

**Research Briefing**

31 October 2022

By Philip Loft

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# The separation of powers in the UK's Overseas Territories

## Summary

- 1 Background: The Overseas Territories
- 2 Separation of powers: Background
- 3 Autonomy of legislatures
- 4 Judicial independence
- 5 Powers of the executive and its accountability

### **Acknowledgements**

The author is grateful for the contributions of Luke Fearon and Diana Atungire-Ocaya (CPA UK); Matthew Salik (CPA HQ), FCDO Desk Officers for the Overseas Territories, and officials from Territory governments and legislatures.

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# Contents

<b>1</b>	<b>Background: The Overseas Territories</b>	<b>7</b>
<b>2</b>	<b>Separation of powers: Background</b>	<b>9</b>
<b>3</b>	<b>Autonomy of legislatures</b>	<b>11</b>
<b>3.1</b>	<b>Main patterns</b>	<b>12</b>
<b>3.2</b>	<b>Anguilla</b>	<b>16</b>
<b>3.3</b>	<b>Bermuda</b>	<b>18</b>
<b>3.4</b>	<b>British Virgin Islands</b>	<b>20</b>
<b>3.5</b>	<b>Cayman Islands</b>	<b>22</b>
<b>3.6</b>	<b>Falkland Islands</b>	<b>24</b>
<b>3.7</b>	<b>Gibraltar</b>	<b>26</b>
<b>3.8</b>	<b>Montserrat</b>	<b>28</b>
<b>3.9</b>	<b>Pitcairn</b>	<b>30</b>
<b>3.10</b>	<b>St Helena, Ascension, and Tristan da Cunha</b>	<b>31</b>
<b>3.11</b>	<b>Turks and Caicos Islands</b>	<b>36</b>
<b>4</b>	<b>Judicial independence</b>	<b>38</b>
<b>4.1</b>	<b>Summary</b>	<b>38</b>
<b>4.2</b>	<b>The Eastern Caribbean Supreme court in Antigua, Montserrat and the BVI</b>	<b>42</b>
<b>4.3</b>	<b>Territory courts</b>	<b>43</b>
	Anguilla	44
	British Antarctic Territory	45
	British Indian Ocean Territory	46
	British Virgin Islands	47
	Cayman Islands	48
	Falkland Islands	50

Gibraltar	51
Montserrat	52
Pitcairn	53
St Helena, Ascension, and Tristan da Cunha	53
South Georgia and the South Sandwich Islands	57
Sovereign Base Areas (SBA) of Akrotiri and Dhekelia	57
Turks and Caicos Islands	58
<b>4.4 Power of judiciary in the OTs</b>	<b>60</b>
<b>5 Powers of the executive and its accountability</b>	<b>62</b>
<b>5.1 Who is the executive in the OTs?</b>	<b>62</b>
<b>5.2 Exercising legislative power: Governor</b>	<b>63</b>
<b>5.3 Accountability of ministers and Governors</b>	<b>63</b>
<b>5.4 Scrutinising OT government: Committees</b>	<b>66</b>
<b>5.5 Audit Offices</b>	<b>68</b>

## Summary

In 2003, the Commonwealth adopted the [Latimer House principles](#) (PDF), which set out good practice on relations between the three branches of government (executive, judicial and legislative).

The separation of powers is judged important for maintaining accountability and ensuring checks and balances between those who make, and those that enforce, the law. It's also a means to ensure different interests and democratic principles are represented in policymaking, including notions of majority-rule, the rule of law, and the protection of minorities.

This briefing describes the separation of powers between the three branches of government in each of the UK's 14 Overseas Territories (OTs).

## What are the Overseas Territories?

There are 14 UK OTs across the globe, but only 10 are permanently inhabited by British nationals, who number [around 260,000 inhabitants](#).

The Territories all have historic links to the UK and with the UK and Crown Dependencies like Jersey [form one undivided realm](#), where King Charles III is sovereign. This means they have no separate representation internationally.

## How are Territory constitutions structured?

Each OT has its own constitution, which is established by the UK Government (often following consultation with the Territory). These constitutions are amendable by the UK Government through the UK Privy Council or an Act of Parliament and cannot be amended by local assemblies, judges, or governments. They guarantee the existence of assemblies, courts, executive offices, and in some cases audit and public account commissions.

## The executive and their powers

All Territories have a UK-appointed Governor (called a Commissioner in the uninhabited OTs), [who in most cases retains responsibility for external affairs, defence, and internal security](#) (such as the police and judiciary). They can usually exercise these powers without reference to local ministers and assemblies and can be instructed to take certain steps by the UK.

In those Territories with larger populations, the Governor shares some executive power with the local Premier/Chief Minister and their Cabinet. Their responsibility varies from Territory to Territory.

Particularly in Territories with smaller populations, the Governor may also make law without reference to the legislature.

The role of the Governor and the exercise of their powers is set out in the Commons Library briefing [The UK OTs and their Governors](#).

## The legislative branch

All inhabited Territories have a parliament, assembly, or council. Generally, legislatures in smaller Territories have more limited law-making powers. Instead, the Governor retains more substantial law-making and executive power.

The Commonwealth Parliamentary Association (CPA) has conducted formal assessments of three OT legislatures: [Anguilla](#) (PDF), [Montserrat](#), and [St Helena](#) (PDF). It concluded that none were sufficiently free of executive influence and control. All Territory legislatures other than Gibraltar and Bermuda, for example, contain members of the executive. Notably, in 2020 the Cayman Islands [passed legislation](#) (PDF) that gave its Assembly more power over its staff, administration, finance and security.

In its three reports, the CPA recommended several benchmarks to increase the independence of OT legislatures, including a separate parliamentary commission to manage the legislature and its staff, access to independent legal advice, and effective public account commissions to audit Territory finances.

## The judicial branch

For all OTs, the judicial committee of the UK Privy Council [is their final point of legal appeal](#). For the inhabited Territories, their constitutions create two lower courts, generally termed a Supreme Court and Court of Appeal. The exceptions are three Caribbean OTs (Antigua, Montserrat, and the British Virgin Islands (BVI)), who act under the [Eastern Caribbean Supreme Court](#).

In six of the 10 inhabited Territories, judges are appointed by the Governor following the advice of a judicial appointment commission. The commissions are required to act independently but do include some political appointees. For the remainder, the Governor appoints judges following consultation with political leaders or following instructions issued from the UK Government. Judges in the highest courts have security of office through life tenure in most OTs.

The courts of each Territory (and ultimately the Privy Council) have 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.

