

APPENDIX

The British Islands

The Channel Islands and the Isle of Man, together known as "The British Islands", are not, in law, a part of the United Kingdom of Great Britain and Northern Ireland. Because of the very substantial legislative and administrative autonomy that they enjoy they are unlike the dependent

territories of the United Kingdom which are dealt with in the following Report. They have therefore been accorded a separate treatment at this point. This Report on the British Islands deals with (I) the Channel Islands, and (II) the Isle of Man.

I. THE CHANNEL ISLANDS

The Channel Islands are situated off the North-West coast of France, at distances from 10 to 30 miles from that coast. They comprise Jersey, Guernsey, Alderney, Brechou, Great Sark, Little Sark, Herm, Jethou and Lihou. The total land area is approximately 75 square miles and the estimated population at the mid-1972 census was just over 124,000. Jersey and Guernsey are by far the largest islands and together account for some 90 per cent of the land area.

English is spoken throughout the islands but a Norman-French patois is widely used, except in Alderney. In Jersey French is the official and ceremonial language but both French and English are used in the courts. In Guernsey English is now used for most official purposes.

I. Constitutional System

The Channel Islands are dependencies of the British Crown, to which they have been attached since the Norman conquest; they represent the only portion of the ancient Duchy of Normandy still annexed to the Crown. By the Interpretation Act, 1889 (52 & 53 Vict., c. 63) s. 18 (1) and 18 (2), the "British Islands" and the "British possessions" there defined include the Channel Islands. The special status of the islands was recognised in the British Nationality Act, 1948 (11 & 12 Geo. 6, c. 56) s. 33, under which citizens of the Channel Islands are declared to be citizens of the United Kingdom and Colonies, but they may be known, if they so wish, as citizens of the United Kingdom, Islands and Colonies.

The Channel Islands are divided into two bailiwicks, one being Jersey and the other Guernsey,

¹ See: Island of Jersey, Report and Recommendations of the Special Committee of the States of Jersey Appointed to Consult With Her Majesty's Government in the United Kingdom on All Matters Relating to the Government's Application to Join the European

together with the islands of Herm and Jethou which are adjacent, Alderney and Sark. They will be considered separately below but their constitutional relationship with the United Kingdom may be summarised in the following way. The Channel Islands have for centuries been substantially self-governing in internal matters. Legislation by the Parliament of the United Kingdom at Westminster can by right extend to the Channel Islands but does not so extend automatically; either an express enactment or extension of the legislation by implication is required. The right of Parliament to legislate for the islands is, in practice, exercised in accordance with certain important customary limitations. It is very unusual for Parliament to legislate for the islands on local issues and there is a long-standing convention that Parliament will not tax the islands without their knowledge, consent and participation. Freedom from the United Kingdom taxation is a fundamental right and privilege of the islands. Acts of Parliament which apply to the islands must be sent to the Royal Courts of Jersey and Guernsey for registration; this provides for local publicity and the Act is enforced as from the date of registration. The Crown also, by Royal prerogative and as successor in title to the Duchy of Normandy, has the right to legislate by Order in Council for the islands. Orders in Council are "transmitted" to the islands in the same way as Acts of Parliament. If they are objected to by the islanders as inconsistent with their privileges or institutions, then the Crown, advised by the Home Secretary, will seek alternative proposals from the legislatures in the islands.¹

Economic Community (1967) 23-36, 37-38, 39-44 for an excellent modern synopsis of the constitutional relationship; and *cf. Simmonds, The British Islands and the Community - I Jersey: 6 C. M. L. Rev. 156-169 (1969).*

i. Jersey

The Crown is represented in the person of the Lieutenant-Governor, who is the principal link between the States (the island legislature) and the British government. The Bailiff, also appointed by the Crown, is the Chief Magistrate and President of the States. The States is comprised of 12 senators (elected for 9 years), 12 constables (elected for 3 years by the island's parishes) and 28 deputies, elected for 3 years. In addition, the Dean of Jersey (representing the Established Church) and the Attorney-General and Solicitor-General sit without vote. The States, as well as considering legislation of the United Kingdom Parliament and Orders in Council, may make regulations (*règlements*) of limited duration on certain matters without the Royal assent but its legislation is usually in the form of Bills (*projets de loi*) "subject to the sanction of Her Majesty in Council". The States also petitions the Crown on occasion when it seeks a new law through an Order in Council.

In practice, the Secretary of State for Home Affairs (the "Home Secretary") is the member of the Privy Council (see the United Kingdom Report ch. I 3) with especial responsibility for the affairs of the British Islands and the principal channel of communication between the British government and all the islands.

