

Research Briefing

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By Philip Loft

The Overseas Territories: An introduction and relations with the UK



- 4 Sovereignty and independence
- 5 Key resources and further reading

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Summary

There are 14 UK Overseas Territories (OT) across the globe, of which ten are permanently inhabited by British nationals.

All the Territories have historic links to the UK and, together with the UK and Crown Dependencies like Jersey and Guernsey, form one undivided realm where the King is sovereign. This means they have no separate international representation. They also have no representatives in the UK Parliament.

This briefing introduces the Territories, sets out the UK's responsibilities towards them, and summarises their constitutions, human rights law and electorates, and issues of disputed sovereignty and independence. It primarily focuses on the ten inhabited Territories.

What are the 14 Territories?

The OTs have an <u>estimated population of 270,000</u> (2021). Pitcairn is the populated Territory with the smallest population of 40 people, while the Cayman Islands and Bermuda have the largest populations of around 65,000.

The 14 Overseas Territories Territories permanently inhabited by UK nationals are marked with a *					
Ascension, St Helena and Tristan da Cunha*	British Indian Ocean Territory	Montserrat*			
Akrotiri and Dhekelia	British Virgin Islands*	Pitcairn*			
Anguilla*	Cayman Islands*	Turks and Caicos Islands*			
Bermuda*	Falkland Islands*	South Georgia & The South Sandwich Islands			
British Antarctic Territory	Gibraltar*				

The diversity of the Territories

While this briefing considers the Territories together, they have diverse geographies, environments, economies, populations, political systems, strategic importance to the UK, and history.

Bermuda, for example, has a two-chamber parliament, a population of 64,000, a higher Gross Domestic Product per person than the UK, and is economically self-sufficient from the UK with a strong tourist economy and financial sector, though faces threats from hurricanes.

St Helena, Ascension and Tristan da Cunha, in contrast, is a single Territory with three political systems for each island united under the same Governor, a total population of 6,000, is one of only three UK Territories eligible for UK aid, and has only fortnightly air flights to South Africa.

The British Antarctic Territory is the largest Territory in terms of land area, at 1.7 million km², but is uninhabited aside from visiting scientists.

Like <u>small island developing states</u>, many of the Territories are highly vulnerable to natural disasters and experience development challenges, including in access to finance and being remote from trade and markets.

What powers does the UK have over the OTs?

As a matter of constitutional law, the <u>UK Parliament has unlimited power to legislate for the Territories</u>. Through the UK Privy Council, the UK Government can also issue Orders in Council, which are a form of law allowing changes to be made to Territory laws and constitutions. The UK Privy Council also acts as the final court of appeal for Territory courts.

The UK <u>can also issue instructions to OT Governors to implement certain</u> <u>policies</u>, where the Territory constitution gives the Governor such a power.

The UK has responsibility for the defence of the Territories, managing most of their foreign relations, and, usually following consultation, extending international treaties to them that the UK has ratified. In most cases, fiscal policy and liability for Territory debts is not an issue for the UK, but three Territories (Pitcairn, Montserrat and St Helena and Tristan da Cunha) are eligible for funding from the UK's aid budget.

Many issues are devolved to Territory Governments and their Governors. This includes immigration policy, internal security like the police, financial services, the environment, and social policy including health and education (though the UK can provide support, such as through the <u>Conflict</u>, <u>Stability and Security Fund</u>, and has the ultimate power to intervene).

This division has sometimes created tensions between UK and OT law: For example, <u>same-sex marriage</u> is not <u>permitted</u> in <u>some Territories</u>. While the UK Government has called for reforms, it has defended OT self-government.

In response to allegations of mismanagement and corruption, the UK has suspended the constitution of the <u>Turks and Caicos Islands in 1986 and 2009</u> and has threatened direct rule in the British Virgin Islands following a <u>Commission of Inquiry in 2022</u>.

How are the Territories internally governed?

While the Territories <u>have individual constitutions</u>, in general:

- **Uninhabited Territories** are administered by a UK appointed Commissioner. They have the power to make laws, establish courts, and regulate the Territory (in line with any instructions or the constitution).
- Inhabited Territories have a UK-appointed Governor, who is commonly responsible for the Territory's external affairs, internal security such as the police, and often has the power to make or reject law. Most Territories have a ministerial system of government, where a Premier and Cabinet must retain the confidence of a locally elected legislature. In others, a committee system of government is in place.

Details for each specific Territory can be found in the Library briefings on the <u>UK's OTs and their Governors</u> and the <u>Separation of powers in the UK's OTs.</u>

Sovereignty disputes and independence

As the administrating power for the Overseas Territories, the UK has a responsibility under the UN Charter to <u>support their political</u>, <u>economic</u>, <u>and social development and self-government</u>. The Government says it will support any OT that wishes to become independent to do so, if this is <u>demonstrated by a "clear and constitutionally expressed wish" of the population.</u>

Of the 14 current Territories only Bermuda, in 1995, <u>has held a referendum on independence</u> since becoming an OT. The question of UK control has primarily been challenged by other states, rather than Territory populations and governments:

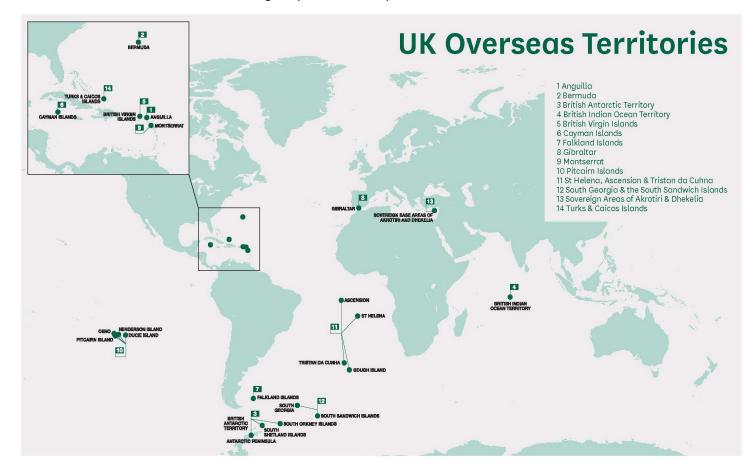
- Argentina claims sovereignty over the Falklands (Las Malvinas) as well as South Georgia & the South Sandwich Islands, invading them in 1982.
- Spain has <u>disputed UK sovereignty of Gibraltar</u>.
- Mauritius has claimed sovereignty of the British Indian Ocean Territory (BIOT), also known as the Chagos Archipelago. The UK has rejected these claims but entered negotiations over the Territory in late 2022.
- While Chile and Argentina have sovereignty claims over parts of the British Antarctic Territory, the Antarctic Treaty of 1959 <u>suspends</u> <u>sovereignty claims and challenges</u>.

For inhabited Territories, the UK Government position is that it will only enter into negotiations over sovereignty with the agreement of locally elected governments and a <u>demonstration of popular consent for any changes</u>.

Population, location, economy

The 14 Overseas Territories (OTs) have a population of 270,000 (2021). Four have no permanent British population. Akrotiri and Dhekelia (Cyprus) has a resident population of 12,000 Cypriots and 4,000 UK service personnel.

Aside from Gibraltar, the Antarctic Territories, and the Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus, they are all small islands or archipelagos. The following map shows their position.



Map adapted from 'Overseas Territories Security, Success and Sustainability', Foreign and Commonwealth Office, June 2012, Cm 8374, 21 November

The economies of the Territories are far smaller than the UK's US\$3.2 trillion one, though Gross Domestic Product (GDP) per person is higher in some Territories with substantial financial sectors, notably Bermuda and the

Strategic Command, Overseas bases in focus: Cyprus, 9 February 2021. All sources in this section accessed 16 December 2022.

Cayman Islands (being US\$127,000 and US\$99,000, respectively, in 2021 compared to US\$47,000 in the UK). 2

For some Territories, such as Pitcairn and St Helena, their isolated position creates additional challenges for accessing markets and services. This makes their sustainability as island economies difficult to achieve. Due to their distance from the UK, the UK and EU are often not their dominant trading partners. For those in the Caribbean, for example, the US is more important.³

The below table provides headline statistics on the economies, population, and main industries of the ten inhabited Overseas Territories.