# 1 Background: The Overseas Territories

The 14 Overseas Territories (OTs) have a total population of around 260,000 (2019 data). Four of the territories have no permanent British population. Akrotiri and Dhekelia (Cyprus) has a resident population of 12,000 Cypriots and 4,000 UK service personnel.<sup>1</sup>

Pitcairn is estimated to have a population of only 40 people.<sup>2</sup>

The Overseas Territories: UK Population			
Mediterranean		Pacific and Indian Oceans	
Gibraltar	34,000	British Indian Ocean Territory	No permanent population
Sovereign Base Areas of Akrotiri and Dhekelia (Cyprus)	No permanent UK population	Pitcairn	No UN estimate
Caribbean		South Atlantic	
Anguilla	15,000	British Antarctic Territory	No permanent population
Bermuda	62,000	Falkland Islands	3,000
British Virgin Islands	30,000	South Georgia & the South Sandwich Islands	No permanent population
Cayman Islands	66,000	St Helena, Ascension and Tristan da Cunha	6,000
Montserrat	5,000		
Turks and Caicos Islands	39,000	<b>Estimated total</b>	<b>260,000</b>

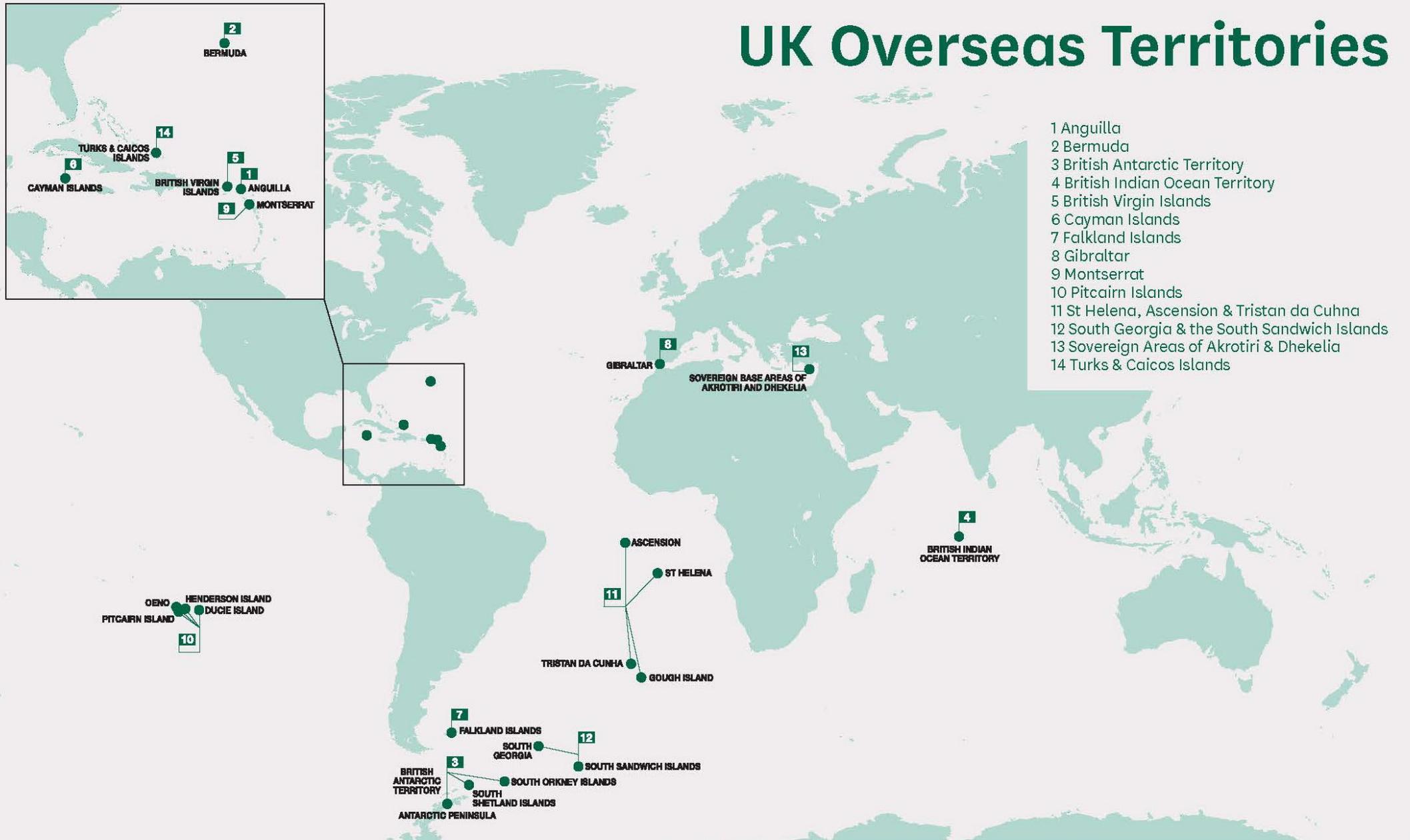
Source: United Nations, [World Population Prospects 2019: Total Population-both sexes](#), 2019

Aside from Gibraltar, the Antarctic Territories, and the Sovereign Base Areas in Cyprus, the OTs are all small islands or archipelagos. The map below shows their position.

<sup>1</sup> Strategic Command, [Overseas bases in focus: Cyprus](#), 9 February 2021, accessed 30 June 2022

<sup>2</sup> FCDO correspondence, 27 September 2022

# UK Overseas Territories



## 2

# Separation of powers: Background

There are three branches of government: The executive, legislative, and judicial.

Under a model separation of powers, each branch performs distinct roles and is constituted of different persons. In a broad sense, the legislature makes laws, the executive puts the laws into effect and plans policy, and the judiciary interprets the law and ensures it is upheld.

A separation of powers is seen as important to ensuring that:

- No one branch or public official can rule alone.
- Each branch is accountable.
- There is the potential for different interests to be represented.<sup>3</sup>

## The Commonwealth's Latimer House Principles

In 2003, the Commonwealth (Latimer House) Principles were adopted by Commonwealth Heads of Government. These provide guidance on the separation of powers between the three branches.<sup>4</sup> Its recommendations include the following:

### Parliament and the judiciary

Parliament should be responsible for law making and the judiciary the interpretation and application of the law.

### Independence of parliamentarians and the judiciary

Parliamentarians should work free from unlawful interference.

Judicial appointments should be made via a public process and based on clearly defined criteria. Judges should have security of tenure, being removed only for reasons of incapacity or misbehaviour that impedes their ability to perform their duties.

### Accountability of the executive

The executive should be accountable to a parliament, with effective scrutiny measures in place.

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<sup>3</sup> Commons Library, [The separation of powers](#), 2011

<sup>4</sup> CPA, [Commonwealth \(Latimer House\) principles on the three branches of government](#), 2003 (PDF)

Governments should also be open to scrutiny by courts through judicial review.<sup>5</sup>

## Applying the model separation of powers to the Overseas Territories

In the Westminster model, the separation of powers has historically been weaker. In the UK case, the Prime Minister is a member of the legislature (as are their cabinets) and until the establishment of the Supreme Court in 2009 Law Lords sat in the House of Lords, presided over by the Executive-appointed Lord Chancellor.<sup>6</sup>

The Overseas Territories (OTs) also do not subscribe to a clear separation of powers:

- **UK rule:** Regardless of any separation of powers in the Territories, the UK Parliament retains constitutional supremacy and can pass Acts for all the OTs. Likewise, the King in Council (a meeting of the Privy Council at which the monarch is present) can make Orders in Council for them with no redress by local legislatures, governments, or the judiciary.
- **Executive:** Executive power is vested in the Crown but exercised by the Governor in line with the Territory's constitution. This means that some executive functions are performed by local ministers and cabinets, or that the Governor is required to consult them before making policy.

While Governors do not sit in OTs legislatures, Ministers do.

In contrast to the UK, the Governor can make law in many of the Territories without their passage through the legislature and veto proposed bills.

- **Legislature:** Compromises a parliament, assembly, or council, though their powers vary from advisory to more autonomous law-making bodies. All but two of the ten inhabited Territory parliaments have Governor-appointed members (though not all can vote and do not form a majority). In addition to these appointed members, Ministers also sit in these assemblies. This means they have a higher proportion of appointed members than in the UK Parliament.
- **Judiciary:** While the Territories have their own court systems, their ultimate point of appeal is to the Judicial Committee of the Privy Council in the UK. Territory governments and officials have no role in the appointment of members of the Privy Council.

