

**House of Commons Justice Committee Inquiry: The United Kingdom and the Crown
Dependencies**

Evidence from the Isle of Man Government

Executive Summary

- 1) The Isle of Man is a Dependency of the British Crown. Its formal constitutional/legal relationship with the United Kingdom is administered, on behalf of the Crown, by the Ministry of Justice (MoJ).
- 2) Relations between the Isle of Man and the UK are generally good, and a practical and positive working relationship is maintained with the MoJ on a wide range of issues, which can differ significantly in their complexity and importance.
- 3) The main points of this submission are –
 - 3.1 The Isle of Man favours the retention of the MoJ as the point of contact in the UK Government because it is involved with the constitutional development of the UK, has an effective overview of all other UK Government Departments and is responsible for many of the functions that are relevant to the Isle of Man
 - 3.2 The Isle of Man would welcome a closer working relationship with the UK, based on the existing constitutional relationship, and building on the framework for developing the international identity of the Isle of Man, and makes a number of recommendations as to how this might be achieved.
 - 3.3 The Isle of Man wishes to enhance its international profile, to develop further opportunities for it to represent itself, or alternatively, to provide expert support for the UK when it is representing the Island internationally.

Introduction

Political and Legal Background

- 4) The Isle of Man (IOM) is a self-governing British Crown Dependency with the Queen as Head of State. It has its own government and laws, and its ancient parliament, Tynwald, is recognised as the oldest continuous parliament in the world. The UK Government, on behalf of the Crown, is ultimately responsible for the Island's defence and international relations. In recent years, reflecting significant differences in UK and Manx law and policies, the Isle of Man has – in agreement with the UK and its international partners¹ – represented its own interests internationally, notably by concluding a significant number of bilateral tax agreements. The Isle of Man is financially autonomous and receives no financial assistance from either the UK or the EU. The Isle of Man is not represented in the UK or European Parliaments.
- 5) The Island's relationship with the EU is set out in Protocol 3 to the UK's Act of Accession (1972), and allows for free trade in agricultural and manufactured products between the IOM and EU. In essence, the Isle of Man is outside the EU except for EC law and policy on customs matters and the free movement of goods. In all other matters, including tax and financial services, the Isle of Man is in the position of a "third country" or non-Member State.

Economy

- 6) With only a limited range of economic levers at its disposal, the IOM has fought against the natural economic disadvantages associated with its small size, geographical location and lack of natural resources. Using its legislative and fiscal autonomy the IOM has built a strong, stable economy and political system for the benefit of the Manx people. Traditional industries of farming, fishing and tourism have been joined by dynamic new sectors such as financial services, e-commerce, film, shipping, aviation, high-tech manufacturing (especially in aerospace) and space commerce to create a diverse economy with an international base.
- 7) Key factors in the IOM's economic development include the Island's political stability combined with a commitment to growth, its physical ability to accommodate more people, the availability of a wide range of professional skills, a legal system based on English common law, cost advantages, extensive transport links and first class telecommunications systems -- all set within a community which provides an excellent quality of life in terms of education, social care, short commuting distances, housing and recreation facilities.
- 8) Given their geographical and historical proximity, a strong business culture is shared between the Island and UK businesses. As a result, the Island has succeeded over recent years in becoming a gateway to the City of London in ways which are highly beneficial both to the Island and the UK. There is a high degree of economic inter-dependence between the Isle of Man and the United Kingdom. For example:

8.1 The majority of goods purchased in the Isle of Man are manufactured and supplied by off-Island (usually UK-based) companies

¹ The Isle of Man has, for example, signed agreements giving effect to the EC's Taxation of Savings Interests Directive with all 27 Member States. Likewise, it has – so far – negotiated and signed 15 TIEAs with partner countries inside and outside the EU.

8.2 As with individuals and companies, Isle of Man Government purchases goods and services from the UK

8.3 Many businesses in the Isle of Man – including major retailers, construction companies and providers of financial services – are (profitable parts) of larger UK companies

International standards

9) The Isle of Man is committed to delivering effective regulation and it complies fully with international standards. The Island has established a reputation for being internationally responsible and economically competitive. That the Isle of Man holds AAA accreditation from Moody's and Standard & Poor's is testimony to this fact. Under the auspices of the Organisation for Economic Co-operation and Development ("OECD"), it is at the forefront of the development by small jurisdictions of a network of Tax Information Exchange Agreements ("TIEAs"). It has a transparent tax code, and does not have banking secrecy laws. It has consistently shown itself to be a co-operative jurisdiction in terms of the international fight against criminal activity.

Constitutional development

10) Tynwald has stated that it would not wish to alter the constitutional status of the Island; rather that it would wish to develop the Island's autonomy within this framework.