Headline statistics for the ten inhabited Territories					
	• Population: 16,000 (2021)				
	• Land area: 90km²				
Anguilla	Gross Domestic Product (GDP): US\$288 million (2021)				
Anguitta	• GDP per person: US\$18,300 (2021)				
	 Main industries: Tourism represents 80% of GDP once all direct and indirect impacts are included (2017 data).⁴ 				
	Population: 64,000 (2021). The second largest OT.				
	Land area: 54km²				
Bermuda	GDP: US\$8,150 million (2021)				
Бетници	• GDP per person: US\$127,000 (2021). The highest among the OTs.				
	• Main industries: International business (28% of GDP), real estate (15%), financial and insurance activities (14%) (2021). ⁵				
	• Population: 31,000 (2021)				
	• Land area: 150km²				
British	• GDP: US\$1,650 million (2021)				
Virgin Islands	• GDP per person: US\$53,100 (2021)				
istanas	 Main industries: Financial services (22% of Gross Value Added in 2014), accommodation and food (12%) and public administration (12%) and professional services (11%).⁶ 				

² UN Conference on Trade and Development, <u>Country profiles: UK</u>

³ See Commons Library, <u>Brexit and the OTs</u>, section 5 for their trading relationships

Government of Anguilla London Office, <u>Anguilla and Hurricane Irma</u>, <u>Recovery</u>, <u>resilience and prosperity</u> (PDF), 2017, p10

Government of Bermuda, Gross Domestic Product—2021

Gross Value Added is similar to GDP. Sourced from: Government of the Virgin Islands Statistics, Percentage contributions to GVA by economic activity, 2010-2014

•	Population: 68,000 (2021). The largest OT.			
•	Land area: 240km²			
Cayman •	GDP: US\$6,750 million (2021)			
Islands .	GDP per person: US\$99,000 (2021). The second highest among the OTs.			
•	Main industries: Financial and insurance services (34% of GDP in 2020), professional, scientific, and technical activities (15%) and real estate (9%).			
•	Population: 4,000 (2021)			
•	Land area: 12,170km²			
Falkland •	GDP: [Falklands Pound] £257 million (2020) or around US\$315 million			
Islands .	GDP per person: £79,900 (2020) or around US\$98,000			
•	Main industries: Fishing (60% of 2020 GDP), public administration and defence (13%) and wholesale and retail (10%).8			
•	Population: 33,000 (2021)			
•	Land area: 10km²			
Gibraltar	GDP: £2.4 billion (2020/21) or around US\$2.9 billion.			
•	GDP per person: £71,000 (2020/21) or US\$87,100.9			
•	Main industries: Financial services and gaming constitute 40% of GDP (2016).10			
•	Population: 4,000 (2021)			
•	Land area: 100km²			
•	GDP: US\$70 million (2021)			
Montserrat .	GDP per person: US\$15,800 (2021)			
•	Main industries: The public sector contributes the majority of GDP. There are small tourist and agriculture sectors. 11			
•	Population: 40 (2022)			
Ditarius	Land area: 47km²			
Pitcairn •	Main industries: These are small: Tourism, honey, agriculture, fishing, international sale of postage stamps, internet dominion registration. ¹²			

⁷ Government of the Cayman Islands Economics and Statistics Office, <u>Indicators: GDP</u>

⁸ Falkland Government, <u>National accounts 2010-2020</u>, February 2022, pp5-6, 10.

⁹ HM Government of Gibraltar, Other publications: GDP estimates

¹⁰ Supplementary written evidence: Government of Gibraltar, GLT0001, 13 December 2016

¹¹ Foreign, Commonwealth and Development Office (FCDO), <u>Montserrat financial aid 2022 to 2023</u>, April 2022, p3; FCDO correspondence, 27 September 2022

¹² FCDO, <u>Pitcairn financial aid 2021 to 2023: Business case and summary</u>, April 2021, p3

	• Population: 5,000 (2021)
St Helena, Ascension, and Tristan da Cunha	 Land area: 390km² GDP: US\$51.5 million (2020/21) GDP per person: US\$11,370 (2020/21) Main industries: Government (49% of GDP), finance and communication (16%), wholesale and retail trade (13%) (2020/21).¹³
Turks and Caicos Islands	 Population: 45,000 (2021) Land area: 950km² GDP: US\$1,060 million (2021) GDP per person: US\$23,500 (2021) Main industries: Wholesale and retail trade (44% of GDP), hotels and restaurants (25%), real estate, renting, business activities (10%) (2020).14

Sources (unless stated above): Populations: UN Population division, <u>Data portal: Population by sex</u>, accessed 16 December 2022 GDP statistics and land area: UN Conference on Trade and Development, <u>Country profiles</u>. Currency exchange rates as of June 2020: HMRC, <u>June 2020: Monthly exchange rates</u>.

Further reading on Territory economies

- <u>UN Conference on Trade and Development</u> (UNCTAD) contains economic profiles (GDP, key exports etc) for many of the larger OTs.
- Europa World Plus has information pages on each of the OTs, describing their recent history, economy, and political developments. Europa is accessible for parliamentary users via the <u>Commons Library catalogue</u>
- Department for International Trade, <u>Trade and investment factsheets</u>, regularly updated. Headline information on trade and exports.
- Commons Library, <u>Brexit and the UK's Overseas Territories</u> provides more on the economies of the Territories. This includes participation in trade agreements and trade with the UK and EU (section 5) and the financial and fishing sectors of some Territories (section 6).

The Territories also release statistics and economic briefings, though these can be ad-hoc.

St Helena Government, <u>The economy: Statistical bulletin No. 3, 2022</u>, March 2022

Government of the Turks and Caicos Islands, <u>Turks and Caicos Economy at a glance, 2020</u>

2 The UK's relationship to the Territories

2.1 Constitutional relationship

Have historic links to the UK

All the Overseas Territories (OTs) were once part of the British empire and are dependencies of the UK. They were formerly known as colonies, and dependent Territories.

The British Overseas Territories Act 2002 provided their present title. 15

Part of an undivided realm

Together with the United Kingdom and the Crown Dependencies of Jersey, Guernsey, and the Isle of Man, the 14 Overseas Territories form an undivided realm, where the British monarch is sovereign.

This means that the Territories have no separate international representation. The Crown is also responsible for appointing the Governor or Commissioner for each Territory.

The Territories are not constitutionally part of the UK and are separate constitutional units from each other and the wider realm. ¹⁶

The UK Government creates their constitutions

The constitutions for each OT are contained in an Order in Council or an Act of the UK Parliament. Orders in Council are <u>legal instruments that have the force of law</u>, and are made by the Crown through the Privy Council.¹⁷

The <u>Privy Council of the United Kingdom</u> is an advisory body to the monarch and its members are known as Privy Counsellors. While many Commonwealth

Overseas Territories Act 2002, section 1. Sources accessed December 2022.

¹⁶ I. Hendry and S. Dickson, British Overseas Territory law, 2018, p23

¹⁷ Privy Council Office, <u>Orders in Council</u>, accessed 29 March 2022

Realms (independent countries where the monarch is head of state) are represented on the Council, there is no direct representation for the OTs.¹⁸

For 12 of the 14 Territories, their constitutions are made under powers granted by UK Acts of Parliament. For two, Gibraltar and British Indian Ocean Territory, their constitutions are made under prerogative powers (ie. can be made by the Crown, with the advice of ministers, under common law).¹⁹

How are constitutions made and scrutinised?

The UK implements and consents to changes in Territory constitutions.

In 2012, the UK Government committed to "equipping each territory with a modern constitution" and said it expected their constitutions to continue to evolve. Its principles are for:

Powers [to be] devolved to the elected governments of the Territories to the maximum extent possible consistent with the UK retaining those powers necessary to discharge its sovereign responsibilities.

However, it went onto to say following a decade of constitutional change in many Territories, it was not the time for another round of amendments.²⁰

Most changes that have occurred have been suggested by OT Governments, with the UK seeking some form of popular consent (such as through a referendum or vote in a Territory's parliament) before changes are made.²¹

Recent constitutional changes have included the symbolic renaming of legislative assemblies, the addition of new bills of fundamental rights, and new commissions to improve judicial and financial oversight.

The UK has sometimes legislated without the consent of Territory Assemblies. In 2009, the <u>Turks and Caicos saw part of its constitution suspended</u> following a judicial commission of inquiry into alleged corruption. The 2011 Constitution of the Islands, which restored ministerial government and an elected House of Assembly, was largely imposed by the UK.²²

Following an UK-commissioned inquiry into alleged corruption in the British Virgin Islands, the UK also considered direct rule for the Territory in June 2022. If the UK judges that sufficient progress on reform is not made, direct rule will be imposed. Quarterly reviews are currently being conducted.²³

Paul F. Scott, "The Privy Council and the constitutional legacies of empire", Northern Ireland Legal Quarterly, Volume 71, 2020, p261-83, at p268

¹⁹ I. Hendry and S. Dickson, British OT law, 2018, pp15, 19, 30, 31

²⁰ Foreign & Commonwealth Office (FCO), <u>The Overseas Territories</u>, Cm 8374, 28 June 2012, p14

²¹ I. Hendry and S. Dickson, British OT law, 2018, pp30, 31

²² As above, p32 and Commons Library, <u>The Turks and Caicos Islands</u>, December 2012

²³ Commons Library, <u>The potential for direct rule in the British Virgin Islands</u>, August 2022

What role does the UK Parliament have in making or amending OT constitutions?

Hendry and Dickson's British Overseas Territories law (2018) states that the UK Parliament has limited powers to scrutinise the constitutions of the OTs. While those constitutions made under Acts of Parliament must be laid before Parliament, they do not require <u>affirmative resolution</u> (active approval) in either house.

For some territories, including St Helena, Ascension and Tristan da Cunha, Anguilla, the Cyprus Sovereign Base Areas of Akrotiri and Dhekelia, Gibraltar and the British Indian Ocean Territory, the Orders in Council granting constitutions do not have to be laid before Parliament at all.²⁴

However, since 2002 arrangements have been in place for most constitution orders to be seen in draft by the Commons Foreign Affairs Committee at least 28 sitting days before they are submitted to His Majesty in Council.²⁵

The UK Privy Council is the final court of appeal for the Territories

All the inhabited Territories have a court system established under their constitutions—this typically includes a magistrate's court, supreme court, and court of appeal. The exceptions are three Caribbean OTs (Anguilla, Montserrat, and the British Virgin Islands), who act under the Eastern Caribbean Supreme Court.