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<sup>5</sup> CPA, [Commonwealth \(Latimer House\) principles on the three branches of government](#), 2003 (PDF), p9-14

<sup>6</sup> The Commons Library, [The UK Supreme Court](#) details its replacement of the House of Lords as the UK's highest court.

## 3

# Autonomy of legislatures

Each of the inhabited Territories has its own legislature—typically called a parliament, assembly, or council. Their powers vary, with smaller Territory assemblies often only having an advisory role.

The table on page 15 summarises the autonomy of legislatures over aspects of their business and administration. A short analytical summary precedes it on pages 12 to 14.

This section is sourced from individual Territory constitutions, reports by the Commonwealth Parliamentary Association (CPA), and House of Commons Library correspondence with the CPA and the Foreign, Commonwealth and Development Office (FCDO).

The situation in each inhabited Territory is discussed further in sections 3.2 to 3.10. This includes formal CPA assessments of the legislative independence of three Territory assemblies: Anguilla, Montserrat and St Helena.

Note that in all Territories the UK Government and Parliament (often via the Privy Council) retain the power to intervene, amend their constitutions and to create law.

## Why does independence matter?

The CPA has developed a Model Law for Independent Parliaments. This is intended to help Commonwealth legislatures, including those in the OTs, to overcome the challenge of dependence on the executive and help them become more effective at representing the public and scrutinising government. The CPA advises the following.

- **Overseeing parliament and its administration:** Having a Speaker or Parliamentary Service Commission creates better clarity and accountability for the management and governance of parliament.
- **Management of their own finances and staff:** Parliaments with the power to appropriate their own funds for staffing and legislative work can incentivise strong job candidates, invest in the physical infrastructure needed to perform their roles, and ensure staff are independent from the executive or a political party.

- **A low priority for the executive:** The CPA argues that without their own management, legislatures managed by the executive may be treated as a lower priority than the other departments managed by ministers.<sup>7</sup>

## 3.1

## Main patterns

### The Governor can circumvent the law-making power of OT parliaments in all but three Territories

Sources and further information for each Territory are set out from section 3.2 onwards

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, which has a population of 40, and the Tristan da Cunha and Ascension Island Councils (which form part of the same OT as St Helena) that also have small populations.

In only three Territories can the UK-appointed Governor not make laws: Bermuda, Montserrat, and St Helena.

In the remainder, the power of their legislatures to make laws can be circumvented by the Governor in circumstances set out in their respective constitutions.

For more on the law making power of the legislatures, see the Commons Library briefing on [The UK OTs and their Governors](#).

### Appointing Speakers/Presiding officers

Speakers and Presiding officers can play important roles in helping shape and govern parliamentary debate and government scrutiny, represent the collective voice of a parliament and head a separate administration for a House to run its own affairs separate to a government ministry.

The CPA argues that having a Speaker elected from within the parliament's membership can make them a stronger advocate for a parliament and its interests.<sup>8</sup> However, the small size of Territory parliaments often means the Speaker is elected from outside the House.

In four legislatures, the Speaker/Presiding member must be chosen from non-members: Anguilla, Gibraltar, Pitcairn, and St Helena. In five, the Speaker can be selected from either in or outside the House.

Only in Bermuda, which has the largest House of Assembly of OTs, at 36 members, must the Speaker be elected from among its elected members.

<sup>7</sup> CPA, [Model law for independent parliaments](#), 2020

<sup>8</sup> CPA, [Governance, organisational and administrative review of the Anguilla House of Assembly](#) (PDF), September 2021, p10

## All but two parliaments have members appointed by the executive

An important aspect of parliamentary scrutiny and separation of powers is that parliamentary membership is determined independently of the executive.

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.

While able to shape proceedings through their participation, in only three Territories do these members have the right to vote: Anguilla, Monserrat, and the Turks and Caicos Islands.

## Government ministers make a high proportion of House membership

In the Westminster system, ministers tend to be members of the legislature. A higher number of ministers may present a challenge to parliamentary scrutiny, as fewer members are not on the “payroll vote” and thus able to serve on committees and partake in general scrutiny (eg. asking questions, suggesting amendments to bills).

In the Westminster House of Commons, there are 95 ministers and whips, 48 parliamentary private secretaries and 20 trade envoys. These 160-170 members constitute around 25% of the 650 members (June 2022).<sup>9</sup>

Due to the small size of most OT parliaments, ministers represent a higher proportion of the membership, and in some cases a majority of voting members (for example, in the BVI there are seven ministers to six voting members).

Smaller Territories such as the Falklands Islands and Pitcairn operate differently: In the Pitcairn Islands, executive power is reserved to the Governor. In the Falklands Islands, no member of the Assembly takes a ministerial role. Instead, a portfolio system operates whereby each member takes responsibility for a certain area.

## Control over own House budget

In most Territories, the legislature’s budget is treated the same as a government department or agency. The finance office sets a budget ceiling, which is then discussed with the Assembly either as part of wider budget proceedings or following specific discussions (such as between the Assembly’s clerk and the government, for example).

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<sup>9</sup> Institute for Government, [Payroll vote](#), updated 1 June 2022

## Access to independent legal advice

For most Territories, legal advice is provided by the Territory Government via the Attorney General. However, legislatures can potentially seek independent legal advice through voting funds for such a purpose or the government can arrange this when required (as in the case of the Turks and Caicos Islands, for example).

In the Cayman Islands, 2020 legislation creating a commission to manage the legislature allows for the creation of support services such as research facilities. This could potentially include legal advice.

## Independent recruitment and management of parliamentary staff

Aside from the Cayman Parliament, which following a 2020 Act passed by its Parliament now has its managing commission, all OT parliamentary officials are employees of the executive. St Helena has recently committed to create a commission to manage its staff following CPA recommendations.

Potentially, this means that officers supporting the Assembly may work on tasks to support both the executive and legislature, weakening the notion of a separation of powers.

## A separate parliamentary building

Only two Territories have a separate parliamentary building to other branches of government or other public services. These are the Cayman Islands and Gibraltar. In 2022, the UK pledged to fund a new building for the Monserrat Legislative Assembly.

This does not mean others do not have permanent spaces, but rather these are shared with either the judicial or executive branches of government. The most common building share is between the parliament and courts.

## Parliamentary control of their own security

In all Territories, internal security is a responsibility reserved to the Governor. While some Territory Parliament Speakers have powers to regulate the immediate precincts of a parliament, policing and security is provided by Territory police forces. There are some agreements in place for support, but these are not set down in law.

Only in the Cayman Islands, which created a Commission to manage its legislature in 2020, does the Legislative Assembly have security for maintaining its build and providing security services.

