

The UK can unambiguously legislate for the Crown Depend...

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I was rummaging through various links today and came to the [UK Foreign Office White Paper on the Overseas Territories published in June 2012](#). This contains, on page 14, the following interesting statement in a section headed 'Our Constitutional Relationship':

The UK, the Overseas Territories and the Crown Dependencies form one undivided Realm, which is distinct from the other States of which Her Majesty The Queen is monarch. Each Territory has its own Constitution and its own Government and has its own local laws. As a matter of constitutional law the UK Parliament has unlimited power to legislate for the Territories.

I would add that I can see no difference in the case of the Crown Dependencies. But I thought I should check that out and found this, which is admittedly a report from the [House of Commons Justice Committee in 2010](#), but which might be seen to represent current opinion:

We note the depth of feeling of some witnesses to this inquiry who have indicated serious grievances with various aspects of the governance of the Crown Dependencies and their desire for the UK Government to step in to address their Crown Dependencies 45 concerns. However, the Crown Dependencies are democratic, self-governing communities with free media and open debate. The independence and powers of self-determination of the Crown Dependencies are, in our view, only to be set aside in the most serious circumstances. We note that the restrictive formulation of the power of the UK Government to intervene in insular affairs on the ground of good government is accepted by both the UK and the Crown Dependency governments: namely, that it should be used only in the event of a fundamental breakdown in public order or of the rule of law, endemic corruption in the government or the judiciary or other extreme circumstance, and we see no reason or constitutional basis for changing that formulation.

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.

That opinion is unambiguous and is that if needs be the UK can intervene to ensure good governance in the Crown Dependencies.

And why is this? Take this [2007 report on the Overseas Territories by the National Audit Office](#). It says:

The Territories are a UK Government-wide responsibility. The Foreign and Commonwealth Office, (“the Department”), leads overall policy and maintains the main UK presence in Territory, with other Government departments helping to discharge specific aspects of the UK responsibilities. The Department seeks to achieve a balance between allowing populated Territories the maximum autonomy they aspire to and ensuring that the UK can meet its responsibilities and minimise its exposure to potential liabilities. Over the years the UK’s exposure to risk has been varied, including; contributing to the costs of natural disasters and of meeting various international obligations; funding liabilities and deficits in Territories’ public finances; and the need to bolster regulation in vital areas like transport safety and security. Other areas, such as the regulation of offshore financial services, clearly pose important and growing risks, though these have not yet resulted in direct costs to the UK.

In other words, the UK unambiguously picks up the bill when things go wrong and that is why it has the right to intervene.

Has anything changed since then. This is from the 2015 UK government report on the Overseas Territories:

The Overseas Territories programme fund

The Overseas Territories programme fund supports the work of government to [maintain the security, stability and prosperity of the Overseas Territories](#) by promoting good governance, economic development, security and environmental preservation. More specifically it:

- * Manages risks and reduces the UK’s liabilities in the Territories ;
- * Is used to develop and implement effective criminal justice systems that introduce new techniques such as restorative justice and witness protection;
- * Makes non-discretionary obligations to cover standing commitments such as annual subscriptions to international organisations and the UK’s international obligations such as to the polar regions;

- * Builds the expertise of the Territories by funding training and secondments for their public servants and by encouraging the exchange of experience through the Jubilee programme;
- * Helps the Territories meet their environmental challenges through the [Darwin Plus: Overseas Territories environment and climate fund](#) which will disburse around £2 million per year to environmental and conservation projects in the Territories.

In 2014-15, the Overseas Territories programme fund will spend more than £4.7 million in support of a wide range of projects across the Territories.

So the answer to that is that we are still picking up the actual bill and are still acting as guarantor, as we also are, I think, in the Crown Dependencies.

None of this changes the fact that where possible devolved power is desirable and I am not suggesting otherwise. What I am making unambiguously clear are three things.

The first is that we are responsible, including financially.

The second is that we equally unambiguously have the right to intervene.

And thirdly, matters relating to financial services and their regulation are clearly seen as being within this remit.

So for all those in the Crown Dependencies and elsewhere who suggest this is not true, I suggest you take your heads out of the sand, stop living in the world of make belief that characterises everything in the offshore world, and instead note the reality that you can ultimately only act with UK consent, and there are those who think that should be withdrawn, and know they have the power to do it.