In the uninhabited Territories, their Governors have the power to establish local courts.

For all Territories, the judicial committee of the UK Privy Council is their final point of legal appeal. It has jurisdiction to review legislation passed by local legislatures (as well as that made by the Governor or any other polity), and the exercise of the Governor's functions detailed in their constitution.²⁶

The judicial functions of the Privy Council are exercised by a committee known as the Judicial Committee of the Privy Council (JCPC). The JCPC is the highest court of appeal for the OTs, as it is for many Commonwealth countries.

Five judges normally sit to hear Commonwealth appeals, and three for other matters. These judges are usually Justices of the UK Supreme Court, with which the JCPC shares many administrative functions. ²⁷

²⁴ I. Hendry and S. Dickson, British OT law, 2018, p20

²⁵ Foreign Affairs Committee, <u>Overseas Territories</u>, HC 147, 18 June 2008, para 29

²⁶ Commons Library, <u>The separation of powers in the UK's OTs</u>, section 4

²⁷ Privy Council Office, "Committees"

UK Government can legislate for the OTs

Both the UK Parliament and Government can legislate for the Territories. In the case of the UK Government, in addition to changing their constitutions, this can take two main forms:

- Legislating through an Order in Council made by the UK Privy Council.

 An example of this is in 2000, when the Government legislated via Order to decriminalise consensual homosexual relations between adults in private in five OTs (PDF).²⁸
- Instructing a Governor to pass, reject or amend legislation, in the Territories in which they have this power.²⁹

The UK Government has said that on issues of devolved policy, such as samesex marriage, it believes "it should be for the Territories to decide and legislate on."³⁰ The UK OT Association, which is the collective voice of the inhabited Territories, also argues the power "should be used in only extreme circumstances."³¹

Parliament can also legislate for the OTs

As the Territories form an undivided realm with the UK, the UK Parliament may legislate for the Territories. As the UK Government's 2012 White Paper, <u>The Overseas Territories</u>, notes:

As a matter of constitutional law the UK Parliament has unlimited power to legislate for the Territories. 32

This builds on a 1969 Privy Council case dealing with UK sovereignty in Southern Rhodesia (now Zimbabwe), where the Council said that:

So far as they are aware it has never been doubted that, when a colony is acquired or annexed, following on conquest or settlement, the Sovereignty of the United Kingdom Parliament extends to that colony, and its powers over that colony are the same as its powers in the United Kingdom.³³

²⁸ Caribbean Territories (Criminal Order) 2000 (PDF)

²⁹ See Commons Library, <u>The UK OTs and their Governors</u>, section 4, on instructions and making law

Government response to the Foreign Affairs Committee, Global Britain and the OTs: Resetting the relationship, 29 April 2019

³¹ UK Overseas Territory Association, Statement: Respect for local democracy in the OTs (PDF)

³² FCO, <u>The OTs</u>, Cm 8374, 28 June 2012, p14

Madzimbamuto v Lardner-Burke and George [1969] 1 AC 645 (PC), at para 722; Hendry and Dickson, British OT law, 2018, pp22-3

Primary legislation is rarely extended to the OTs, however. Their legislation is also not invalid for inconsistency with UK law. This allows them considerable autonomy.³⁴

Recent example of the UK Parliament legislating

A recent example of UK legislation being extended to the OTs is the <u>Sanctions</u> and <u>Anti-Money Laundering Act 2018</u>. This permits the Foreign Secretary to impose upon an OT, via Orders in Council, publicly accessible registers of beneficial ownership³⁵ should the Territories fail to establish such registers themselves by the end of 2020 (the deadline is now 2023).³⁶

Several Territory Governments raised questions about the level of engagement between the UK Parliament and themselves on the legislation. In 2018, the Cayman Islands' Government recommended:

That sufficient safeguards be put in place immediately to protect the Cayman Islands, and indeed the wider British Overseas Territory family, from future constitutional overreach by the Houses of Parliament, and that these safeguards be established in partnership with the wishes of our governments.³⁷

Gibraltar, Anguilla, Bermuda, British Virgin Islands, and Montserrat all raised concerns about the legislation. The UK Prime Minister and Foreign Office Minister were in contact with the concerned Territories.³⁸

In response to criticism of UK overreach, the Government stresses that although it is willing to discuss reform with the OT Governments, it broadly sees the current constitutional balance as the correct one.³⁹

2.2 British citizenship

Under the British Nationality Act 1981, citizens of the then-Dependent Territories had British Dependent Territory citizenship and did not have the right to abode in the UK. Notable exceptions were those in Gibraltar, where citizens had the right to apply for UK citizenship, and the Falklands, where British citizenship was granted in 1983 (following the Falklands War in 1982).⁴⁰

³⁴ Hendry and Dickson, British OT law, 2018, p22

[&]quot;Beneficial ownership" refers to the person who ultimately owns or controls an asset, such as property or a company. This may differ from the direct legal owner, who may not control or benefit from that asset. A register allows law enforcement agencies, for example, to check who ultimately owns an asset: see Commons Library, Registers of Beneficial ownership

Sanctions and Anti-Money Laundering Act 2018, Section 63(3)

Written evidence from Government of Cayman Islands, OST0109, October 2018

³⁸ PQ HL9678 [<u>British OTs</u>], 2 August 2018

⁹ Written evidence from the Foreign and Commonwealth Office, OTS0103, September 2018, para 26

⁴⁰ British Overseas Territories Act 2002: Explanatory notes, paras 5-6

Following the British Overseas Territories Act 2002, individuals in the Territories automatically became a British citizen if their parent was British or was a British Overseas Territory citizen settled in a qualifying Territory.⁴¹

All Territories qualify except the Sovereign Base Areas in Cyprus. This is because the UK's connection is primarily for defence purposes.⁴²

In response to a gap in this legislation, which meant that because women could not pass on citizenship at the time of their birth, or because their parents were not married, some children of British Overseas Territories citizens were unable to acquire the same status, the Nationality and Borders Act 2022 includes an amending provision to previous legislation.⁴³

The legislation also provides a citizenship route for the former inhabitants of the British Indian Ocean Territory, also known as Chagossians, ⁴⁴ who were removed from the Territory by the UK Government between 1968 and 1973. ⁴⁵

2.3 The UK's responsibility for defence

The UK is responsible for the defence and security of all the Territories and has committed to help protect them against international terrorism, organised crime, and natural disasters.⁴⁶

The Government's 2021 Integrated review of defence, security, development, and foreign policy restates a commit to defend the Territories as the "first responsibility of the Government."

Under the Antarctic Treaty of 1959, all military activity is prohibited in Antarctica. This means there can be no UK military presence in the British Antarctic Territory. 48

OTs act as strategic bases

Some Territories also function as strategic locations for UK military action and bases. The below have permanent military forces:

⁴¹ Gov.UK, <u>Types of British nationality: British OT citizen</u>

⁴² British Overseas Territories Act 2002, Section 3

⁴³ Nationality and Borders Act 2022, Part 1

⁴⁴ Home Office, <u>Nationality and Borders Bill: Chagossians nationality factsheet</u>, November 2022

⁴⁵ See Commons Library, <u>BIOT: UK to negotiate sovereignty 2022/23</u>, section 3

FCO, <u>The Overseas Territories</u>, Cm 8374, 28 June 2012, section 1

⁴⁷ Cabinet Office, <u>Global Britain in a competitive age</u>, updated 2 July 2021

⁴⁸ British Antarctic Survey, <u>The Antarctic Treaty</u>, Article I

 Falklands: Personnel from the RAF, Royal Navy and Army are based on the Territory to maintain security in the Islands and in the neighbouring South Georgia & the South Sandwich Islands Territory.

Ascension Island serves as a staging post for flights between the UK and the Falklands.⁵⁰

- **Gibraltar:** All three services, including a locally raised regiment, have a presence in Gibraltar.⁵¹
- The British Indian Ocean Territory: A joint US-UK base has been situated on its largest Island, Diego Garcia, since the 1960s. It has facilitated operations in the Middle East and was originally developed to counter Soviet and Chinese influence in the Indian Ocean. 52
- Sovereign Base Areas, Cyprus: Akrotiri, Episkopi, Dhekelia and Ayios Nikolaos has Army and Navy units stationed there and it supports visiting Royal Navy ships and operations in the Middle East.⁵³

Other military presence and engagement

For the Caribbean Territories, the Royal Navy maintains a Royal Fleet Auxiliary ship to respond to hurricanes from June to November.⁵⁴

Some Territories also have small defence units to provide disaster relief and security, including Bermuda, the Cayman Islands, Falklands, Montserrat, and the Turks and Caicos Islands. ⁵⁵ Gibraltar has an army regiment. ⁵⁶

A recent example of deployment is a Royal Navy ship to the Turks and Caicos in the Autumn of 2022 to help the Territory's response to a rising number of homicides through providing surveillance and wider security.⁵⁷

The Ministry of Defence's <u>Overseas Territories: The Ministry of Defence</u> <u>contribution</u>, 2012, provides more on the Department's support (eg, natural disasters and UK interests such as maintaining freedom of navigation).