## The autonomy of UK OT legislatures is limited

	Law-making power (with Governor's signature)	Speaker is an elected Member of the House?	Members appointed by Executive	Number of Ministers (not including ex-officio members)	Control over House budget	Access to independent legal advice	Independent staff appointment/management	Separate parliamentary building	Control over own secure precincts
Anguilla	✓	X	2*/13	5/13	X	X	X	X	X
Bermuda	✓	✓	0/36 (House) 3/11 (Senate)^	13/36 (max, House) 2/11 (max, Senate)	X	X	X	X	X
BVI	✓	✓ <sup>0</sup>	1/15 <sup>2</sup>	7/15	X	X	X	X	X
Cayman Islands	✓	✓ <sup>0</sup>	2/21 <sup>2</sup>	7/21	✓	✓	✓	✓	✓
Falkland Islands	✓	✓ <sup>0</sup>	2/11 <sup>2</sup>	N/A (portfolio system)	X	X	X	X	X
Gibraltar	✓	X	0/18	10/17 (max)	X	X	X	✓	X
Montserrat	✓	✓ <sup>0</sup>	2*/11	4/11	X	X	X	X <sup>▲</sup>	X
Pitcairn	X	X <sup>1</sup>	3/10	N/A (Governor)	X	X	X	X	X
St Helena	✓	X	1/13	5/13	X	X <sup>▲</sup>	X <sup>▲</sup>	X	X
Turks and Caicos Islands	✓	✓ <sup>0</sup>	5*/21 <sup>2▲</sup>	7/21	X	X	X	X	X

Notes:

<sup>0</sup> Can be either an elected member or from outside

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

^ For Bermuda, all members of the Senate are appointed formally 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.

<sup>1</sup> The Mayor presides over the Council and is a member but is directly elected by the Islanders

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

▲ These are likely to change: The UK committed to build a new parliament-house in 2022 for Monserrat and St Helena's Legislative Council has committed to establishing an independent body

Sources: See sections 3.2 to 3.10 below.

## 3.2

# Anguilla

## Independence from the executive

The CPA conducted a review of the [governance, organisation and administration of the Anguillan House of Assembly](#) (PDF), published in September 2021. It concluded that it was not independent, stating:

There are several actors across the government of Anguilla who have a disproportionate control over the legislature's governance and functions.<sup>10</sup>

It recommended the House “should pursue a course of greater independence from the executive as soon as possible” and noted that among stakeholders there was a “positive commitment” to ensure this could happen.<sup>11</sup>

## Law-making power

The Governor, with the advice and consent of the House of Assembly, may make laws for the peace, good order and government of Anguilla.

The Assembly cannot proceed on any proposed bill or amendment which in the opinion of the Assembly's speaker makes provision for imposing or increasing a tax, for imposing any charge on the revenues, or affecting the debt of Anguilla without the recommendation of the Governor.<sup>12</sup>

The CPA has been critical of the drafting process for legislation, stating a lack of time for scrutiny:

According to stakeholders, there is a legislative agenda produced by the government and shared with the Attorney-General, however it is not currently shared with the House or available for public consumption. Bills are drafted by the Attorney General's Chambers and are signed off by the Executive Council. [...]

Bills tend to be added to the Order Paper with limited notice, at present Members are given 3-5 days' notice of a Bill coming to the House.<sup>13</sup>

The CPA states that the legislative functions of the house are not fully exploited, with a lack of legal training hindering extensive amendments to Bills other than those made by the Government to correct errors or incorporate feedback from consultations.<sup>14</sup>

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<sup>10</sup> CPA, [Governance, organisational and administrative review of the Anguilla House of Assembly](#) (PDF), September 2021, p8 (hereafter CPA, Anguilla)

<sup>11</sup> As above, pp8-9

<sup>12</sup> [Anguilla Constitution Order 1982](#), as amended, Chapter V, Section 47 and 55

<sup>13</sup> CPA, [Anguilla](#), p21

<sup>14</sup> As above, p22

## Speaker

The Speaker of the Anguillan Assembly is elected by the House but is not an elected Member. The CPA argues that this potentially hinders the ability of the Speaker to push for reforms and further resources.<sup>15</sup>

## Membership

The House of Assembly has 11 elected members, and 2 ex-officio members with voting rights (Deputy Governor and Attorney-General).<sup>16</sup>

Until the 2020 elections, the House had two nominated members appointed by the Governor.<sup>17</sup>

Under law, the number of Ministers cannot may not exceed a number proportionate to elected members within the House:

In no circumstances may the number of Ministers be increased so that the total number of Ministers exceeds a number arrived at by subtracting one from the total number of elected members of the House of Assembly and then dividing by two.<sup>18</sup>

There are currently five ministers, including the Premier.<sup>19</sup>

## Control over budget

The budget is primarily determined by the Government and not the House. In terms of process, Anguilla's Executive Council issues a budget ceiling which the House must operate under. The budget of the House is drafted by its Clerk, with "limited input" from Members, according to the CPA.

Once the budget is submitted, the Ministry of Finance and Executive Council review it. The whole national budget is submitted to the House of Assembly for approval. The CPA says the budget has not been challenged "in recent memory."<sup>20</sup>

## Access to independent legal advice

It's uncertain whether the House has access to standing independent legal advice, but the CPA says it is "fortunate" that the current and previous leader of the Opposition have both been lawyers with their own private attorney chambers for researching.

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<sup>15</sup> CPA, [Anguilla](#), p10

<sup>16</sup> [The Anguilla Constitution Order 1982](#), as amended, section 35

<sup>17</sup> [The Anguillan Constitution \(Amendment\) Order 2019](#), Section 4

<sup>18</sup> As above, Section 5

<sup>19</sup> CPA, [Anguilla](#), p2

<sup>20</sup> As above, p15

The CPA has recommended that the House establish a Clerk of Bills with legal training to provide advice on drafting and amending legislation.<sup>21</sup>

## Recruitment and management of House staff

Anguilla's Public Service Commission recruits and manages House staff. The Commission is appointed by the Governor following consultation.<sup>22</sup>

The House is governed by the Speaker, on the advice of the clerk. The Clerk is technically employed by the Anguillan Department of Public Administration and must formally report to the Permanent Secretary. All House staff report to the Clerk.<sup>23</sup>

## Building and security

The House does not control or own the precincts of the House. Instead, these are shared with magistrates and the Anguilla High Court. These are properties of the Crown. The CPA says there is not sufficient office space to accommodate all House staff and Members.<sup>24</sup>

The CPA argues that, given the costs of replicating the services provided by the Government of Anguilla, it should develop service agreements with such entities, but it should be a "long-term aspiration" to move the judicial arm of Anguilla to a separate building.<sup>25</sup>

There are limited security measures, and the risk is judged low. The role of Sergeant at Arms is a largely ceremonial one.<sup>26</sup>

## 3.3

## Bermuda

### Law-making power

The Bermudian Parliament has the power to make laws for the peace, order, and good government of Bermuda. The Governor must assent to bills for them to become law.<sup>27</sup>

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<sup>21</sup> CPA, [Anguilla](#), pp21, 22

<sup>22</sup> [The Anguilla Constitution Order 1982](#), as amended, section 65

<sup>23</sup> CPA, [Anguilla](#), p9

<sup>24</sup> As above, p31

<sup>25</sup> As above, pp13, 31

<sup>26</sup> As above, pp31-2

<sup>27</sup> [Bermuda Constitution Order 1968](#), Schedule 2, Section 34 (PDF)

## Speaker

For both the Senate and House of Assembly, a President and Vice President (Senate) and Speaker and Deputy Speaker (House) must be elected from their members.<sup>28</sup>

## Membership

The Bermudan Cabinet consists of the Premier and at least six other members of the legislature (constituted of the two Houses).<sup>29</sup> There are currently 13 Ministers.<sup>30</sup>

Under the constitution, there can be a maximum of 12 Ministers from the House of Assembly, plus the Premier. The minimum overall number of Ministers from both houses is seven, including the Premier.<sup>31</sup>

## Senate

The Senate has 11 members, all appointed by the Governor: Three independents are appointed by the Governor at their own discretion, five on the advice of the government leader (Premier), and three by the opposition leader.<sup>32</sup>