The Royal Court consists of the Bailiff and 12 *jurats* chosen by an Electoral College. The Bailiff is always a lawyer but the *jurats*, who are judges of both law and fact, are not necessarily so. The Royal Court sits in two divisions, known as the "inferior number" (the Bailiff and two *jurats*), which is a civil and criminal court of first instance (and a court of appeal from police and petty debt courts), and the "superior number" (the Bailiff and seven *jurats*) when it is an appellate court for both civil and criminal matters. The Bailiff exercises a casting vote. Assize Courts are also held (before the Bailiff, at least seven *jurats* and a jury) to try offences on indictment.

ii. Guernsey

The Crown is represented in the person of the Lieutenant-Governor and the Bailiff is the President of the States, as in Jersey. The States of Guernsey is made up of two bodies: the States of Deliberation (with legislative powers) and the States of Election (which makes appointments, including that of 12 *conseillers* of the States of Deliberation). In addition to the *conseillers*, the States of Deliberation is comprised of 33 deputies, and 12 representatives of parish councils and

of the Isle of Alderney. The two Law Officers sit without vote. The legislative functions of the States of Guernsey are similar to those of the States of Jersey, but the States of Guernsey may legislate on certain matters for Alderney and for Sark, although each of those islands has a legislative assembly (respectively the States of Alderney and the Chief Pleas of Sark, which is still in essentials an independent feudal hereditary state). As in Jersey, the States of Guernsey performs many of its functions through the use of executive committees.

The Royal Court of Guernsey is divided into two divisions; it sits either as the Ordinary Court (the Bailiff and two to four *jurats*), when it exercises civil jurisdiction at first instance or hears certain appeals from Alderney and Sark, or as the Full Court (the Bailiff and at least seven *jurats*), when it serves as a court of first instance for serious criminal cases, or as a court of appeal from the Ordinary Court, or the Magistrates' Court of Guernsey, or hears serious criminal cases from Alderney or Sark. In Alderney there is a Court (with Chairman and *jurats*) which has wide civil and limited criminal jurisdiction. In Sark the Court of the Seneschal exercises limited civil and criminal jurisdiction.

The Court of Appeal (Guernsey) Law, 1961, established the framework of a Court of Appeal with civil and criminal jurisdiction over the whole of the Bailiwick of Guernsey.

An unsuccessful attempt was made some years ago to set up a common Court of Appeal for both Bailiwicks. The Judicial Committee of the Privy Council acts as the final court of appeal from both Bailiwicks in both civil and criminal matters.

2. Private Law

The common or customary law of the Channel Islands is based upon the *Ancienne Coutume de Normandie*, modified over the course of 1000 years of continuous evolution by local usage, judicial decision and legislation. The English common law has not been imported as such. The common law of the ancient Duchy of Normandy has, however, been developed autonomously and idiosyncratically since mediaeval times in the islands.

The laws of the islands are thus strongly indigenous and local in character. In Jersey, for example, legislative sources of law in use today include the ancient customary law of Normandy (evidenced by the *Grand Coutumier du Pays et Duché de Normandie*, compiled in the thirteenth century, and by the works of scattered text writers, and

the reported decisions of the Judicial Committee of the Privy Council and the Royal Court of Jersey); Royal Charters; Orders in Council; Acts of the British Parliament in which the Channel Islands are specifically mentioned or to which they apply by necessary implication; a Code of

1771; Laws passed by the States and sanctioned by the Sovereign in Council; and *règlements*. In Guernsey the civil law owes rather less to the Norman customary origins traceable elsewhere; as in Jersey there is remarkably little modern legal literature.

II. THE ISLE OF MAN

The Isle of Man, situated in the Irish Sea and roughly equidistant from England, Ireland, Scotland and Wales has a land area of some 227 square miles and at mid-1972 the estimated population was just over 56000.

The English language is spoken, although Manx is used for certain official pronouncements.

I. Constitutional System

The island is neither a part of the United Kingdom nor a colony; it is a dependency of the British Crown and is substantially self-governing. The island was first acquired as a feudal lordship during the reign of *Edward I*. Its citizens today are citizens of the United Kingdom and Colonies, but may, under the terms of the British Nationality Act, 1948 (11 & 12 Geo., c. 56) s. 33 style themselves Citizens of the United Kingdom, Islands and Colonies if they so wish.

United Kingdom legislation extends to the island, and is enforceable within it, if the island is directly named or included by necessary implication. In practice, United Kingdom legislation is so extended in matters of special and non-local importance, only after due consultation with the island authorities. The island's own legislature (*infra*) acts autonomously in respect of domestic matters but insular legislation is submitted for the approval of the Crown, which is given by the Privy Council.

The Lieutenant-Governor, appointed as Lord of Man, represents the Crown on the island. He presides over, and is advised by, an Executive Council which consists of seven members of Tynwald (*infra*).