⁴⁹ What is the British military presence on the Falkland Islands?, The Independent (online), 14 June

⁵⁰ RAF, <u>Ascension Island Base</u>

⁵¹ Ministry of Defence, <u>OTs: The Ministry of Defence contribution</u>, 2012, p7

⁵² Commons Library, <u>BIOT: UK to negotiate sovereignty in 2022/23</u>, pp8, 22

⁵³ Strategic Command, Overseas bases in focus: Cyprus, 9 February 2021

Government response to the Foreign Affairs Committee report on the UK's response to hurricanes in its OTs, 9 May 2018, section 2 and Royal Navy, Royal Navy ship completes 2022 deployment in the Caribbean, 20 December 2022

Government of Bermuda, Royal Bermuda Regiment; Government of the Cayman Islands, The Cayman Islands Regiment; Falkland Islands Government, Falkland Islands Defence Force; Government of Montserrat, Five Royal Monserrat Defence Force, March 2022 and The Government of the Turks and Caicos Islands, Turks and Caicos Regiment recruited, January 2021

⁵⁶ Ministry of Defence, <u>The Royal Gibraltar Regiment</u>

⁵⁷ Commons Library, <u>Crime in the Turks and Caicos 2022</u>

Responsibilities of UK-appointed Governors

All Territory Governors have a reserved responsibility for defence, declaring states of emergency, and, often, responsibility for international security and defence. In the case of the Sovereign Base Areas in Cyprus, the Administrator is also Commander British Forces Cyprus, combining the two roles.

In Bermuda and Montserrat, the Governor can delegate to a local minister responsibility for defence, with the approval of a UK Secretary of State.⁵⁸

In the Falklands, the Governor must consult with the Commander British Forces South Atlantic before exercising any defence-related functions and act in accordance with their advice, and the same requirement is in place for the Commissioner of South Georgia & The South Sandwich Islands. ⁵⁹

2.4 Responsibility in foreign affairs

The UK represents Territories internationally

As they are part of an undivided realm where the monarch is sovereign, the Territories have no separate international representation, including in the Commonwealth. This role is instead performed by the UK.⁶⁰

Aside from in some specific contexts, the OTs are not members of international organisations. For example, while Territory representatives may attend the Commonwealth as observers or international climate conferences, they can do so only as part of the UK delegation.⁶¹

Neither were any Territories aside from Gibraltar members of the European Union while the UK was a member. Instead, like other European territories overseas, they were part of an overseas territory association. This gave them access to certain funding and the single market.⁶²

In its 2012 White Paper on the Territories, the UK Government committed to:

• Help the Territories strengthen their links with the Commonwealth, small island states, and regional groups such as the Caribbean Community

Bermuda Constitution Order 1968, Schedule 2, Section 62 (PDF) and Montserrat Constitution Order 2010, Part III, Section 39

⁵⁹ Falkland Islands Constitution Order 2008, Schedule, Chapter V, Section 66 and <u>The South Georgia</u> and South Sandwich Islands Order 1985, Section 5 (PDF)

⁶⁰ FCO, <u>The UK OTs</u>, June 2012, Cm 8374, p14

HC Deb, 9 March 2020, c88; PQ 87779 [British OTs: UN Climate Change Convention and UN], 15 November 2022

⁶² For more on Territory relations with the EU, see Commons Library, <u>Brexit and the OTs</u>, section 2.1

(CARICOM), which all the Caribbean Territories and Bermuda are members of.

Make "every effort" to consult on relevant issues in international fora.⁶³

The Commonwealth and the Overseas Territories

The OTs are not members of the Commonwealth in their own right but can attend as observers and contribute to UK preparations. They can participate in several Commonwealth-related programmes, including the Commonwealth Parliamentary Association and the Commonwealth Games.⁶⁴

In 2008 and 2012, the Commons Foreign Affairs Committee recommended that the Government consider wider participation of the Territories in Commonwealth conferences. ⁶⁵ The Government responded that it would support their participation but emphasised that in 2007 the Commonwealth reiterated that equal and full membership was not possible for them as the Commonwealth is an association of sovereign member states. ⁶⁶

Extending treaties and conventions

Treaty-making is a royal prerogative, <u>meaning that it is exercised by the Crown following ministerial advice</u>. It is ultimately for the UK Government to determine whether to ratify treaties and extend them to the OTs.⁶⁷

The Foreign, Commonwealth and Development Office (FCDO) <u>have issued</u> <u>guidance</u> which states that generally this is done with the consent of the Territory Governments and only once the UK is satisfied the OT can meet any treaty obligations. ⁶⁸ This is because the UK is ultimately responsible for the Territory's adherence and would be required to answer any case in an international court or a complaint from another treaty state. ⁶⁹

While it will not compel OTs to sign, the UK Government <u>encourages them to</u> sign treaties relating to tax and transparency issues and human rights.⁷⁰

⁶³ FCO, <u>The UK OTs</u>, June 2012, Cm 8374, pp79-80, 83

⁶⁴ Commonwealth Parliamentary Association, <u>UK OTs;</u> Commonwealth Sport, <u>Teams & countries</u>

Foreign Affairs Committee, <u>The role and future of the Commonwealth</u>, HC 114, November 2012, paras 123-44

Government response to the Foreign Affairs Committee: The role and future of the Commonwealth,
 22 January 2013, para 89

⁶⁷ Commons Library, <u>The royal prerogative</u>

⁶⁸ FCDO, <u>Guidance on extension of Treaties to the OTs</u>, November 2022

⁶⁹ I. Hendry and Dickson, British OT law, 2018, p280

FCDO, <u>Guidelines on extension of treaties to Overseas Territories</u>, 18 November 2022, section 1 (b) and FCO, <u>The OTs</u>, Cm8374, November 2012, p51

Powers of Governors in external affairs

Generally, Governors have reserved powers to manage foreign and external affairs of the Territories. However, some Territory constitutions provide powers to local ministers and governments to manage external affairs within their immediate region.

In the British Virgin Islands and Cayman Islands, for example, the Governor should devolve responsibility over the Territory's relationship with regional Caribbean organisations, the European Union, and on similar topics.⁷¹

Sections 3 and 5 of the Library briefing, <u>UK Overseas Territories and their Governors</u>, provide more detail.

2.5 Financial responsibility of the UK

UK aid budget

Under the Charter of the United Nations, the UK has responsibility to advance the political, economic, and social development of the Territories.⁷²

In its 2012 White Paper on the OTs, the UK Government <u>set out intentions for</u> the OTs to be "freer from financial dependence on Whitehall" but also to meet the needs of those where "financial self-sufficiency is not possible."⁷³

It described these Territories as <u>"a first call on the aid budget."</u> Most are ineligible for UK aid due to their high levels of income or because they are uninhabited.⁷⁴ Only three are eligible:

- Montserrat
- St Helena, and Tristan da Cunha (but not Ascension, which forms part of the same Territory but has no permanent population)
- The Pitcairn Islands

Other OTs may become eligible in the event of a natural disaster that leads to a decline in their GDP.⁷⁵

The Virgin Islands Constitution Order 2007, Chapter 4, Article 60 and The Cayman Islands Constitution Order 2009, Schedule 2, Section 55 (PDF)

⁷² <u>UN Charter, Chapter XI—Declaration regarding non-self-governing territories, Article 73</u>

FCO, The UK OTs, Cm 8374, June 2012, p17

FCDO, 2021 UK-OT Joint Ministerial Council 2021, 18 November 2021, 'Economic resilience.'

Department for International Development (DFID), <u>UK secures change to international aid rules</u>, 1 November 2018

While UK aid must usually be spent with the aim of reducing poverty, there is an exemption in place for the Territories. He id id focuses on strengthening OT economies, reducing their dependency due to their remote locations, and supporting skills development to fill gaps in their workforce.

Further reading on UK aid to the Territories

- Commons Library, <u>Brexit and the UK's OTs</u>, sections 3 and 4 narrate EU and UK aid and financial assistance to the Territories.
- Commons Library, <u>The UK OTs: Climate change and biodiversity</u>, section 3 describes UK environmental funding to the Territories.
- Foreign, Commonwealth and Development Office (FCDO) Development Tracker pages on <u>Pitcairn</u>, <u>St Helena</u>, <u>Tristan da Cunha</u> and <u>Montserrat</u> provide plans and related spending for the three Territories.
- Department for International Development, <u>Profile of development work:</u> <u>OTs</u>, September 2020 provides a two-page summary of aid efforts.
- UK Government, <u>Conflict</u>, <u>Security and Stability Fund</u> (CSSF). The UK also supports several Territories through the CSSF on issues such as security, immigration, the environment, and governance issues.

2.6 Territory borrowing

Debts are primarily a responsibility of OT governments

As the government of each Territory is distinct from the UK Government, their debt liabilities are the legal responsibility of the respective government. This includes cases where the Territory has undertaken borrowing with the approval of the UK Government.

However, there is nothing to stop the UK Government voluntarily adopting liability.⁷⁸

The FCDO carries the risk of contingent liabilities in the Territories that are not in receipt of UK aid (which could be realised, for example, in the case of a natural disaster or global crisis). ⁷⁹ In 2010, the Foreign Office explained (bold added):

⁷⁶ International Development Act 2002, section 2, as amended

⁷⁷ DFID, <u>UK secures change to international aid rules</u>, 1 November 2018

Hendry and Dickson, British OT Law, 2018, p246

⁷⁹ HM Treasury, <u>HM treasury support for the UK's OTs</u> (PDF), April 2012, p2

Contingent liabilities are defined as liabilities that may give rise to future financial commitments. For overseas territory Governments, these can include, but are not limited to, healthcare schemes, pension arrangements and national insurance schemes.