Under the constitution, there must be at least one Minister appointed from the Senate and a maximum of two.<sup>33</sup>

## House of Assembly

The House, 36-members strong, is elected by universal suffrage. No members are appointed.<sup>34</sup>

## Control over budget

The Parliament's budget is scrutinised as part of wider budget processes.<sup>35</sup> There is no separate parliamentary commission, with the Ministry of Finance taking the lead in setting the budget.<sup>36</sup>

## Access to independent legal advice

There is no specific post of legal adviser or Counsel to the Bermudan Parliament, although there are several clerks and aides able to provide

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<sup>28</sup> [Bermuda Constitution Order 1968](#), Schedule 2, Section 32 (PDF)

<sup>29</sup> As above, Schedule 2, Section 57

<sup>30</sup> Bermuda Parliament, [Members of Cabinet](#), accessed 22 August 2022

<sup>31</sup> As above

<sup>32</sup> [Bermuda Constitution Order 1968](#), Schedule 2 Section 27

<sup>33</sup> Bermuda Parliament, [Members of Cabinet](#), accessed 23 September 2022

<sup>34</sup> Bermuda Parliament, [House of Assembly](#), accessed 22 March 2022

<sup>35</sup> James E. Smith, [How Bermuda's parliament works](#), 2008, section 5 (PDF)

<sup>36</sup> Government of Bermuda, [Approved estimates of revenue and expenditure for the year 2021/22](#), 2021(?), pp21 and 22 of the PDF

support to the parliament more generally, including on legal matters (see below).<sup>37</sup>

## Recruitment and management of House staff

The Legislature is supported by a Clerk, Deputy Clerk, Assistant Clerk and Sergeant-at-Arms, as well as others.<sup>38</sup>

The Clerk of the Legislature heads the Legislature Department.

Public officers are appointed by the Governor, following the advice of the Public Service Commission.<sup>39</sup>

The Clerk of the House is responsible for appointing clerks to assist committees.<sup>40</sup>

## Building and security

The House of Assembly is based in Sessions House. It shares the building with the Supreme Court. The Cabinet Building is nearby, where the Senate is based.<sup>41</sup>

The House of Assembly has its own Sergeant-at-Arms, who oversees security and safety of members of parliament and the parliament.<sup>42</sup>

The 1957 Parliament Act allows for the regulation of the precincts of the House of Assembly and Senate in respect of the management of members of the public (“strangers”).<sup>43</sup>

## 3.4

## British Virgin Islands

### Law-making power

The House of Assembly has primary law-making power and the Governor must assent to bills before they become law.

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<sup>37</sup> Government of Bermuda, [Office of the Clerk of the Legislature](#), 2018 p2 (PDF); House of Assembly, [Clerk](#), accessed 20 September 2022

<sup>38</sup> As above

<sup>39</sup> [Bermuda Constitution Order 1968](#), Schedule 2, Section 82

<sup>40</sup> [Bermuda House of Assembly Standing Orders](#), section 57

<sup>41</sup> Bermuda Parliament, [The House of Assembly at Sessions House](#), pp2, 10 (PDF)

<sup>42</sup> Bermuda Parliament, [House of Assembly: Sergeant-at-Arms](#), accessed 20 September 2022

<sup>43</sup> [Bermuda Parliament Act 1957](#), Part III (PDF)

The Governor can declare legislation that has failed to pass the Assembly to be law. They can do this on the grounds of it being considered an urgent necessity to comply with international obligations.<sup>44</sup>

## Speaker

The Speaker can be chosen from among the elected members of the House of Assembly or from persons qualified to be elected members of the House.<sup>45</sup>

## Membership

The House of Assembly consists of 15 members, including the Speaker, 13 elected members and one non-voting ex-officio member, the Attorney General.<sup>46</sup>

Under the BVI constitution, under no circumstances may the number of Ministers exceed two-fifths of the total number of elected members of the House.<sup>47</sup> However, a 2017 amendment allows the Government to appoint two junior ministers (who do not sit in the cabinet).<sup>48</sup>

As of May 2022, there were seven ministers (including those not in the Cabinet), constituting a majority of the 13 voting members in the Assembly.<sup>49</sup>

## Control over budget

The House of Assembly sets its own budget within the budgetary ceilings set by the Minister of Finance and Financial Secretary. The Speaker presents the Assembly budget at the annual standing finance meeting.<sup>50</sup> This is a committee of the whole house, chaired by the Speaker, that examines the annual and supplementary estimates for the Territory.<sup>51</sup>

## Access to independent legal advice

Legal advice is provided by the BVI Attorney General.<sup>52</sup> The Government has also appointed legal representation in the past, notably in relation to the Commission of Inquiry into the Territory [that concluded in 2021](#).<sup>53</sup>

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<sup>44</sup> [The Virgin Islands Constitution Order 2007](#), Chapter 5, Articles 71 and 81

<sup>45</sup> As above, Chapter 5, Section 69

<sup>46</sup> As above, Chapter 5, Section 63

<sup>47</sup> As above, Chapter 4, Section 47

<sup>48</sup> [The Virgin Islands Constitution \(Amendment\) Order 2015](#), Article 2

<sup>49</sup> Government of the Virgin Islands, [National unity Government of the Virgin Islands sworn in](#), 5 May 2022

<sup>50</sup> FCDO correspondence, 10 October 2022

<sup>51</sup> Government of the Virgin Islands, [House of Assembly ensuring a smooth budget process](#), 19 November 2021

<sup>52</sup> FCDO correspondence, 15 September 2022

<sup>53</sup> FCDO correspondence, 10 October 2022; see Commons Library, [The potential for direct rule in the BVI](#), 16 August 2022

## Recruitment and management of House staff

All house staff are public servants. They are therefore appointed under the usual public appointments processes, but there is some independent management of staff by the Assembly.<sup>54</sup>

## Building and security

The BVI Assembly is permanently based in a separate building to the executive in Road Town, Tortola, although the building is shared with the Supreme Court.<sup>55</sup> The Assembly is temporarily based in a conference centre due to building works.<sup>56</sup>

The Speaker of the House can contact the police for security needs, who provide security when required. There is no standing separate force.<sup>57</sup>

## 3.5

## Cayman Islands

### Law-making power

Primary law-making power lies with the legislature. However, the Governor may assent to laws that have not been introduced into the Legislative Assembly or those that are unlikely to pass. The Governor must consult with the Premier on this point.

Bills must relate to the Governor's responsibilities (defence, foreign affairs, etc). Bills cannot become law until the Governor's assent is given.<sup>58</sup>

### Speaker

The Speaker can be elected from among the elected members or those from outside who are qualified to be. The Deputy Speaker must be an elected Member.<sup>59</sup>

### Membership

The Parliament consists of a Speaker, 18 elected members, and two ex-officio members: the Deputy Governor and Attorney General.<sup>60</sup> Neither of the two appointed members are entitled to vote.<sup>61</sup>

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<sup>54</sup> FCDO correspondence, 15 September 2022

<sup>55</sup> Government of the Virgin Islands, [House of Assembly](#), accessed 20 September 2022

<sup>56</sup> FCDO correspondence, 15 September 2022

<sup>57</sup> FCDO correspondence, 15 September 2022

<sup>58</sup> [The Cayman Islands Constitution Order 2009](#), sections 77 and 81 (PDF)

<sup>59</sup> As above, Section 65

<sup>60</sup> As above, Section 60

<sup>61</sup> As above, Section 75

The Cabinet consists of 9 members (including the two ex-officio members also in the Assembly). All must be from among the elected Members of the Parliament.<sup>62</sup>

## Control over budget

The Legislative Assembly (Management) Law 2020 created a Legislative Assembly (now Parliament) Managing Commission. This is responsible for carrying out related financial, operational and administrative matters for the Parliament, among other duties (see below).

