

Written evidence from *Nicholas A. Stanig (SOT90)*

Public Administration and Constitutional Affairs Committee The Status of the UK's Overseas Territories in the 21st Century inquiry

1. I am a current University of East Anglia student, studying Politics and International Relations. I am giving evidence to the Committee in a professional capacity in response to the Committee's call for evidence on The Status of The UK's Overseas Territories in the 21st Century.
2. This is a welcome inquiry into a crucial aspect of our current constitutional and historic relationship with our Overseas Territories. This written evidence will address the questions of 'How is legislation made in the Overseas Territories' and 'What role does the UK Government and UK Parliament have in these processes?'

Written Evidence: Summary

3. The British Overseas Territories are self-governing nations with their own elected executive, legislative and judiciary branches operating under a Governor representing the Crown (British Government)¹.
4. The various British Overseas Territories differ drastically in population, location, size and historical relationship with the United Kingdom². Therefore, each territory should be treated individually with an individualised plan of official engagement.
5. The current constitution arrangement is not fit for purpose due to a lack of clarity on powers dedicated to the UK Government and the retrospective Territory creating a lack of democratic representation in official institutions.
6. The UK Parliament retains ultimate decision-making power to legislate for the territories with no recourse to challenge such decisions³.
7. Four specific recommendations are therefore made:
 - Introduce members of parliament for each overseas territory to decrease the democratic deficit.
 - Transition the responsibility of managing relations with all British Overseas Territory away from the Foreign, Commonwealth and Development Office

¹ See Henry and Dickson, 2018, p7, 'Hendry, I.D. and Dickson, S. (2018). *British Overseas Territories Law*. Hart Publishing, pp.15–35.

² See also Scott, P.F. (2023). Corruption and the constitutional position of the Overseas Territories. *Oxford University Commonwealth Law Journal*.

³ See also H, M.H. (1968). The Legal Effects of U.D.I. (Based on *Madzimbamuto v. LardnerBurke*). *International and Comparative Law Quarterly*. The legal jurisprudence highlighting ultimate decision-making control belongs to the UK Parliament.

to the Cabinet Office to streamline official engagement and to symbolise unity as part of the UK Governance structure.

- Create a singular minister with responsibility for the Overseas Territories with no or little other ministerial responsibility.
- Outline specifically what the role of the UK Government is in each territory.

How is Legislation made in the British Overseas Territories?

8. Some British Overseas Territories experience high levels of self-government and are financially independent with the vast majority of laws being made by the locally elected governments.⁴
9. For example, the British Overseas Territory of Gibraltar has a GDP larger than most Western European nations with a prosperous Gaming and Financial Sector. Additionally, the British Virgin Islands and the Cayman Islands have extensive financial sectors, renowned worldwide for their banking secrecy.^{5 6}
10. However, the UK Government Representative in the territories, The Governor, has extensive exclusive executive and legislative powers with ultimate accountability not to the citizens of the Territory but to the Crown⁷, creating a democratic deficit.
11. Furthermore, British Overseas Territories are subject to the 'repugnancy doctrine', which was established by the Colonial Laws Validity Act (1865), establishes that any law made in a British Overseas Territory is void if it clashes with a UK Act of Parliament⁸. This demonstrates decisively that the UK Parliament has exclusive control over the territories contrary to the UK Government's claim of internal self-governance.
12. Another significant source of British Overseas Territory legislation is the continued use of 'Orders in Council'. A legal instrument implemented by the Crown that enacts amendments to constitutions and measures to ensure good governance and internal security. This instrument can be used very broadly by the Crown, on behalf of the UK Government. British Overseas Territories have no recourse to challenge the legitimacy of the use of Orders in Council. Depending on the specific Territory, certain 'Order in Councils' do not apply, creating a significant vacuum of understanding between the UK Government and The Territories.

The Role of the UK Government and Parliament:

13. The UK Overseas Territories have no official representation in the UK parliament apart from ministers from the Foreign Office who focus on regions rather than the

⁴ Yusuf, H.O. and Chowdhury, T. (2019). The persistence of colonial constitutionalism in British Overseas Territories. *Global Constitutionalism*, 8(1), pp.157–190.

⁵ See also <https://www.gibraltar.gov.gi/statistics/key-indicators>

⁶ Jan, F. (2016). The anatomy of the Cayman Islands offshore financial center: AngloAmerica, Japan, and the role of hedge funds. *Review of International Political Economy*, pp.1034–1063.

⁷ ECS Wade & GG Phillips, *Constitutional Law* (4th edn, Longmans, Green and Co, London, 1951) 403.

⁸ See also section Colonial Laws Validity Act 1865 and the Interpretation Act 1978

territories outright. Leading to a severe lack of disorganisation as no central minister is responsible for relations with the Overseas Territories.⁹

14. There is also considerable academic concern that the Foreign, Commonwealth and Development Office is not best suited to handle relations between the UK Government and the Territories, primarily because they are not foreign nor part of the commonwealth, creating a symbolic and constitutional issue.¹⁰
15. The Privy Council Orders are in substance executive legislation outside the realm of parliamentary accountability and scrutiny.¹¹ Therefore, forcing the UK Parliament to have no role in scrutinising an 'Order in Council', issued by the Privy Council on behalf of His Majesty's Government.
16. Lastly, the UK Parliament maintains exclusive unlimited power to legislate for the Territory on its Internal and External affairs as a result of Parliamentary Sovereignty.¹² Therefore, allowing the Territories to be ruled without democratic accountability or representation. A key example of the UK Government's exclusivity of control is the forced introduction of the Sanctions and Anti-Money Laundering Act (2018), requiring all British Overseas Territories to create general registers to prevent money laundering. This fuelled extensive backlash from the democratically elected Territorial governments across the world.

Recommendations:

17. 1st Recommendation

- Each British Overseas Territory should be allocated a designated Member of Parliament based upon the same parliamentary standards as UK constituencies. Keeping in line with British democratic principles that ensures representation where there is exclusivity of power. This will affirm that citizens of BOT will have a voice in an institution that has ultimate control over their livelihoods and increase the UK's parliament relations with The Territories.

18. 2nd Recommendation

⁹ Peter, C., Marie, Naclér, Elisabeth and Alomar, Rafael Cox (2022). Parliamentary representation of overseas territories in the metropolis: a comparative analysis. *Commonwealth & Comparative Politics*, 60(3), pp.229–253.

¹⁰ See again Clegg et al., (2022)

¹¹ Moules, R. (2009). JUDICIAL REVIEW OF PREROGATIVE ORDERS IN COUNCIL.

¹² H, M.H. (1968). The Legal Effects of U.D.I. (Based on Madzimbamuto v. LardnerBurke). *International and Comparative Law Quarterly*, 17(4), p.10221034.

- Transition the responsibility for relations with the British Overseas Territories from the FCDO to the Cabinet Office. This will ensure that the UK Government streamlines official engagement within the UK Central Governance structure and not as a so-called 'foreign entity'. Furthermore, it will fix the constitutional and symbolic issue plaguing the British Overseas Territories. Therefore, improving unity and efficiency in governance.

19. 3rd Recommendation

- Create a dedicated single Minister, within the Cabinet Office, responsible for streamlining and engaging with The Territories.

20. 4th Recommendation

- Institute a report outlining the role and responsibilities of the UK Government, each Territory's Governor and each Territory's elected representatives. This will ensure clarity of responsibilities, improving central and territorial government efficiency and governance.

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