Overseas territory debts are actual liabilities of overseas territory Governments. The UK has agreed with certain overseas territory Governments that their debt obligations will be limited, in the interest of sustainable public financial management and good governance.⁸⁰

Neither does the UK Government have a guarantor role when OTs borrow.81

Fiscal policies are determined locally

In most Territories, locally elected governments and parliaments are responsible for their own fiscal policy, including revenue and borrowing.

The major exceptions are the uninhabited Territories and those with smaller populations (eg, St Helena's Governor is responsible for financial matters).82

UK Government expectations

In its <u>2012 White Paper on the OTs</u>, the UK Government said it expected Territories to manage their finances sustainability and to apply some international standards, including limits on public sector borrowing.⁸³

The UK has agreed borrowing limits with some OTs

Some Territory governments and the UK have agreed borrowing guidelines.84

All these agreements state that a Territory's government will only borrow for capital expenditure if it is confident that it can meet the additional debt servicing costs from projected increases in revenue or from elsewhere. They also contain targets for the level of borrowing.

In the event an OT breaks these limits, or when the UK taxpayer may be called upon for support, the UK will require some assurance measures to be made to ensure the Territory's public finances remain, or become, sustainable.⁸⁵

Fiscal framework agreements include the below:

⁸⁰ HC Deb, 14 Dec 2010, cWA175

⁸¹ PQ 144845 [Debts: British OTs], 30 March 2022

⁸² The St Helena, Ascension, and Tristan da Cunha Constitution Order 2009, Schedule, Chapter 1, section 44

⁸³ FCO, <u>UK OTs</u>, Cm 8374, June 2012, p58

⁸⁴ As above, p59

PQ 13574 [Anguilla: Politics and government], 4 November 2015; HC Deb, 17 December 2013, WA169

- Anguilla: Signed 2013. Puts limits on capital borrowing. 86
- **British Virgin Islands:** Signed 2012. Includes both debt limits and borrowing for capital expenditure.⁸⁷
- Cayman Islands: The 2009 constitution says government borrowing, interest, and debt repayments may not exceed levels set out in law and with the agreement of the UK.⁸⁸ In 2011 it also agreed a Framework for Fiscal Responsibility with the UK Government.⁸⁹
- **Falkland Islands:** The 2013 Framework includes appraisal requirements for capital projects and limits on borrowing for capital projects. 90
- Turks and Caicos Islands: The 2013 agreement includes a debt ceiling.⁹¹
 Its constitution also requires its government to design a fiscal framework which has limits on public debt, servicing costs, and reserves.⁹²

Government of Anguilla, <u>Framework for fiscal sustainability and development</u> (PDF), 2013, para 34 and Annex D

M. Benwell et al, <u>"Covid-19 and the British OTs: A comparative view,"</u> The International Journal of Commonwealth Affairs, Vol. 110, 2021, pp159-70, at p164

⁸⁸ The Cayman Islands Constitution Order 2009, as amended, Section 113

⁸⁹ FCO, <u>Foreign Office and Cayman Islands sign new fiscal responsibility framework</u>, 23 November 2011

Falkland Islands Legislative Assembly, Executive Council: Economic and fiscal framework, 208/13, 25 September 2013

Governor's Office Waterloo Grand Turk, <u>Statement of governance principles issued to TCI Government</u>, 8 May 2013; PQ HL852 [<u>Turks and Caicos Islands</u>], 21 July 2014

⁹² The Turks and Caicos Islands Constitution Order 2011, Section 109

3 Territory constitutions: An overview

Each of the Territories has its own constitution and they are administered separately to one another. Unlike the UK, their constitutions are drafted as single laws or instruments (with some later amendments).

3.1 Powers of Governors and Legislatures

For the uninhabited Territories, a UK-appointed Commissioner holds executive and law-making power.

In the inhabited Territories, generally the UK is responsible for their defence, security and supporting good governance, while taxation, the environment and other domestic issues are devolved to elected governments and assemblies. Some Territories have councils or committees instead of parliaments, with varying powers and levels of independence from the executive, and most have a ministerial system of government.

The following table provides a summary of the makeup of Territory parliaments and their powers and that of the Governor/Commissioner. It shows that:

- All Territory assemblies/parliaments have the power to draft and pass legislation, though the Governor's signature is required for bills to become law. The exception is the Pitcairn Islands and the Tristan da Cunha and Ascension Island Councils (which form part of the same OT as St Helena) that have small populations.
- In all but Gibraltar and the lower House of the Bermudian Parliament, at least one member of each OT parliament is appointed by the executive. These are typically the Attorney General, the Deputy Governor or Financial Secretary.
- Only three Territories do not allow the Governor to make laws:

 Bermuda, Montserrat, and St Helena (though they can in Ascension and Tristan da Cunha, which form part of the same Overseas Territory with St Helena).

In only some can governors make law for "good government" and "order," meaning they are relatively uninhibited by requirements that laws must have first been introduced into a parliament/assembly, limited to the governor's areas of responsibility, or have agreement from the UK or local government (only one of these may apply).

	Executive and Legislative branches (Minimum size for Cabinets)	Legislature: Size and members appointed by the Executive	Legislature: Power to make laws? (with Governor's signature)	Governor: Power to reject laws?	Governor: Power to make law for "good government" and "order"?
Anguilla	House of AssemblyPremier & 3 MinistersGovernor	2*/13	✓	✓	✓
Bermuda	House of Assembly & SenatePrime Minister & 6 MinistersGovernor	0/36 (House) 3/11 (Senate)^	✓	✓	
British Antarctic Territory	UninhabitedUK Commissioner exercises responsibility	-	-	✓	✓
British Indian Ocean Territory	UninhabitedUK Commissioner exercises responsibility	-	-	✓	✓
British Virgin Islands	House of AssemblyPremier & 4 MinistersGovernor	1/15²	✓	✓	
Cayman Islands	Legislative AssemblyPremier & 7 MinistersGovernor	2/212	✓	√ °	
Falkland Islands	Legislative AssemblyNo Ministers: Portfolio systemGovernor	2/11²	✓	✓	
Gibraltar	ParliamentChief Minister & 4 MinistersGovernor	0/18	✓	✓	

	Executive and Legislative branches (Minimum size for Cabinets, excluding appointed members)	Legislature: Size and members appointed by the Executive	Legislature: Power to make laws? (with Governor's signature)	Governor: Power to reject laws?	Governor: Power to make law for "good government" and "order"?
Montserrat	Legislative AssemblyPremier & 3 MinistersGovernor	2*/11	✓	✓	
Pitcairn	Island CouncilMayor & no ministerial systemGovernor	3/10	X	✓	✓
South Georgia & the South Sandwich Islands	Uninhabited.UK Commissioner exercises responsibility.	-	-	✓	✓
Sovereign Base Areas of Akrotiri and Dhekelia	No permanent UK population.UK Commissioner exercises responsibility	-	-	✓	✓
St Helena¹	Legislative CouncilChief Minister & 5 MinistersGovernor	1/13	✓	✓	
Turks and Caicos Islands	House of AssemblyPremier & 6 MinistersGovernor	5*/21² ^	✓	✓	✓

Notes:

Sources: Commons Library, The UK OTs and their governors and The separation of powers in the UK's OTs

¹ St Helena, Ascension and Tristan Da Cunha form a single OT, but each have their own constitutional arrangements. The table covers St Helena only.

^{*}Appointed members have the right to vote in the legislature: This is only the case for 4 of the 5 members in the Turks and Caicos Islands

[^] For Bermuda, all members of the Senate are appointed formally by the Governor but 5 on the recommendation of the Premier, 3 from the official opposition and 3 independently selected by the Governor. For the Turks and Caicos, one of those appointed is the Attorney General (with no vote), two are appointed by the Governor at their discretion and the remaining two by the Governor following the advice of the Premier

² This is the maximum size of the legislature, assuming the Speaker is elected from outside the house—otherwise they are smaller by one member

[°] Only on issues that are reserved for the Governor

Further reading on Territory constitutions

- Commons Library, <u>The UK OTs and their governors</u>. This provides more on how Governors and Commissioners can make law and policy in each OT.
- Commons Library, <u>The separation of powers in the UK's OTs</u>, details the role of the three branches of government (executive, legislative and judicial) in each of the Overseas Territories.

3.2 Provisions for human rights

The UK Government expects Territory Governments to meet the "same high standards as the UK Government" in human rights. It cites the inclusion of bills of rights or human rights chapters in Territory constitutions as an example of this commitment.⁹³

All ten inhabited Territories have constitutional protections against discrimination on the grounds of some protected characteristics, such as race and ethnicity. All locally made laws must adhere to these protections.