The Chief Officer of the Commission is responsible for the budget vote by the Parliament for the Commission's work.<sup>63</sup>

In terms of process, the Parliament's budget is prepared by the clerk, chief officer, and chief financial officer. It must be reviewed by the cabinet before being submitted for approval in parliament.<sup>64</sup>

## Access to independent legal advice

The 2020 Act allows for the Commission to provide staff to support a range of parliamentary functions, including research services, procedure and committee work. A legal role is not specifically mentioned but could be included under this provision.<sup>65</sup>

Following these reforms, the parliament can also seek independent legal advice on matters relating to the administrative aspects of parliament or the management commission.<sup>66</sup>

The Attorney General can also provide legal advice.<sup>67</sup>

## Recruitment and management of House staff

The Managing Commission created in 2020 is also responsible for providing clerical staff, attendants and others to support the Parliament and its committees.<sup>68</sup>

The Commission is not fully independent from the Executive, with the Premier one its members, and there is potential for other members to be ministers. However, all nine members are members of the parliament or its officials.<sup>69</sup>

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<sup>62</sup> [The Cayman Islands Constitution Order 2009](#), section 44 (PDF)

<sup>63</sup> Cayman Islands, [Legislative Assembly \(Management\) Law 2020](#), Sections 4, 14 (PDF)

<sup>64</sup> FCDO correspondence, 23 September 2022

<sup>65</sup> Cayman Islands, [Legislative Assembly \(Management\) Law 2020](#), Sections 4 (PDF)

<sup>66</sup> FCDO correspondence, 23 September 2022

<sup>67</sup> FCDO correspondence, 23 September 2022

<sup>68</sup> Cayman Islands, [Legislative Assembly \(Management\) Law 2020](#), Section 4 (PDF)

<sup>69</sup> As above, Section 5

In terms of appeals and grievances, House staff are required to appeal to the Civil Service Commission.<sup>70</sup>

## Building

A separate parliament building was constructed in 1972, with recent additions.<sup>71</sup> The Courts and Governor are also based in separate buildings.<sup>72</sup>

The Commission created in 2020 is responsible for maintaining the building and providing security services within its precincts.<sup>73</sup>

## 3.6

## Falkland Islands

### Law-making power

The Governor, with the advice and consent of the Legislative Assembly, may make laws for the good government and order of the Falklands Islands. The Governor's consent is required for all Bills to become law.

The Assembly cannot proceed on legislation relating to money, tax, debts, and public salaries without permission of the Governor. If the Governor considers it necessary, a Bill that has failed to pass the Assembly can be declared law, with any amendments they wish.<sup>74</sup>

### Speaker

The Speaker and Deputy Speaker are elected by the Legislative Assembly and may or not be members of it.<sup>75</sup>

### Membership

The Legislative Assembly consists of eight elected members, the Speaker, and two ex-officio members: The Chief Executive and the Director of Finance. The ex-officio members have no vote in the Assembly.<sup>76</sup>

The Attorney General and Commander British Forces South Atlantic Islands are also able to attend but are not considered members. Neither have a vote.<sup>77</sup>

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<sup>70</sup> Cayman Islands, [Legislative Assembly \(Management\) Law 2020](#), Section 19 (PDF)

<sup>71</sup> Cayman Islands Government, [Parliament building celebrated](#), 12 July 2022

<sup>72</sup> Cayman Islands Judicial Administration, [Directory](#) and Cayman Islands Government, [Office of the Governor](#), accessed 20 September 2022

<sup>73</sup> Cayman Islands, [Legislative Assembly \(Management\) Law 2020](#), Section 4

<sup>74</sup> [Falkland Islands Constitution Order 2008](#), Schedule, Chapter IV, Sections 51 to 54.

<sup>75</sup> As above, Schedule, Chapter IV, Section 39

<sup>76</sup> As above, Schedule, Chapter III, Section 26

<sup>77</sup> As above, Schedule, Chapter IV, Section 41

The Islands operate a portfolio system, whereby each Assembly member takes responsibility for a particular area (eg education) and works with the Government and departments. They do not take on a ministerial role.<sup>78</sup>

The Executive Council, which the Falkland Islands Governor is required to consult on several issues, consists of three elected members of the Legislative Assembly and the two ex-officio members (5 of 11 members, if the Speaker is externally elected). However, it does not act as an executive in the same way as a cabinet.<sup>79</sup>

## Control over budget

The Assembly budget follows the process of each government department/directorate. The Clerk of the Assembly works on the budget with the Treasury, and then the Clerk (as Head of Department) will present the proposals to a committee of all Assembly Members. They then consider the proposals following the guidance of officers.<sup>80</sup>

## Access to independent legal advice

The Attorney General is allowed to attend meetings of the Assembly and is the primary legal advisor to it.

When drafting legislation, Falklands Islands Government officials can be supported by a “legislative drafter.” They are usually drawn from the Law and Regulation Directorate, or an individual appointed by the Attorney General.<sup>81</sup>

The Assembly could potentially vote funds to procure independent legal advice but has not in the past. Instead, the Falkland Islands Government Law and Regulation department provides legal advice when requested.<sup>82</sup>

## Recruitment and management of House staff

Under the constitution, there is a Clerk of the Legislative Assembly to support its work. It is a public office, meaning they are appointed formally by the Governor (or the Chief Executive).<sup>83</sup> All employees supporting the Assembly are line-managed by the Government.<sup>84</sup>

The Clerk of the standing Finance Committee is appointed by the Financial Secretary.<sup>85</sup>

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<sup>78</sup> Falkland Islands, [The Legislative Assembly](#), accessed 23 September 2022

<sup>79</sup> [Falkland Islands Constitution Order 2008](#), Schedule, Chapter V, Section 57

<sup>80</sup> FCDO correspondence, 21 September 2022 and 11 October 2022

<sup>81</sup> Falkland Islands Government, [Policy development and law reform](#), December 2021, p65 (PDF)

<sup>82</sup> FCDO correspondence, 11 October 2022

<sup>83</sup> [Falkland Islands Constitution Order 2008](#), Schedule, Chapter VII, Section 84

<sup>84</sup> FCDO correspondence, 21 September 2022

<sup>85</sup> Falkland Islands Legislative Assembly, [Standing rules and orders](#), section 66 (PDF)

Under a draft protocol (August 2014), public officers are expected to be politically neutral and brief members when required.<sup>86</sup>

## Building and security

Gilbert House acts as the offices of the Legislative Assembly, but its meetings take place in the Court and Assembly Chambers in Stanley Town Hall. Gilbert House includes offices for Members of the Legislative Assembly.<sup>87</sup>

The Town Hall is also used for the courts service,<sup>88</sup> although the Governor's office is in a separate building (Government House).<sup>89</sup>

Security is provided by the Royal Falkland Island Police force and is not governed by the Assembly.<sup>90</sup>

## 3.7

## Gibraltar

### Law-making power

The Legislature can make laws for the peace, order and good government of Gibraltar, with the Governor's assent needed for Bills.