11) The signing of an international identity framework between the UK and Isle of Man Governments in May 2007 was an important step forward in pursuit of this aim. This recognised that "*the Isle of Man has an international identity which is different from that of the UK*", and that "*the UK recognises that the Isle of Man is a long-standing, small democracy and supports the principle of the Isle of Man further developing its international identity*". This framework, reinforcing the Isle of Man's separate status within the context of its constitutional relationship with the UK, is a cornerstone of the Island's strategy to continue to develop its national identity.

12) The IOM's determination to promote its identity and protect its reputation has led it to adopt policies and priorities which do not always mirror those of the UK. Improving the management of this position is the basis of this submission.

Responses to the Committee's Questions

i) How, in practice, the UK Government represents the Crown Dependencies internationally

13) The UK's international representation of the Isle of Man is not, generally, differentiated from its own. Indeed it is only when there is a divergence of interests, or there is a specific requirement of the Island, that the nature of that representation is brought into focus. It is at this point – when it is most needed – that in practice support from the UK might not be as robust as it should be, and the Isle of Man finds itself in the intractable position of not being able to represent itself, but also not being able to gain the full support of its "representative".

The key elements of the UK's international representation on behalf of the IOM are -

Diplomatic/political relations with other countries

- 14) As a non-sovereign dependency of the Crown, the Isle of Man is without an international legal personality and so must rely on the UK to represent and defend its interests and reputation internationally. It is crucial to the Island that this representation is meaningful and that the issues being presented on its behalf, and frequently without the IOM's presence, are fully understood, so that the IOM's position can be fairly and accurately conveyed to key policy makers, such as those on the G20, OECD or EU Member States.
- 15) Under the international identity framework, the Isle of Man is being increasingly entrusted to represent and defend its own laws and policies internationally, in full consultation and cooperation with the UK².
- 16) In the absence of a formal diplomatic status, it is extremely uncommon for disputes or problems to arise between the Isle of Man and third countries. However, one recent and high-profile example involves the collapse of the Icelandic bank, Kaupthing hf, and the subsequent failures of its subsidiaries in the UK and Isle of Man. At the time, the Isle of Man wished to make representations to the Icelandic Government on behalf of its own depositors, but also had concerns about the manner in which the issue had been handled in the UK. The Isle of Man expressed those concerns about HM Treasury's representation of the Island's interests in respect of Kaupthing to the House of Commons' Treasury Committee.
- 17) Whilst the MoJ arranged for HM Treasury to keep the Isle of Man informed it was clear that the Isle of Man was not a priority to HM Treasury.
- 18) The issue became highly politicised and the Chancellor of the Exchequer (whilst under attack himself) openly, and most unfairly, attacked the Isle of Man as "*a tax haven in the middle of the Irish Sea.*"
- 19) The MoJ was supportive of the Isle of Man, and meetings were quickly arranged with the Lord Chancellor and Lord Bach. Whilst the MoJ is well aware of the Isle of Man's constitutional position, it is clear to the Isle of Man authorities that other UK Government Departments, which must act internationally on behalf of the Isle of Man, neither fully understand nor value this position.
- 20) The Isle of Man frequently undertakes diplomatic, political or cultural missions in order to further commercial or economic ties with other countries. However, it is often the case that the nature and level of advice and assistance that the Isle of Man receives in support of these missions, varies substantially between British embassies.

² <http://www.gov.im/lib/docs/cso/iominternationalidentityframework.pdf>

- 21) With regard to relations with the EU, it can sometimes be difficult to impress upon UK officials that whilst the UK, as a member of the EU, has ceded responsibility for certain areas of policy, the Isle of Man (and by extension, the UK, in respect of the Isle of Man) as a non-member, has not. This would include such areas as World Trade Organisation membership and trade in matters not covered by Protocol 3.

International bodies/international law

- 22) The constitution of the majority of international bodies including the European Union and United Nations will only permit independent sovereign states to become full members. Furthermore, the Island cannot become a party to multilateral conventions or agreements, as it is not an independent state.
- 23) The UK is required, therefore, to represent the interests of the Isle of Man in international forums, and to sign, ratify, and report on international obligations e.g. conventions and treaties, on behalf of the Isle of Man. In practice, no international agreement entered into by the UK ("Bevin Memorandum"³) should apply to the Isle of Man unless the agreement explicitly states that to be the case. The UK, via the MoJ, should consult the Isle of Man whenever ratification of an international treaty, convention or agreement is being considered. Although this process generally works well, on occasion the Island has not been consulted adequately and has been given insufficient time to give appropriate consideration to such matters.

Consular services and defence

- 24) Manx people are British Citizens under the British Nationality Act 1981 and British/EU style passports are issued in the Isle of Man under the authority of the Lieutenant Governor. Manx people are therefore entitled to consular support when abroad, in the same way as other British citizens.
- 25) The UK is also responsible for the defence of the Isle of Man, which makes an annual voluntary contribution towards the cost of its defence and international representation by the UK ("Contribution Agreement 1994). In 2008/09 this figure was £2,559,278.55.

ii) The role of the Ministry of Justice in managing the United Kingdom's relationship with the Crown Dependencies including inter-departmental liaison and coordination

- 26) Whilst its interaction with international bodies is becoming more frequent, it is still the case that the Isle of Man's most important external relationship is with the United Kingdom itself.
- 27) Having the key role in managing the UK's relationship with the IOM, the Ministry of Justice:

³ Foreign Office Circular No 0118, 16th October 1950.