Analysis by Hendry and Dickson in their book British OT law suggest that older constitutions such as Bermuda (made in 1968) and Anguilla (made in 1982, though subsequently amended), offer less extensive protections than more recent ones. ⁹⁴ However, local legislation, such as Bermuda's Human Rights Act 1981 can supplement these rights. ⁹⁵

In 2010, the UK Government said that since 1999 every new constitution, at a minimum, reflects the rights set out in the European Convention on Human Rights and International Covenant on Civil and Political Rights. 96

Some Territories, including Bermuda, The Cayman Islands, Turks and Caicos Islands, Monserrat, and the British Virgin Islands, have human rights commissions. These are established either under their constitutions or through local legislation.⁹⁷

⁹³ FCO, <u>The OTs</u>, 2012, Cm 8374, pp14, 52

⁹⁴ Hendry and Dickson, British OT law, 2018, pp163, 165

⁹⁵ Bermuda Human Rights Commission, <u>Your rights</u>, accessed 11 April 2022

⁹⁶ HC Deb, British Overseas Territory: Equality, 17 June 2010, c516W

⁹⁷ Hendry and Dickson, British OT law, 2018, p181

Further reading on equalities topics in the OTs

- Commons Library, <u>Same-sex marriage in the UK's OTs</u>, April 2022. The legalisation of same-sex marriages has been a point of controversy, most recently in the Caribbean Territories. This Insight explores the issue.
- P. Clegg, F. Dunwoodie-Stirton and P. Cole, <u>Human rights in the overseas Territories: In policy but not practice?</u>, Commonwealth and Comparative Politics, Volume 54, 2016, pp46-68. Overview of constitutional protections, UK efforts to promote human rights, and a discussion of LGBT+ rights.
- NJ Barker, Lwouldn't get unduly excited about it:" The impact of the ECHR on the British Overseas Territories: A case study of LGBT rights in Bermuda, Public Law, Volume 4, 2016, pp595-612

3.3 The right to vote in the Territories

All inhabited Territories have their own parliament, assembly, or council, though their powers vary. Their membership is determined by an electorate.

While British citizenship is determined in UK legislation, local immigration and "belonger status" is determined locally by Territory constitutions or laws. In most Territories, belonger status is required into order to register to vote.

In 2019, the Commons Foreign Affairs Committee raised concerns that laws governing "belonger" status denies many legally resident OT citizens the right to vote and hold elected office. 98 The below sets out the situation.

What is "belonger?" status

"Belongership" or "belonger" status is not present in all Territories, and is a status determined by local legislation or the constitution.

No such status has been established in the uninhabited Territories of the British Antarctic Territory, South Georgia and the South Sandwich Islands, or the Sovereign Base Areas. Ascension also has no status, while in Pitcairn and Tristan da Cunha legislation focuses on the right to abode. ⁹⁹

Belonger status is separate to nationality or citizenship as no Territory has this. Hendry and Dickson in their book on British OT law describe it as the equivalent to a "local citizenship of an Overseas Territory," being granted to

Foreign Affairs Committee, <u>Global Britain and the British OTs: Resetting the relationship</u>, February 2019 para 67

⁹⁹ Hendry and Dickson, British OT law, 2018, p220

those judged to have close enough connections to "belong" to the OT. They set out two broad patterns of belonger status:

- 1) Being judged "sufficiently indigenous to the Territory."
- 2) Granted the status by residing for a certain period or being married to a belonger.¹⁰⁰

Debate on reform in the UK

The UK Government has noted that the size of the electorate in some Territories is small compared to their populations and argues that "people who have made their permanent home in the OTs should be able to vote." However, it also recognises that Territories often want to "maintain their cohesion" through regulating immigration and access to certain political and economic rights (eg the right to buy property or vote). ¹⁰¹

In 2019, the Commons Foreign Affairs Committee considered the constitutions of Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, the Falklands Islands, Gibraltar, Montserrat and the Turks and Caicos, which have a form of belongership. The Committee argued that:

Belongership and its equivalents are wrong. While we recognise that the OTs are small communities with unique cultural identities, we do not accept that there is any justification to deny legally-resident British Overseas Territory and UK citizens the right to vote and to hold elected office. 102

In response to the Committee, the then Foreign & Commonwealth Office said it was a matter for local governments, though it understood the committee's position:

The UK Government understands the committee's concerns and continues to impress upon OT governments the importance of allowing people who have made their permanent home in the territories the ability to vote and engage fully in the community, but recognises the desire of island communities to maintain their cohesion [...]

In the spirit of a relationship based upon partnership, we will continue to support and encourage consistent and open political engagement on belongership and its territory-specific equivalents, whilst respecting the fact that immigration decisions are primarily a matter for OT governments.¹⁰³

¹⁰⁰ Hendry and Dickson, British OT law, 2018, p221

FCO, Written evidence, OSTS0103, September 2018, para 44

Foreign Affairs Committee, <u>Global Britain and the British OTs: Resetting the relationship</u>, February 2019, para 67

¹⁰³ FCO, <u>Response to Global Britain and the OTs</u>, April 2019, para 9

Position in individual Territories

Most Territory Governments and politicians were critical of the Committee's recommendation to widen their franchises. The below provides a summary of belonger status, which is primarily gained by either descent or by grant.

Anguilla

- Belonger status: Open to those born to parents in Anguilla or belongers of Anguilla, by virtue of marriage of at least three years, or 15 years residence in Anguilla.¹⁰⁴
- **Voter registration:** Open to belongers and a British OT citizen born in Anguilla.¹⁰⁵
- **Size of the electorate:** The number of belongers as a proportion of the population is uncertain. In the 2020 elections, 11,951 people were registered to vote (though up to 40% lived in other Territories or islands, according to the Commonwealth Parliamentary Association (CPA). Anguilla's population is around 16,000.

Bermuda

- **Bermudian status:** Can be applied for if an individual meets one of several qualifications, which may include: Living in Bermuda for at least five years, being of good conduct and character, or being married to a Bermudian for at least two years. 107
- **Voter registration**: A individual may only register if they have Bermudian status. ¹⁰⁸
- Size of the electorate: The number with such status is uncertain. For the 2020 general election, the total registered electorate was 46,000.¹⁰⁹ Around 54,000 people are aged over 18 in Bermuda (based on the 2016 census).¹¹⁰
- Reaction to the Committee's 2019 report: Premier David Burt said non-Bermudians did not have the right to determine the direction of the Territory and he would "strenuously resist" any changes. 111

¹⁰⁴ The Government of Anguilla, <u>Belonger status</u>

¹⁰⁵ Anguilla Central Registration Office, <u>How do I register to vote?</u>

¹⁰⁶ CPA British Islands and Mediterranean Region (BIMR), Anguilla general election (PDF), June 2020, pp9, 10

¹⁰⁷ Government of Bermuda, <u>Apply for Bermudian status</u>

¹⁰⁸ Bermuda Parliamentary Register, FAQs

¹⁰⁹ Bermuda Parliamentary Register, October 2020 general election results

¹¹⁰ Government of Bermuda, <u>The Bermuda census: 2016 census preliminary infographic</u>

^{111 &}lt;u>UK report calls for the expat vote</u>, The Royal Gazette [online], 22 February 2019

British Virgin Islands (BVI)

- **Belonger status:** Following the UK-initiated Commission of Inquiry report into alleged corruption in 2022, the new BVI Government has pledged to reduce the residency threshold for belonger status from 20 to 10 years. 112
- Voter registration: Voters must have belonger status.
- Size of the electorate: In 2019, the CPA estimated that around 34% of the population had belonger status.¹¹⁴
- Position of the new BVI Government: In July 2022, the new Premier, Dr Natalio Wheatley, said belonger status "remains a privilege" and "sound knowledge and history of the Virgin Islands and your social and civic contribution to society are all very important factors."

Cayman Islands

- Belonger status: Among other avenues, the children or partners of a Caymanian born in the Cayman Islands, a British Overseas Territories Citizen who has been legally resident for at least 15 years, or a citizen after at least five years after the receipt of the certificate of naturalisation or registration, can apply.¹¹⁶
- **Voter registration:** Individuals must have Caymanian status or be Caymanian born. 117
- Size of the electorate: In 2021, the CPA estimated that those holding Caymanian status were around 34,000 of the 65,000 population. 118
- Position of Cayman Islands Government: In a previous report in 2017, the CPA recommended that any review of its constitution should take account of the "continued reasonableness of the pertinent provisions, particularly the duration of residence requirement" and said many long-term residents felt disenfranchised.¹¹⁹

In 2019, the former Premier of the Cayman Island, Alden McLaughlin, said in response to the Foreign Affairs Committee report that he would "lead the charge for independence" if it was advanced and imposition of change would be an act of "neo-colonialism." 120

Government of the Virgin Islands, <u>Quarterly review implementation of the Commission of Inquiry recommendations</u>, 4 October 2022, section 3e

¹¹³ Government of the Virgin Islands, <u>Application for register as a voter</u>

¹¹⁴ CPA BIMR, Election observer mission: BVI (PDF), 2019, p4

Belongership is a privilege not a right—Premier, BVI News [online], 25 July 2022

¹¹⁶ CPA BIMR, <u>Cayman Islands General Election 2021</u> (PDF), 2021, p9

¹¹⁷ Cayman Elections Office, How to register

¹¹⁸ CPA BIMR, <u>Cayman Islands General Election 2021</u> (PDF), 2021, p9

¹¹⁹ CPA BIMR, Cayman Islands General Election 2017 (PDF), pp5, 10

Premier dismisses FAC report on non-legal rights, Cayman News Service [online], 22 February 2019

Falkland Islands

- Falkland Islands status: Those eligible for Falkland Island status include those born to those with such status or those that have been resident for at least seven years. 121
- Voter registration: Only those with Falkland Islands status are eligible.
- Size of the electorate: As of May 2022, there are around 1,300 registered electors. The UK Government says around 68% of the voting-age population are eligible to vote (2022). 124
- Response to the 2019 Foreign Affairs Committee report: Some
 Members of the Falklands Legislative Assembly rejected reforms, arguing
 that there must be limits on who is able to buy land and vote to protect
 the sustainability of the Falklands and its right to self-determination. 125