The Governor may, if they consider legislation necessary in any of the areas on which they are responsible (external affairs, police, internal security, defence) draft and give assent to a law. However, they must consult with the Chief Minister before doing this.<sup>91</sup>

### Speaker

The Speaker cannot be an elected member of the parliament.<sup>92</sup>

### Membership

Under the 2006 constitution, the parliament consists of the Speaker and 17 elected members. Under the previous constitution, there were two appointed members.<sup>93</sup>

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<sup>86</sup> [Draft protocol on the roles of members of the Legislative Assembly and Officers of the Falkland Islands Government](#), section 3 (PDF)

<sup>87</sup> Falkland Islands Government, [A brief introduction to the Legislative Assembly](#), 2020 (PDF), pp3, 4

<sup>88</sup> [Courts & Tribunal Service of the Falkland Islands](#)

<sup>89</sup> Gov.UK, [Governor's Office Stanley](#), accessed 20 September 2022

<sup>90</sup> FCDO correspondence, 21 September 2022

<sup>91</sup> [Gibraltar Constitution Order 2006](#), Sections 32, 33 and 34 (PDF)

<sup>92</sup> As above, Section 26

<sup>93</sup> As above, Section 25

The Council of Ministers consists of the Chief Minister and at least four other members. They may not number more than ten of the 17 members of parliament.<sup>94</sup>

## Control over budget

There is no separate parliamentary commission. The budget for the parliament is set within the context of the annual appropriation bill, which becomes the basis for the allocation of funding from the Gibraltar Government's Consolidated Fund to the Parliament.<sup>95</sup>

## Access to independent legal advice

The Gibraltar Parliament can seek independent advice from the private sector using the funds allocated to it, if it chooses to do so.<sup>96</sup> There is no standing independent legal adviser other than the Attorney General, who acts as the Government's legal adviser.<sup>97</sup>

## Recruitment and management of House staff

Under the 2006 constitution, there are the Parliamentary Officers of Principal Auditor, Ombudsman, and the Clerk to the Parliament.<sup>98</sup>

The Speaker has some role in managing staff.<sup>99</sup> Of these officials, the Principal Auditor is appointed by the Governor, following the Advice of the Specified Appointments Commission for Gibraltar.<sup>100</sup> The Public Service Commission is responsible for appointments to other public offices.<sup>101</sup>

## Building and security

The Gibraltar Parliament is situated in its own parliament building: This is separate from the Government in Convent Place and the judicial branch, housed in separate law courts.<sup>102</sup>

In 2013, a select committee on parliamentary reform was established. It recommended the construction of a purpose-built parliament building, noting that the Speaker and the clerk "have never had adequate offices." It also

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<sup>94</sup> [Gibraltar Constitution Order 2006](#), Section 45 (PDF)

<sup>95</sup> FCDO correspondence, 29 September 2022

<sup>96</sup> FCDO correspondence, 29 September 2022

<sup>97</sup> HM Government of Gibraltar, [Government law offices](#), accessed 3 October 2022

<sup>98</sup> [Gibraltar Constitution Order 2006](#), Section 25

<sup>99</sup> FCDO correspondence, 9 September 2022

<sup>100</sup> [Gibraltar Constitution Order 2006](#), Section 56 (PDF). The Commission includes two members appointed by the Governor and two on the recommendation of the Chief Minister, one of whom has the casting vote.

<sup>101</sup> As above, Section 54

<sup>102</sup> Government of Gibraltar, [Our government](#), accessed 20 September 2022 and Government of Gibraltar, [Completed law courts building officially opened](#), 14 September 2012 (PDF)

recommended offices for the Leader and Members of the Opposition “as a matter of priority.”<sup>103</sup>

Gibraltar’s Government has committed to supporting the effective functioning of the parliament building.<sup>104</sup>

Security is provided by the Royal Gibraltar Police.<sup>105</sup> Under the Parliament Act 1950, the Speaker has the power to remove and regulate the admittance of strangers within the precincts of the Parliament Chamber and related areas (eg offices, rooms).<sup>106</sup>

Through agreement with the Speaker, there is police presence prior to and at termination of every session of parliament to ease the passage of the Speaker, Members, and staff in the immediate area of entrance to the lobby of parliament.<sup>107</sup>

## 3.8

## Montserrat

### Independence from the executive

The CPA conducted a review of the Montserrat’s Legislative Assembly which published in 2022. It concluded that it was not independent, stating:

It is also essential that the Legislative Assembly is given greater independence. [...] Assembly must have its own staff, its own budget, which is controlled and overseen by its own Members. It is an anathema of parliamentary democracy, the Latimer House Principles, these CPA Benchmarks to have an Assembly so controlled by the Executive.<sup>108</sup>

The CPA recommended “wide-reaching reforms” to improve the Assembly’s functioning, independence, and ability to serve the Territory.<sup>109</sup>

### Law-making power

Montserrat’s Assembly has primary law-making power, but the Governor must assent to bills before they become law (which they can refuse).

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<sup>103</sup> Commission on Democratic and Political Reform, [A report to parliament on democratic and parliamentary reform](#), January 2013, pp23, 24 (PDF)

<sup>104</sup> HM Government of Gibraltar, [Integrity of parliament house to be restored](#), 16 September 2020

<sup>105</sup> FCDO correspondence, 9 September 2022

<sup>106</sup> [Gibraltar Parliament Act 1950](#), Section 63 (PDF)

<sup>107</sup> Gibraltar Parliament, [Speakers’ Rulings and statements](#), p28 (PDF)

<sup>108</sup> CPA, [Montserrat: CPA recommended benchmarks for democratic legislatures: Final report](#), 2022, p1 (hereafter CPA, [Montserrat](#))

<sup>109</sup> As above, p3

The Assembly cannot proceed on any Bill that relates to public revenue or public funds without the approval of the Cabinet.<sup>110</sup>

## Speaker

The Legislative Assembly may elect a Speaker from either its membership or from outside, if they are qualified to stand for election (eg not holding a judicial office).<sup>111</sup>

## Membership

The Assembly is formed of nine elected members and two ex-officio members (the Attorney General and Financial Secretary), and the Speaker.<sup>112</sup>

There are four ministers in the Assembly, including the Premier.<sup>113</sup>

## Control over budget

The Speaker has no formal say over how the [Legislature Department](#) of Montserrat's Government is run.<sup>114</sup>

The CPA says Montserrat should be “highly commended” of the support given to the Leader of the Opposition and independent Member, who are given funded use of an office building, staff, and expenses.<sup>115</sup>

## Access to independent legal advice

The Attorney General is an ex-officio member of both the cabinet and legislature. The Legislative Drafting Unit is tasked with addressing issues raised by members of the Legislature, as well as advising the Government.<sup>116</sup>

## Recruitment and management of House staff

The CPA judges that the Montserrat Assembly “fails to meet all benchmarks that relate to parliamentary staff,” and recommends the establishment of a corporate body to manage the parliament. There are no constitutional protections for the position of Clerk.

The Assembly's Clerk must perform multiple roles and be accountable to both the Executive and Parliament, being a public service appointment. They are required to report to the Deputy Governor, Financial Secretary, Speaker,

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<sup>110</sup> [The Montserrat Constitution Order 2010](#), Part IV, Sections 70, 71 and 74

<sup>111</sup> As above, Part IV, Section 59

<sup>112</sup> As above, Part IV, section 48

<sup>113</sup> CPA, [Montserrat](#), p4

<sup>114</sup> As above p14

<sup>115</sup> As above, p14

<sup>116</sup> Government of Montserrat, [Attorney General's chambers](#), accessed 20 September 2022

among others, and perform roles beyond legislative business (eg electoral commission and complaints commission).<sup>117</sup>

## Building

Currently, the House shares facilities with other public services. This is partly due to the impact of the 1995 volcanic eruption.<sup>118</sup> In 2022 the UK Government announced it would fund a new building for the Parliament.<sup>119</sup>

The [Royal Monserrat Police](#) provides general security for the Islands.

