

**Written evidence submitted by Professor Peter Clegg, University of the West of England, Bristol
(TTC 21)**

I am an academic who researches and publishes on the British Overseas Territories, and have written on some of the topics that are of interest to this inquiry.

The relationship between the Overseas Territories and Parliament is a complicated one, which at its best works well, but at its worst causes significant tension and disquiet, particularly when the territories feel there is insufficient consultation when legislation that affects them is passed by Parliament. This evidence argues the following: That attempts could be made to better incorporate the interests of the territories into parliamentary bills that impact them, but there would always be limits to this. Further, much of the legislation affecting the territories is enacted via Orders in Council, and thus largely by-passes Parliament. That the House of Commons committee system is often reactive rather than proactive when it comes to the territories and a re-evaluation of this approach should be undertaken. That there is no consensus on whether the level and nature of direct representation for the territories in the UK Parliament should be changed, and there would be significant risks if greater representation was secured.

The role of the UK Parliament in creating legislation that extends to the territories was placed into sharp relief by the Sanctions and Anti-Money Laundering Act 2018, which established beneficial ownership registers for the territories. Those territories with offshore financial centres complained of legislative and constitutional overreach, arguing that the economy was a devolved responsibility. Nevertheless, the UK Parliament has the sovereign authority to act and did so. The circumstances of this legislation were slightly unusual in that it was passed without the support of the British Government. Further, there are only a few examples of when legislation affecting the territories has been passed in this way. Yet an argument can be made that even though the territories would not have power to veto such legislation the mechanisms for awareness-raising and consultation should be strengthened, for example parliamentary clerks identifying legislation that might have a direct impact on the territories and explaining its possible implications. If this was done, with fair warning, this would then give the territories sufficient time and opportunity to formulate a response and lobby government and individual MPs in an attempt to re-shape the proposals. The territories already have decent mechanisms to do this although there is a debate about whether these mechanisms can be strengthened (see below).

As noted above, most legislation applied to the territories deriving from the UK does not come through the Parliament; rather via Orders in Council. Most territory constitutions are enacted in this way; so too some key changes such as the ending of the death penalty and the decriminalisation of gay sex. There have also been suggestions that the implementation of gay marriage in the territories could be enacted via an Order in Council, although so far, such a move has been resisted by the British Government because of the strong opposition from the territories themselves. Indeed, now and in the past British Governments have only used Orders in Council as a last resort knowing the controversy they are likely to cause. Indeed, there are several instances, such as the Frameworks for Fiscal Responsibility, where agreement was made between Britain and the territories, prior to an Order in Council being used. A final point is in relation to the power of the British Governor to make legislative change or to disallow legislation; a recent example being in the Cayman Islands with the Governor enacting legislation to provide for civil partnerships for same-sex couples. The use of these legislative tools with little reference to the UK Parliament or territory governments is perhaps outside of the purview of this inquiry and require a more fundamental look at the balance and use of constitutional provisions, but nevertheless it is an important consideration within the context of UK legislative power.

In relation to the House of Commons committee system, it often operates in a reactive rather than a proactive way and the engagement with the territories and the issues affecting them can be sporadic. Parliamentary inquiries into the territories are rare and are often provoked by something going wrong in one of them. Prior to the Foreign Affairs Committee report in 2019, the previous one considering the territories as a whole was published in 2008 when there were growing concerns about the standards of governance in the Turks and Caicos Islands. And then 10 years before there were several parliamentary reports looking at the background to, and consequences of, the Montserrat volcano. The reports into the Turks and Caicos Islands and Montserrat were undoubtedly influential, helped to address serious concerns, and guided the British Government and the territories to make (overall) important changes. However, what was lacking then and now was a consistency of overview and inquiry. The Foreign Affairs Committee is presently the lead parliamentary committee with oversight of the territories and so more regular consideration of them should be undertaken; not necessarily full-blown investigations, but certainly biennial 'temperature-checks'. The ongoing work of the European Scrutiny Committee considering the UK's negotiations with the EU in respect of Gibraltar is an effective case in point. If these more regular touching-in points were established that were better coordinated with Parliamentary debates, then the level of oversight, engagement and understanding would undoubtedly be improved.