Gibraltar

- **Gibraltarian status:** Has a range of eligibility requirements, including that a British OT citizen has been resident in Gibraltar for at least ten years, that they are married to a Gibraltarian person, or is the descendent of such a person. 126
- **Voter registration:** A person may register to vote without having this status, providing they are over 18, are a British Overseas Citizen (among other categories), lived in the Territory for at least six months, and intend to live their indefinitely. 127

Montserrat

- **Belonger of Montserrat:** In addition to by descent, individuals may apply for belonger status on the basis of marriage (and at least three years residence) or at least a year after they have gained a permit of permanent residence (which requires at least five to eight years residence). 128
- **Voter registration:** Monserrat allows any Commonwealth citizens resident in Monserrat for at least three years in the period preceding the date of registration to vote.¹²⁹

Falkland Islands Customs & Immigration, <u>Falkland Islands status amendment 2022</u>, 10 November 2022

¹²² Falkland Islands Government, <u>Registry services</u>

¹²³ Falkland Island Government, <u>Falklands Islands Gazette Extraordinary No</u> 7, 4 May 2022

¹²⁴ Ministry of Justice, <u>Human rights: Common core document</u>, updated May 2022, p67

Falklands startled at Westminster paper proposing UK citizens right to vote in Overseas Territories, Merco Press [online], 22 February 2019

Government of Gibraltar, Apply for Gibraltarian status

¹²⁷ Electors Registration Rules 2019, LN 2019/021 (PDF)

¹²⁸ Government of Montserrat, <u>Citizenship and residence information</u>

¹²⁹ CPA BIMR, Montserrat General Election (PDF), November 2019, p9

St Helena, Ascension, and Tristan da Cunha

- St Helenian status: In addition to by birth or marriage (if they have been in St Helena for at least three years), individuals must have resided on St Helena for at least five years and intend for it to be their principal home. 130
- **Voter registration:** Voters must have St. Helenian status and be over 17. ¹³¹
- **Size of the electorate:** In the 2021 elections, the registered electorate was around 2,160. The CPA estimates that around 60% of those over 17 are registered. The certain are registered.

There is no right to abode on Ascension Islands: An individual must have a contract of employment or be a partner of someone who does.¹³⁴

Turks and Caicos Islands

- Turks and Calicos Islander status: Gained by direct descent from an Islander with such status or having British Overseas Territory Citizenship of the Islands and either being resident for ten years or having a permanent residence status for five.¹³⁵
- Voter registration: Voters must have Turks and Caicos Islander status. 136
- Size of the electorate: In 2021, the CPA estimated that around a third of the population hold such a status and are therefore eligible to register to vote. 137

Further reading on recent Territory elections

Section 5 provides a list of recent Commonwealth Parliamentary Association reports on Territory general elections.

¹³⁰ St Helena Government, St Helenian status

¹³¹ St Helena Government, <u>Election forms: Form election register</u>

¹³² St Helena Government, <u>General election 2021—The results</u>, 14 October 2021

¹³³ CPA BIMR, <u>St Helena General election</u> (PDF), October 2021, p11

¹³⁴ Ascension Island Government, <u>FAQs</u>

Turks and Caicos Ministry of Immigration and Border Services, <u>Turks & Caicos status</u>

¹³⁶ CPA BIMR, <u>Turks and Caicos Islands General election</u> (PDF), February 2021, p11

¹³⁷ As above, p3

4 Sovereignty and independence

4.1 The UN and decolonisation

In 1961, the UN General Assembly established the Special Committee on decolonisation, who maintains a list of non-self-governing Territories. The committee reviews the list annually and can send investigatory missions and examine developments in these Territories. ¹³⁸

The Committee judges that all ten permanently inhabited OTs have not "yet attained a full measure of self-government" (ie. all the Territories but the BIOT, British Antarctic Territory, Sovereign Base Areas and South Georgia and the South Sandwich Island).¹³⁹

Under the UN Charter, the UK's role as administering power is to, among other objectives, support the OTs' political, economic, and social advancement and the development of their "self-government." ¹⁴⁰

In its 2012 White paper on the Territories, the UK Government said its view was that the UN Committee "no longer has a relevant role to play" for any of the Territories because they have a large measure of self-government.¹⁴¹

In 2020, the UK Government reiterated its position and said the OTs "remain in agreement that the Territories are internally self-governing." ¹⁴²

4.2 How would the Territories gain independence?

The UK Government says that any Territory that wishes to become independent may seek to do so, but the decision must be based on a "clear and constitutionally expressed wish" of the Territory's population (such as a referendum). The UK undertakes to help a Territory achieve this if it wishes.¹⁴³

As set out below, four territories have held votes on sovereignty, independence, or related issues since the 1960s.

¹³⁸ UN, Special committee on decolonisation

UN, Non-self-governing Territories

¹⁴⁰ UN, <u>UN Charter: Declaration regarding non-self-governing Territories</u>

¹⁴¹ FCO, <u>The OTs</u>, 2012, p84

PQ 128714 [Self-determination of states], 16 December 2020

PQ 149316 [British OTs: Self-determination of states], 9 February 2021

4.3 Referenda in the OTs on their status

Anguilla: On remaining in St Kitts and Nevis, 1967-1969

Background

Anguilla was previously administered with St Kitts and Nevis (a now independent country). In 1967, the UK assumed responsibility for their external affairs while allowing independence in their domestic politics.

As Anguilla feared dominance by its larger neighbour, protests and armed attacks on Government buildings took place.

Referenda

A referendum was held in 1967, in which almost all voters supported the creation of a republic independent from St Kitts and Nevis.

A second referendum was held in 1969, with voters again rejecting a return to the St Kitts and Nevis state and instead supporting an independent republic. The UK rejected the move and sent armed forces to restore control.

Anguilla then came under direct UK rule. In 1980, it formerly became a British Dependent Territory (the precursor to an Overseas Territory) and separated from St Kitts. A new constitution was introduced in 1982.¹⁴⁴

Gibraltar: Relations with Spain, 1967 and 2002

Background

Spain ceded sovereignty to the UK in the Treaty of Utrecht in 1713. In recent times Spain has said the UK has unlawfully occupied parts of the isthmus and surrounding waters and has sought to reclaim the Territory by peaceful means as well as proposing joint sovereignty with the UK. 145

The UK Government says it will not enter into arrangements under which sovereignty would be passed to another state without the consent of Gibraltarians, nor enter into sovereignty negotiations if Gibraltar is "not content." ¹⁴⁶

Referenda

In 1967, Gibraltar held a referendum on whether to remain with the UK or transfer the Territory to Spanish sovereignty: less than 1% of the Territory's

¹⁴⁴ Europa World Plus, <u>Anguilla: Recent history</u>

Commons Library, Brexit and Gibraltar, CBP9763. For the Spanish position, See its Foreign Affairs ministry page, Gibraltar

FCDO, A treaty between the UK and EU in respect of Gibraltar, 29 March 2021

12,762 voters voted in favour of the transfer. ¹⁴⁷ The vote took place after the UK made an Order in Council in the context of UN calls for the UK to negotiate with Spain over sovereignty. ¹⁴⁸

In 2002, Gibraltar's Government arranged a referendum on joint UK-Spain sovereignty to demonstrate local opposition: 99% of 17,900 voters voted against such an arrangement. ¹⁴⁹ The referendum was held on the local initiative of the Territory Government in the context of renewed talks between the UK and Spain over the Territory, which collapsed soon afterwards. ¹⁵⁰

Bermuda: Independence, 1995

Referendum vote

Bermuda held an independence referendum in 1995, with 75% of voters rejecting independence on 58% turnout. One reason for the lower turnout was that the opposition Progressive Labour Party, which had supported independence, instead called for constitutional changes to be made first and the issue to be decided in a general election.¹⁵¹

Continuing debate

The question of independence has remained part of the political debate, and Bermuda's Progressive Labour Party has continued to explore avenues to achieve this. From 2004 to 2006, it initiated a "public discussion" on independence from the UK, and in 2007 then-Premier Ewart Brown said independence is "inevitable." ¹⁵²

In December 2022, Bermuda's Government published a report on the self-government of the Territory. The Territory's Attorney General and Minister of Legal Affairs, Kathy Lynn Simmons, said it was timely for the Territory to "resume the evaluation of our position and relationship with the United Kingdom under our existing constitutional arrangements." ¹⁵³

The Premier, David Burt, says the new report on self-government is focused on removing the Territory from the UN list of non-self-governing states (see above), while the opposition One Bermuda Alliance has accused the Government of seeking a break from the UK.¹⁵⁴

¹⁴⁷ Archive: Gibraltar votes to remain with Britain—1967, The Guardian [online], 11 September 2018

¹⁴⁸ HL Deb, Gibraltar Referendum, 14 June 1967, vol 283, cc937-42

¹⁴⁹ Gibraltar pledges allegiance to the crown, DW, 11 August 2002

Foreign Affairs Committee, Gibraltar: Time to get off the fence, HC461, 24 June 2014, paras 9-10

Bermudians vote to stay British, The Independent [online], 18 August 1995

¹⁵² Europa World Plus, <u>Bermuda: Recent history</u>

Government of Bermuda, <u>Tabling of report: "Assessment of self-governance sufficient in conformity with internationally recognised standards,"</u> 2 December 2022

November 2022: Throne speech sparks debate on independence, The Royal Gazette [online], 1 January 2023; Bermuda should "strive" to get off list of non self governing countries—Premier, The Royal Gazette [online], 21 November 2022

Falklands Islands: To remain a UK OT, 2013

Argentine claims

Argentina, which refers to the Territory as Las Malvinas, claims sovereignty over the Falkland Islands. It argues they were illegally occupied by the UK and that the right to self-determination does not apply, as they were "a population transferred by the colonial power." ¹⁵⁵

The UK Government has rejected these claims and <u>said UK sovereignty</u> <u>extends back to the 1760s</u>. The UK has said that no negotiations on the sovereignty of the Falkland Islanders will take place "unless and until the islanders decide." ¹⁵⁶

For more on the ongoing sovereignty dispute, see the Lords Library briefing, Sovereignty since the ceasefire: The Falklands 40 years on, August 2022.

