies have played a constructive role in this process and we are glad that they are reaping the benefits of a more functional relationship with the UK. Lord McNally described our work in this area as a good model for interaction between select committees and the departments they scrutinise.

70. *There are two outstanding areas on which we would like the Ministry of Justice to focus improvements: speeding up the process for extending treaties to the Crown Dependencies at their request; and international representation.*

71. We also recognise that procedures which have been put in place to ensure effective consultation and co-operation need to be effectively maintained in the future, *and we recommend that this Committee reviews the progress of the relationship during the next Parliament.*

## Conclusions and recommendations

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### Role of the Ministry of Justice

1. We welcome the general improvement in the relationship between the UK and the Crown Dependencies as attested to in this follow-up inquiry. We are pleased that the conclusions and recommendations of the previous Committee's Report provided the basis for this shift, and we pay tribute to the way in which they have been implemented by the Ministry of Justice, with particular credit due to Lord McNally and Cathryn Hannah. The Ministry team dedicated to dealing with the Crown Dependencies is operating with fewer resources than in the past. However, in our estimation it is using them more effectively, in line with the Committee's recommendation that the Ministry limit its activities to key constitutional duties, and the Department's reduced budget has not caused tangible difficulties.(Paragraph 10)

### Parliamentary Questions

2. We welcome the fact that, as a general rule, the Ministry of Justice is no longer providing substantive answers to Parliamentary Questions on issues pertaining to the Crown Dependencies for which their own governments are responsible, in line with the Committee's recommendation. This more accurately reflects the constitutional relationship. (Paragraph 12)

### Relationship with other UK Governments Departments

3. The Ministry of Justice, in partnership with the Crown Dependencies, has taken a number of initiatives aimed at improving mutual understanding amongst officials in UK Government Departments and the Crown Dependencies about their respective roles and responsibilities, the impact of which we explore further in the following chapters. Although there have continued to be occasions where the Crown Dependencies have felt poorly treated by the UK, often with some justification, we are content that the Ministry of Justice has mechanisms in place to fix the relationship.(Paragraph 17)
4. Owing to the general rate of turnover in the civil service, the Ministry of Justice must ensure that efforts to raise awareness of the Crown Dependencies across Government are ongoing, and we would like to be kept updated on this point. In our view, Lord McNally's communication with Ministers across Government after the last election to remind them of their obligations in relation to the Crown Dependencies, as sanctioned by the Prime Minister, has proved particularly helpful and we hope that this process will be replicated by future Governments.(Paragraph 18)

### The constitutional relationship going forward

5. We note the pressure from some groups in the Crown Dependencies towards re-defining the constitutional relationship in a way that allows the Islands even greater independence from the UK. While the relationship has evolved over time and will rightly continue to do so, its very nature imposes certain responsibilities on the UK which it cannot ignore. We are therefore not convinced that any attempt to achieve a

fundamental re-balancing would be fruitful. We welcome the Ministry of Justice's response to our recommendation that it produce a simple account of the constitutional position of the three Crown Dependencies by publishing such an account in the Ministerial foreword to the Government's response to the 2010 report. The Ministry's exposition generally reflects our understanding of the position both in theory and in practice, although we consider that the final paragraph on international representation should place a stronger onus on the Government to consult the Crown Dependencies, as we discuss in chapter five. (Paragraph 22)

### Insular legislation

6. Frequent long delays in recommending legislation made in the Crown Dependencies for Royal Assent were a particular concern highlighted in the 2010 Report. In our view, the Ministry of Justice and the Crown Dependencies have carried out our recommendations by implementing a more appropriate and proportionate system for scrutinising insular legislation, with significant success. It is for Guernsey and Jersey to decide for themselves whether to adopt the system used in the Isle of Man, whereby Royal Assent is largely delegated to the Island's Lieutenant-Governor, but we agree that it could help to avoid the remaining delays that can occur during periods when the Privy Council does not sit. (Paragraph 30)

### Pro-active requests for treaty extension

7. We recognise the frustration that exists in the Crown Dependencies about the length of time it can take to extend treaties to them, and support the Ministry of Justice's efforts to establish exactly what is required of them by Government Departments, in order to speed up the process. We understand the Ministry's caution about a "presumption of consent", given the UK's international obligations, but we recommend that the Ministry of Justice explore the potential to streamline the process for granting treaty extension so that it is more risk-based and proportionate, perhaps via the matrix of compliance prepared by Dependency law officers, who are Crown officials, as suggested to us by Jersey. (Paragraph 36)