Another element that might be enhanced would be the focus on joint working between the UK Parliament and the Overseas Territories. Not to say that the inquiry process is opaque and unsupportive to the territories, but sometimes the findings are not well received, for example in the 2019 Foreign Affairs Committee report on same-sex marriage and Belongerships, and that certainly strains relations between the territories and the House of Commons committee system. It is a difficult balancing act to strike between on the one hand ensuring working relations with the committee system and the territories is as cooperative and effective as possible, but on the other allowing committees to highlight areas for improvement. If committees' work on the territories were more regularised then that balance could perhaps be better achieved and a stronger and more trusting working relationship developed. It would not entirely remove dissension, and rightfully so, but it would help avoid those sporadic, heavily laden interventions by House of Commons committees that are often not well received by the territories. Also, committees might be able to liaise more closely with the territory governments over areas they might like to see greater scrutiny. Many of the legislatures in the territories are small and lack some oversight capacity, and so, some gaps could be filled by House of Commons committees. This would not compromise their independence, but help facilitate accountability and transparency. One area of mutual interest, for example, might be the performance of the UK Government-appointed Governors.

Finally, there is the issue of whether the level and nature of representation for the territories in the UK Parliament should be changed. As has been noted above, the UK Parliament has a significant role in relation to the territories, including legislative power. And one can argue that if a territory is affected by the decisions made in another parliament or is subjected to the legal authority of another political entity then direct parliamentary representation should be given. This argument has certainly been put forward by British MPs and some political leaders in the territories over the years. The case is arguably most strongly articulated in Gibraltar with the Representation in Westminster Movement.

It is certainly an important debate, but it is crucial to note that these discussions are not new. Over several decades, the issue of parliamentary representation for the territories has raised its head, but there has been little action. For example, the Foreign Affairs Committee considered the issue in 1998. It recognised a "democratic deficit" in the UK's relationship with the territories and noted that one option to improve the situation was "direct representation". However, the Committee stated that it "raises a number of substantial constitutional questions". The issue has been raised many

times since then as part of committee inquiries and parliamentary debates, but with little new thinking. One barrier is the British Government's antipathy towards the idea, in part because it does not fit with Britain's approach to decolonisation and constitutional change, unlike France, for example. Further, there is no consensus on the part of the territories, and with the exception of the Representation in Westminster Movement little practical work has been done on its likely implications.

Further, there are some key concerns that provide substantial blocks to direct representation. These include:

- It would be difficult and inequitable for each overseas territory to have its own representative at Westminster.
- If a single representative was considered, it would be challenging for the territories to reach a consensus on which single representative might collectively represent their interests and how this would be done.
- There is a concern on the part of some territories that British taxation rates might be applied to them.
- Similarly, there is a risk that additional British legislation would have to be adopted, having a negative impact on some of their business sectors.
- Many territories are concerned that their relatively high level of autonomy across a range of policy areas would be compromised if incorporated more significantly into Britain's national policy development and policy architecture.

Further, if you look at the position of other territories who have representation in their metropolitan parliaments there are risks involved. For example, for the Faroe Islands and Greenland, their representation is the only formal element via which their interests are officially represented in the Danish political system. In addition, the representatives have to be careful to distance themselves from mainland party politics, in case their position is compromised. For Åland in the Finnish Parliament, despite their single MP, engagement with the government is limited with no dedicated civil servants on Åland affairs and few informal relations. By comparison, the British territories have a broader and arguably more dynamic set of parliamentary relations.

In conclusion, there are certainly areas where positive change could be made to improve the territories' engagement with the House of Commons committee mechanism and proceedings more generally, for example, via greater and earlier levels of consultation prior to legislation being introduced and committees engaging more regularly with the territories and considering mutually beneficial issues. On the other hand, there are limitations to what might be achieved due to the nature of the constitutional settlement in place and the varied access points that the territories already have into Westminster and Whitehall.