Referendum

In 2013, the Falkland Islands Government held a referendum on whether to maintain the Territory's status as a UK OT. On a 92% turnout, 99.8% of the 1,516 voters were in favour of remaining an UK OT. 157

4.4 Uninhabited Territories and sovereignty

Sovereign Base Areas of Akrotiri and Dhekelia (Cyprus)

While the Sovereign Base Areas have no permanent British population, they do have a population of Cypriot nationals.

When the Republic of Cyprus was established in 1960, the sovereign base areas of Akrotiri, Episkopi, Dhekelia and Ayios Nikolaos remained under British jurisdiction. For the UK, they are run as military bases.

Because they were created at the time of independence, they are not on loan from the Republic of Cyprus and have never formed part of the country.

The UK Government says the areas will remain UK sovereign territory unless the UK decides to divest sovereignty, perhaps in view of changing military requirements. It has announced no intentions in this regard. 158

Argentine Ministry of Foreign Affairs, International Trade and Worship, <u>The Question of the Malvinas</u>

Islands: Historical background

FCO and Ministry of Defence, 2010 to 2015 Government policy: Falkland Islanders' right to selfdetermination, updated 8 May 2015

¹⁵⁷ As above

FCO, <u>The overseas territories</u>, Cm 8374, June 2012, p117

British Indian Ocean Territory/Chagos Archipelago

In 1965, the UK created the British Indian Ocean Territory (BIOT), also known as the Chagos Archipelago. One of the disputes to arise from this was the claim of Mauritius to hold sovereignty over the Territory, which were administered with Mauritius when part of the UK colony.

Mauritian Government ministers <u>agreed to the detachment prior to the</u> <u>country's independence in 1968</u> and accepted UK Government undertakings to cede the Archipelago to Mauritius when no longer needed for defence purposes. The UK also paid £3 million in recognition of the decision. ¹⁵⁹

The UK Government has consistently rejected Mauritian sovereignty claims.

In November 2022 the UK and Mauritian Governments announced they <u>would</u> <u>enter into negotiations</u> to resolve "all outstanding issues" on the BIOT. ¹⁶⁰ This follows increasing criticism of the UK at the UN and international courts.

For more on the background to the negotiations, see the Commons Library briefing, <u>BIOT</u>: <u>UK to negotiate sovereignty 2022/23</u>.

British Antarctic Territory

The Territory was first claimed by the UK in 1908, and there are overlapping claims by Chile and Argentina. However, Territorial sovereignty is held in abeyance by the Antarctic Treaty of 1959, which states:

No acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica. No new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted while the present Treaty is in force. 162

South Georgia & The South Sandwich Islands

South Georgia was claimed by the UK in 1843, and South Sandwich in 1908.

Until 1985, the Territory was administered as part of the Falkland Islands. Argentina has maintained a claim to South Georgia since 1927 and South Sandwich Islands since 1948, as part of its wider claims to the Falklands Islands/Malvinas. 163

BIOT Administration, History

HCWS354 BIOT/Chagos Archipelago, 3 November 2022

British Antarctic Survey, <u>Britain in Antarctica</u>

The Antarctic Treaty 1959, Article IV

Government of the South Georgia & the South Sandwich Islands, <u>Background</u>

5 Key resources and further reading

General and background information

- <u>Europa World Plus</u>. Regularly updated background information and statistical data for most of the Territories. Requires a parliamentary-log in to access.
- UK Ministry of Justice, <u>Human rights: Common core document</u>, updated May 2022. Includes profiles of each Territory's constitution, and key political, demographic, social and economic data (where available).

UK Government

- UK Government, <u>The Overseas Territories: Security, success and sustainability</u>, Cm 8374, November 2012. Most recent overview of UK policy towards the Territories.
- Gov.uk, <u>Policy papers and consultations: OTs</u>. Links to recent communiqués and engagement between the UK Government and the Territories.
- Foreign, Commonwealth and Development Office, <u>Overseas Territories</u> governments on the web, updated February 2019. Links to Territory Governors and Government websites.

UK Parliament material

Committee material on the Territories

- Foreign Affairs Committee, <u>Global Britain and the British OTs: Resetting</u> the relationship, HC 1464, 2019. Discusses UK funding, citizenship, samesex marriage and relations between the Territories and the UK Parliament.
 - The UK Government published its response in 2019.
- Foreign Affairs Committee, <u>Overseas Territories</u>, HC 147, 2008. Examines the constitutional relationship between the Territories and the UK,

allegations of corruption in the Turks and Caicos Islands, contingent liabilities, and the UK Government's approach to the Territories.

The UK Government <u>published</u> its response the same year (PDF)

Foreign Affairs Committee, <u>Dependent Territories</u>, HC 1192, 1998.
 Examine citizenship, systems of government, organisation of UK Government responsibility for the Territories, and UK Parliament accountability.

The UK Government <u>published a response in 1998</u>.

Gibraltar

- European Scrutiny Committee, <u>Negotiations with the EU in respect of Gibraltar</u>, ongoing
- European Union Committee, <u>Brexit: Gibraltar</u>, HL 116, 2016-17, 1 March 2017

The Government published a response to the report in 2017.

Library briefings

Territory constitutions

- Commons Library, <u>The separation of powers in the UK's OTs</u>, November 2022. Describes the three branches of government in each of the Territories.
- Commons Library, <u>The UK's OTs and their Governors</u>, June 2022. Powers of the Governors in each Territory.

UK-OT economic relations and support

- Commons Library, <u>Brexit and the UK's OTs</u>, August 2022. Foreign trading relations of the Territories, and eligibility for UK and EU funding
- Commons Library, <u>The UK's OTs and sanctions against Russia</u>, March 2022. It is the long-standing position of the UK Government that Territories apply the same sanctions as the UK.
- Commons Library, <u>UK OTs: Climate change and biodiversity</u>, October 2021. The importance of the environments of the OTs and the support the UK provides.
- Commons Library, <u>Coronavirus: UK support to the OTs</u>, June 2021.
 Support provided by the UK to address the pandemic in the Territories.

Brexit and Gibraltar

- Commons Library, <u>Brexit and the UK's OTs</u>, 2022, section 8. Discusses the position of Gibraltar within the EU and post-Brexit negotiations.
- Commons Library, <u>Brexit and Gibraltar</u>, 2017. Constitutional status of Gibraltar and possible effects of Brexit.

The Falkland Islands

- House of Lords Library, <u>Sovereignty since the ceasefire: The Falklands 40 years on</u>, August 2022. Summary of the Falklands War and continued debate over sovereignty.
- Commons Library, <u>Argentina and the Falkland Islands</u>, 2012, Argentine claims in the 2000s.

The British Indian Ocean Territory (BIOT)

The BIOT was created in 1965. Mauritius has disputed sovereignty with the UK and the removal of the local population between 1968 and 1973 was controversial. In the Autumn of 2022, the UK and Mauritius announced they would enter negotiations over the Territory. For background, see:

- Commons Library, BIOT: UK to negotiate sovereignty 2022/23, 2022
- Commons Library, <u>Disputes over the BIOT</u>, February 2021

Other issue-specific briefings

- Commons Library, <u>Crime in the Turks and Caicos Islands 2022</u>, December 2022. In 2022, the Territory saw a rise in violent crime. The briefing describes how the Territory, UK Government and others have responded.
- Commons Library, The potential for direct rule in the British Virgin
 Islands, August 2022. In 2022, a UK-commissioned Commission of Inquiry
 uncovered alleged corruption. The UK has said it will not impose direct
 rule at present if the Territory's new national unity government can make
 the necessary reforms.
- Commons Library, <u>Same sex marriage in the UK's OTs</u>, April 2022. Four Territories allow neither same-sex marriage or civil partnerships. Samesex sexual acts have been legal in all the Territories since at least 2000.

Commonwealth Parliamentary Association

The Commonwealth Parliamentary Association (CPA) and the CPA's UK branch works in all the inhabited Overseas Territories aside from Pitcairn.

For specific work, see the CPA UK page Where we work: UK OTs.

The Commonwealth Parliamentary Association's British Islands & Mediterranean region has published the following observation reports on Territory elections:

- Anguilla General Election, June 2020
- British Virgin Islands, February 2019
- Cayman Islands General Election, April 2021
- Monserrat General Election (PDF), November 2019
- St Helena General Election, October 2021
- Turks and Caicos Islands General Election, February 2021

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