- 27.1 manages relations between the UK and IOM when differences arise on policies or legislation, and facilitates solutions
 - 27.2 co-ordinates all formal communication between UK Government Departments and the Isle of Man Government on such issues as notification of compliance with international standards and UN/ILO periodic reports for onward transmission to international bodies via UK Departments; consultation on UK and IOM legislation and policy on such issues as terrorism, shipping, immigration, space, derogations, financial services and fisheries which have trans-boundary implications
 - 27.3 processes legislative matters including granting of Royal Assent, Orders in Council and other issues. This includes both Isle of Man primary legislation and also UK legislation which may impact upon the Isle of Man. The Crown acts on the advice of the Lord Chancellor (in his capacity as Privy Counsellor) in respect of Isle of Man issues. This advice is provided by the MoJ.
 - 27.4 is responsible for Crown appointments and liaison with the Lieutenant Governor in the Isle of Man
- 28) There are also numerous informal contacts made between Isle of Man and UK Government Departments on a daily basis, on matters of mutual interest which fall outside the scope of this enquiry.

iii) What, if any, changes are required in terms of either policy or practice in order to improve the Ministry of Justice's management of the relationship between the United Kingdom and the Crown Dependencies?

- 29) Relations between the UK and the Isle of Man are generally good, and the management of that relationship is reasonably sound but very much dependent on the resources and competing demands within the MoJ. On a practical level, it is undoubtedly beneficial to have a single point of contact on both sides, and it is difficult to identify a UK Government Department which would be a more suitable point of contact. Whilst the Foreign and Commonwealth Office (FCO), is largely externally focused, the Overseas Territories (OTs), for which it is responsible have a very different relationship with the UK than that of the CDs and so the IOM considers that its link to the Crown should not be through the FCO, in recognition of this difference.
- 30) The IOM would offer the following recommendations to improve current management of the relationship between the Isle of Man and UK–
 - 30.1 A strategic understanding of international policies and aims would assist the IOM in positioning itself in terms of global economic and regulatory environment. This broader strategic insight, which would include UK international policy and aims, possibly in dialogue with the FCO, would enhance the IOM's relationship with the UK and provide more focussed consideration at strategic rather than operational level.

- 30.2 It is recognised that the allocation of resources within the MoJ is a matter for the UK to determine. However, the complexity and diversity of IOM issues and the impact of these issues on the UK, along with the contribution the IOM makes to the UK economy, underlines the importance of making full and effective use of available resources and the benefit of the IOM representing itself whenever possible.
- 30.3 Experience shows that where key officers in UK Departments understand the constitutional relationship and the IOM perspective on policy issues there is less friction as a result. MoJ has a role to play in facilitating this understanding and driving forward the relationship in key areas. While this has been achieved in some areas, certain key relationships (particularly with HMT) require further development.
- 30.4 Consideration should be given to developing further the provisions of the international identity framework, and monitoring and reviewing progress to ensure the Island's international identity is supported in its development as set out in the terms of the framework.
- 30.5 The MoJ should continue to raise awareness of the IOM across the UK Government, and in particular the need for the IOM to be consulted, through the MoJ, on any issue that may affect or be of interest to the Island. Increased awareness and meaningful understanding of the terms of the International Identity Framework Agreement should be promoted widely and clearly across UK Government Departments. This would be helpful in averting unexpected difficulties that arise from a lack of understanding about the impact of policies or legislative proposals on the IOM.
- 30.6 Inter-Governmental relations could be facilitated through (bi) annual meetings or conferences for officials in the Isle of Man and the MoJ, which might focus on a particular theme or issue and include briefings from officers from other UK Government Departments.
- 30.7 The ability for the Isle of Man to attend meetings/assemblies as part of a UK delegation, in an advisory capacity, where issues impacting the Island are on the agenda, would allow the IOM to ensure a much earlier and fuller understanding of high level policy proposals. This is particularly relevant to financial services initiatives.
- 30.8 The ability to gain the support of the UK for associate membership of certain bodies, where their constitution would allow for that, would be useful, e.g. Shipping and Associate membership of the International Maritime Organisation.
- 30.9 When a difference in policy/opinion arises between the Isle of Man and the UK in instances where relations need to be entered into with other countries, every effort should be made to include an Isle of Man and MoJ representative in those talks.
- 30.10 Key administrative processes and procedures, such as the granting of Royal Assent, could be formalised in writing between the IOM and UK and include defined timescales and completion targets to our mutual agreement.