### Consultation by UK Departments

8. Clearly there will be occasions when a policy change in the UK has adverse consequences for one or more of the Crown Dependencies: what is important is that the Dependencies are not "bounced" by such decisions without having had the opportunity to present their case, to ask for further consideration, or to suggest modifications which might meet their concerns. The Ministry of Justice has taken steps to implement the Committee's recommendation on consultation, which has led to significant improvement, but failures to undertake early consultation do still arise and will no doubt continue to do so, as happens within the UK Government itself. (Paragraph 45)

### International relations

9. We note the Government's continued opposition to the Committee's recommendation that it find a means by which the Crown Dependencies' position can be represented separately from that of the UK, where their positions differ, in

international negotiations. We agree with Ministers that it is preferable for agreement to be reached on a common position through consultation, and we recognise that the primary duty of the UK Government is to negotiate in the UK's interest, but it remains our view that, where the Crown Dependencies have a distinct view on a matter which is significant to them, the UK Government has a duty to ensure that their case is heard in the negotiations. We welcome the fact that the Crown Dependencies have been given more opportunities to have input into certain international negotiations, such as the G8.(Paragraph 51)

### Entrustment

10. We are pleased that the Ministry of Justice and the Crown Dependencies have been exploring greater use of Letters of Entrustment, by which the Crown Dependencies may be authorised to conclude their own international agreements, in accordance with the Committee's recommendation. We urge the Ministry of Justice to work with the Crown Dependencies to develop expeditious arrangements to deal with Dependency access to Bilateral Investment Treaties, now that the UK has ceded competence for these to the EU.(Paragraph 55)

### Good government: general

11. The Government agreed with the Committee's interpretation of the circumstances in which the UK Government could intervene in a Crown Dependency on the grounds of "good government", and we have heard nothing in this follow-up inquiry to convince us that this requires review. We acknowledge that a number of individuals in the Crown Dependencies have genuine concerns about governance, and that conflicts of interest are more of a risk in small jurisdictions. However, we are satisfied by what we have been told publicly and privately that there is no complacency on the part of the UK authorities and that complaints are properly considered. We are also satisfied that mechanisms are in place in the Crown Dependencies to test and rectify such concerns. In particular, we commend the habit of bringing in outside expertise where there may be the possibility or the risk of a perception that the smallness of the political or legal community might prevent a matter being dealt with fairly and impartially. (Paragraph 60)

### Good government: Sark

12. Lord McNally and his officials at the MoJ have diligently implemented the Committee's recommendation to keep a "watching brief" on good government in Sark. In this they have received welcome assistance from other Crown Dependencies, for example. Sark's progress on the path to democracy and more efficient administration has been slow, but we commend the conseillers in the Chief Pleas who have worked hard to strengthen governance on the Island, without administrative support, and we hope that the appointment of the new Senior Administrator will make their job easier in future. (Paragraph 67)
13. We deeply regret the apparently intractable discord on Sark, as witnessed on our visit and in the written evidence we have received. We reiterate our conclusion that, 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. Disputes between different interest groups on the Island should not be allowed to get in the way of the responsibility of the authorities on Sark to continue to implement democratic processes and plan a sustainable future for the Island, and the UK Government should continue to encourage and support them in achieving this. (Paragraph 68)

### Overall conclusion

14. We are very pleased to conclude that the Ministry of Justice has taken positive and effective action to give effect to all of the Committee's recommendations (with the one exception of the recommendation on international representation with which the Government disagreed) and that the recommendations have worked well in practice. The Crown Dependencies have played a constructive role in this process and we are glad that they are reaping the benefits of a more functional relationship with the UK. Lord McNally described our work in this area as a good model for interaction between select committees and the departments they scrutinise. (Paragraph 69)
15. There are two outstanding areas on which we would like the Ministry of Justice to focus improvements: speeding up the process for extending treaties to the Crown Dependencies at their request; and international representation. (Paragraph 70)
16. We also recognise that procedures which have been put in place to ensure effective consultation and co-operation need to be effectively maintained in the future, and we recommend that this Committee reviews the progress of the relationship during the next Parliament. (Paragraph 71)

## Appendix

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### **Ministerial foreword from the Government Response to the Justice Select Committee's report: Crown Dependencies, Cm7965, November 2010**

The following statement is intended to set out how the Government believes the relationship between the Crown Dependencies and the United Kingdom should operate to meet current needs, taking into account the growing ability of the Islands to represent their own interests within the UK and abroad. This is at the behest of the Committee. It is not intended to change or challenge the existing constitutional relationship.