The island's legislature is bicameral and collectively known as the Court of Tynwald: it is comprised of the Legislative Council (the Upper House) and the House of Keys (the Lower House). The two bodies sit separately for legislative purposes and vote separately but sit together for much of their other executive and financial business. The Legislative Council is composed of: the Lieutenant-Governor, the Bishop of Sodor

and Man, the First Deemster (the senior High Court judge – *infra*), the Attorney-General, two members appointed by the Lieutenant-Governor, and five members appointed by the House of Keys. The House of Keys is one of the oldest legislative assemblies in the world; it is composed of 24 elected members. Of these, 13 members represent the sheadings (six rural divisions of the island), seven represent Douglas, the chief town, and the four remaining represent the other three principal towns of the island, Ramsay (two), Castletown and Peel (one each). Much of the island's legislation on domestic matters, such as revenue, customs duties, education and other services is deliberately kept in line with similar legislation in the United Kingdom but there are very significant differences in, for example, direct taxation. Income tax is much lower than in the United Kingdom and there is no surtax or death duty payable. An annual reading of the laws passed during the year is carried out each mid-summer day (5 July) on Tynwald Hill at St. John's; until this century the formal and public promulgation of each law in this fashion was necessary before an act of Tynwald could come into effect. Today the Royal Assent is announced in Tynwald by the Lieutenant-Governor and a certificate to that effect is signed before an act takes effect.

The judiciary and the courts. – The High Court has two judges, who are called deemsters. They exercise both civil and criminal jurisdiction; the First Deemster acts as the clerk of the rolls. If a Court of Appeal should be necessary another judge of appeal is appointed from the English Bar and he will sit together with the deemster who did not sit at first instance. A further appeal lies to the Judicial Committee of the Privy Council in both civil and criminal cases. The High Bailiff of the island acts as a stipendiary magistrate and there are Magistrates' Courts in the four principal towns. Justices of the Peace are appointed by the Lord Chancellor of England in consultation with the Lieutenant-Governor. Coroners sit in the sheadings and also serve as court officers

(e.g., empanelling juries, serving summonses, collecting fines, etc.). Members of the Manx Bar are advocates, who act both as barristers and solicitors.

2. Private Law

The legal history of the Isle of Man, since its conquest by the Vikings, has evolved quite separately from that of England. The customary

law of the island is called "breast law" (i.e., the law residing in the breasts of the judges) and it has been modified and developed by insular legislation over the centuries. Although, as has been noted above, the law of the island is today substantially similar to English law, there are still very interesting differences in the law of property (where Manx law recognises tenure in customary fee simple), and of succession.²

III. BIBLIOGRAPHY

1. *The Channel Islands*

Sheridan, *The Channel Islands: Keeton and Lloyd* (ed.), *The United Kingdom. The Development of Its Laws and Constitutions* (1955) Part 2, 1141-1153; *Lemprière*, *The Constitution of the Bailiwick of Jersey: 1 The Solicitor Quarterly* 298 (1962); *Le Patourel*, *The Origins of the Channel Islands Legal Systems: ibidem* 194; *Simmonds*, *Some Aspects of the Application of United Kingdom Legislation to the Channel Islands: ibidem* 2, p. 33 (1963); *Sir Kenneth Roberts-Wray*, *Commonwealth and Colonial Law* (1966) 672-675; *Recueil des Lois de Jersey 1771-1936* (7 vol. 1878-1957; 3 vol. 1955-1961); *Regulations and Orders (Jersey) 1939-1953* (rev. ed. 1959); *Ordinances of the States (Guernsey)/Recueil d'Ordonnances de la Cour Royale de l'Isle de Guernsey 1533-1800* (6 vol.) (1852-1932); *Orders in Council (Guernsey)/Ordres en Conseil 1803-1907* (22 vol.) (1903-1974); see also: Biblio-

graphical Guide to the Law of the United Kingdom, the Channel Islands and the Isle of Man (ed. 2, 1973) 232-236.

2. *The Isle of Man*

Holland, *The Isle of Man: Keeton and Lloyd* (ed.), *The United Kingdom. The Development of Its Laws and Constitutions* (1955) Part 1, 485-493; *Sir Kenneth Roberts Wray*, *Commonwealth and Colonial Law* (1966) 675-677; *Moore*, *A History of the Isle of Man* (2 vol.) (1900); *Acts of the Tynwald, 1407 to date*; *Report of the Joint Working Party on the Constitutional Relationship Between the Isle of Man and the United Kingdom* (1969); *Commission on the Constitution, Isle of Man. Joint Evidence of the Home Office and Tynwald* (1970).

(Completed in January 1975)

² See comments of *Kneale*: *Bibliographical Guide to the Law of the United Kingdom, the Channel Islands*

and the Isle of Man (1956) 182-187; and comments of *Kinley*, *ibidem* (ed. 2, 1973) 237-243.