

Memo to Alistair Darling: stop issuing mis-information

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MEMORANDUM

To: Alistair Darling, Chancellor of the Exchequer
From: Tax Justice Network
Date: 25th February 2009

Subject: Mis-information about the UK's responsibilities vis-à-vis the Crown Dependencies

TJN has been contacted by a journalist working with the French newspaper [**La Tribune**](#). He tells us that UK Treasury officials have informed him that the UK has no constitutional means of exerting influence over the activities of its Crown Dependencies, and therefore cannot interfere with the way they function as tax havens. This is not correct, and we would be grateful if you would ensure that UK officials desist from giving out this false information.

Despite not being part of the United Kingdom, Guernsey, Jersey and the Isle of Man are intricately linked to the UK by virtue of their being **dependencies of the British monarch**. The inhabitants of the Crown Dependencies are treated as subjects of the British Crown and are treated as part of the United Kingdom for the purposes of the **British Nationality Act**.

Being possessions of the British monarch means that they do not have independent status as sovereign nations in their own right. They have no independent status in the United Nations, or in any other multilateral organisation. The British government is responsible for representing the Crown Dependencies at international fora and for their good governance in international affairs.

Almost every law enacted by the local legislatures in the Crown Dependencies requires the assent of the Queen in Council, generally known as the **Privy Council**, prior to their enactment (the exceptions apply solely to the Isle of Man, where the monarch's personal representative, the Lieutenant Governor, may grant assent to some laws). A UK Minister is appointed as Privy Councillor with the specific responsibility for ensuring the good governance of the Crown Dependencies. This role is currently undertaken by a

Minister of State from the **UK Ministry of Justice**, which acts as the principal channel of communication between the UK government and the three Crown Dependencies (there is regular contact between Crown Dependency officials and other Whitehall departments, but the MoJ is the official link between the UK government and the insular authorities).

The UK Ministry of Justice is also responsible for processing draft legislation from Jersey, Guernsey and the Isle of Man prior to its receiving assent from the Queen in Council, and the MoJ is additionally responsible for consulting with the islands on extending UK legislation to them.

In addition to having effective responsibility for vetting all legislation passed by the local legislatures of the Crown Dependencies (by the way, why did New Labour give assent to Jersey's Trust Law of 2006 which permits the creation of **sham trusts**?), the Ministry of Justice is also responsible for the appointment of almost all the key officials in the islands. The Bailiffs of Jersey and Guernsey, are Crown appointees. Ditto the Demesters and High Baillif in the Isle of Man. Likewise the Attorneys-General, Solicitors-General, and stipendiary Magistrates are all Crown Appointments. The British monarch is also responsible for appointing the Crown's personal representative to the islands, known in all cases as the Lieutenant Governor.

Now, like most things relating to Britain's constitutional arrangements, there is a degree of uncertainty surrounding the exact nature of the relationship between the UK and the Crown Dependencies. This allows for a certain amount of obfuscation and playing with smoke and mirrors to present a picture that suits the UK's political games in the international arena. But we can look to the 1972/73 **Royal Commission on the Constitution**, whose report is widely known as the Kilbrandon Report, which whilst acknowledging a degree of uncertainty, also stated as follows:

"the United Kingdom Government are responsible for defence and international relations of the Islands, and the Crown is ultimately responsible for their good government. It falls to the Home Secretary to advise the Crown on the exercise of those duties and responsibilities. The United Kingdom Parliament has the power to legislate for the Islands, but it would exercise that power without their agreement in relation to domestic matters only in most exceptional circumstances".

"[The UK] Parliament does have power to legislate for the Island without their consent on any matter in order to give effect to an international agreement"

Source: Hansard, House of Commons Debates, 3 June 1998, cols. 471 and 465.

Times have changed slightly since then: the MoJ has replaced the Home Office, but the wording is fairly clear and unambiguous:

The Crown is ultimately responsible for their good government. [BTW the same applies to **Antigua** so what went wrong there, and in the **Turks & Caicos**? Have you all fallen asleep on the job?]

The UK Parliament does have power to legislate for the Island without their consent on any matter in order to give effect to an international agreement. This could (and should) be applied, for example, to the **European Union's Savings Tax Directive**.

All in all, it seems pretty conclusive that the UK government has both powers and responsibilities vis-?â€ -vis the Crown Dependencies, though you and your colleagues have chosen to exercise neither. But kindly stop your officials from mis-informing journalists and others: this smacks more than just a bit of **la perfide albion**.