The Crown Dependencies (Jersey, Guernsey and the Isle of Man) have their own democratically elected governments responsible for setting policy, passing laws and determining each Island's future. They have an important relationship with the United Kingdom because of their status as dependencies of the British Crown but they are not part of the United Kingdom nor, except to a limited extent, the European Union. They are not represented in the UK parliament and UK laws do not ordinarily extend to them without their consent.

Relationships with the Islands are the responsibility of the United Kingdom Government as a whole. The Ministry of Justice holds the policy responsibility for the constitutional relationship but all departments should be engaging routinely with the Crown Dependencies where appropriate to their policy responsibilities. The UK and the Crown Dependencies have a wide range of common policy interests—for example borders and security, the economy, and the environment—and where UK policy-making is likely to have an impact on the Islands their interests (which may differ from island to island) should be considered.

The United Kingdom Government has a responsibility to ensure that the Crown Dependencies have the advice and assistance necessary to function as socially and economically sound democracies. In turn the Government expects each Crown Dependency to accept the responsibility of being a 'good neighbour' to the UK and to ensure its own policies do not have a significant adverse impact on the UK's interests. The UK Government and the Crown Dependencies can benefit from a close working relationship and both should seek to foster trust and co-operation in all their dealings to enable open and constructive discussions on policy matters across the board to achieve mutually satisfactory results.

The United Kingdom respects each Crown Dependency's laws and policies as the expression of the will of a democratic government with the power of self-determination. The UK government is responsible for the Crown Dependencies' international relations and ultimate good governance and has the commensurate power to ensure these obligations are met. Whilst the UK does not require the Crown Dependencies' policies to closely mirror those of the UK, the UK will look to resolve anything which appears to

be fundamentally contrary to current UK principles or interests with the Crown Dependency concerned.

As they are not sovereign States, the Crown Dependencies cannot bind themselves internationally. It should be recognised that the Crown Dependencies do have an international identity which is different from that of the United Kingdom. UK Government Departments should consult the Crown Dependencies in respect of any international instruments that may extend to them, and where practicable consult them when developing a UK position on international matters. The United Kingdom supports the use of entrustments as a way to enable the Crown Dependencies to represent their own interests on the international stage.

# Formal Minutes

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**Tuesday 10 December 2013**

Members present:

Sir Alan Beith, in the Chair

Jeremy Corbyn  
Mr Elfyn Llwyd

Andy McDonald  
John McDonnell

Draft Report (*Crown Dependencies: developments since 2010*) proposed by the Chair, brought up and read.

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

Paragraphs 1 to 71 read and agreed to.

Summary agreed to.

A Paper was appended to the Report as an Appendix.

*Resolved*, That the Report be the Tenth 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.

[Adjourned till Tuesday 17 December at 9.15am.]

## Witnesses

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The following witnesses gave evidence. Transcripts can be viewed on the Committee's inquiry page at [www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2010/crown-dependencies-2013/](http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2010/crown-dependencies-2013/)

**Tuesday 5 November 2013**

*Question number*

**Rt Hon Lord McNally**, Minister of State, and **Cathryn Hannah**, Head of Crown Dependencies, Overseas Territories and Visits Team, Ministry of Justice

Q1-42

## Published written evidence

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The following written evidence was received and can be viewed on the Committee's inquiry web page at [www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2010/crown-dependencies-2013/](http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2010/crown-dependencies-2013/).

CDF numbers are generated by the evidence processing system and so may not be complete.

- 1 Ministry of Justice ([CDF 01](#))
- 2 Stephen Holmes ([CDF 02](#))
- 3 Nicholas Le Cornu ([CDF 05](#))
- 4 Policy Council of the States of Guernsey ([CDF 06](#))
- 5 The Chief Pleas of Sark ([CDF 07](#))
- 6 Michael Higgins ([CDF 08](#))
- 7 Government of Jersey ([CDF 09](#))
- 8 Peter Willers ([CDF 10](#))
- 9 Isle of Man Government ([CDF 11](#))
- 10 John Irving ([CDF 13](#))
- 11 Michael Dun ([CDF 14](#))
- 12 A resident from Jersey ([CDF 15](#))
- 13 Ian Evans ([CDF 17](#))
- 14 Maria Le Fustec ([CDF 18](#))
- 15 States of Alderney ([CDF 23](#))
- 16 J.M Beaumont ([CDF 24](#))
- 17 Ministry of Justice ([CDF 26](#))
- 18 Paul Arditti ([CDF 27](#))
- 19 Advocate Gordon Dawes on behalf of Sir David and Sir Frederick Barclay ([CDF 28](#))
- 20 Advocate Gordon Dawes on behalf of Kevin Delaney ([CDF 29](#))