## 3.9

## Pitcairn

### Independence from the Executive, law-making power and budget

As the Pitcairn Islands has a small population of around 40,<sup>120</sup> the Administrator (the Governor's representative) retains substantial law-making and budgetary power.

Following consultation with the Island Council, the Governor may make laws ("ordinances") for the peace, order and good government in Pitcairn.

The Governor does not have to adhere to any advice of the Council.<sup>121</sup>

Ongoing budgetary aid for the Pitcairn Islands is determined by the FCDO. It works in consultation with the Governor, Deputy Governor, the Pitcairn Island Office (all based in New Zealand), and the Island Government.

While the Mayor, who presides over the elected Island Council, is ultimately responsible for the additional expenditure made on behalf of the Council, the Council itself has little role in setting or approving budgets.<sup>122</sup>

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<sup>117</sup> CPA, [Monserrat](#), p14

<sup>118</sup> Monserrat Legislative Assembly, [A brief overview of the Legislature in Monserrat, 1951 to present](#), accessed 20 September 2022

<sup>119</sup> CPA, [Monserrat](#), pp5, 8; Government of Monserrat, [UK Government to fund Montserrat's new parliament building](#), 7 July 2022

<sup>120</sup> FCDO correspondence, 27 September 2022

<sup>121</sup> [The Pitcairn Islands Constitution Order 2010](#), Schedule 2, Sections 36 and 37. Areas such as foreign policy, defence, fiscal issues and child safeguarding are known as reserved powers. The UK acts for Pitcairn in these areas, consulting and taking their views into account. Unlike other OTs, responsibility for child safeguarding sits with the Governor, not the Island Council: FCDO correspondence, 27 September 2022

<sup>122</sup> Pitcairn Government, [Policy—Budgetary aid policies & guidelines](#) (PDF), pp1, 3

## Membership and presiding officer

Pitcairn has a ten-member Island Council with seven elected members and three non-voting ex officio members (the non-resident Governor, Deputy Governor and resident Administrator).

The Mayor, who presides over the Council, is elected directly for a three-year term but is also a member of the Council. They hold the casting vote.<sup>123</sup>

## Access to independent legal advice

There is an Attorney General (and Deputy) of Pitcairn who is the principal legal adviser to the Government of Pitcairn. They are appointed by the Governor, acting with the approval of a Secretary of State. The Attorney General's office is based in New Zealand.<sup>124</sup>

## Recruitment and management of House staff

The Governor appoints an Island Secretary. They act as Clerk to the Council and record the minutes of each meeting and any related papers.<sup>125</sup>

## Building and security

The Pitcairn Council holds meetings in the Public Hall. This also serves as the courthouse, council chambers, and performs other public functions.<sup>126</sup>

Crime is very low. There is one off-island police contractor (from New Zealand Police) and an island community police officer tasked with general roles in the Pitcairn Islands.<sup>127</sup>

## 3.10

## St Helena, Ascension, and Tristan da Cunha

The three areas form a single Overseas Territory, although have separate constitutional arrangements.

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<sup>123</sup> Europa World, Pitcairn: Introduction; [Pitcairn Islands Local Government Ordinance](#), Revised 2019, Part II, Section 6 (PDF)

<sup>124</sup> FCDO correspondence, 27 September 2022

<sup>125</sup> [Pitcairn Islands Local Government Ordinance](#), Revised 2019, Parts I and II, Sections 2, 6 and 10 (PDF)

<sup>126</sup> Immigration Pitcairn, [The Adamstown neighbourhood](#), accessed 18 August 2022

<sup>127</sup> Government of the Pitcairn Islands, [Immigration: FAQs](#), archived 8 January 2016; FCDO correspondence, 27 September 2022

## St Helena

### Independence from the executive

In 2021, the CPA's benchmark report concluded there is “not enough separation of powers between the legislature and the executive.”<sup>128</sup>

### Law-making power

The legislature makes laws for the peace, order and good government of the Territory. Except on the recommendation of the Governor, the legislature cannot consider Bills which relate to money, taxation, charges, debts, or revenues.

A Bill must receive the assent of the Governor to become law, or the assent of the Crown through a UK Secretary of State.<sup>129</sup>

### Speaker

The Legislative Council elects a Speaker and a Deputy Speaker. Neither can be members of the Council. They do not have a vote.<sup>130</sup>

### Membership

The unicameral Legislative Council consists of 12 elected members, a Speaker and Deputy Speaker, and one non-voting ex-officio member (the Attorney General).<sup>131</sup>

There are five ministers on the Council.<sup>132</sup>

### Control over budget

The budget is led by the executive. In 2021, the CPA recommended the formation of a Parliamentary Service Commission to allow the legislature to become financially and administratively independent of the Executive.<sup>133</sup>

### Access to independent legal advice

The Attorney General, appointed by the Governor and who acts as a legal advisor to the Government, performs the same role for the Council.<sup>134</sup>

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<sup>128</sup> CPA, [St Helena Legislative Council benchmark assessment report](#), August 2021, Summary, p1 (PDF) (hereafter CPA, St Helena)

<sup>129</sup> [St Helena, Ascension and Tristan da Cunha Constitution Order 2009](#), Schedule, Chapter 1, Sections 60 and 73

<sup>130</sup> As above, Schedule, Chapter 1, Section 55 and 67

<sup>131</sup> St Helena Government, [Legislative Council](#), accessed 23 September 2022

<sup>132</sup> St Helena Government, [Your Council](#), accessed 23 September 2022

<sup>133</sup> CPA, [St Helena](#), p1

<sup>134</sup> As above, p1

In response to the CPA report, in April 2022 the Legislative Council said there are now separate staff in place but there are no separate powers.<sup>135</sup>

### Recruitment and management of House staff

There are two parliamentary staff: the Clerk of Councils and the Assistant Clerk of Councils. Some support is also provided by the Head of Administration Central Support Service at St Helena Government.

The staff are currently employed by the St Helena Public Service. Pay and conditions, as well as recruitment and promotion policies, are all those of the St Helena Government.<sup>136</sup>

In April 2022, the Legislative Council said it had now agreed for a Clerk to be employed by an independent body such as a Parliamentary Service Commission.<sup>137</sup>

### Building and security

There is no separate building: instead, the Legislative Council meets in the Castle, Jamestown. This is shared with the Governor's Office, Ministers and the public service.<sup>138</sup>

The CPA states the Legislature has "inadequate infrastructure to do its work effectively." However, given the small size of the Island it says a building shared with the executive is a "suitable compromise" although care should be taken to ensure their functions are distinct and separate.<sup>139</sup>

Security is provided by the Royal St Helena Police Force in the event it is required.<sup>140</sup>

## Ascension

### Law-making power

The Governor, acting after consultation with the Island Council, may make laws for the peace, order and good government of Ascension.

They do not have to act in accordance with the Council's views.<sup>141</sup>

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<sup>135</sup> St Helena Legislative Council, [Response to the St Helena Legislative Council Benchmark assessment report](#), April 2022 (PDF), p1

<sup>136</sup> CPA, [St Helena](#), p13

<sup>137</sup> St Helena Legislative Council, [Response to the St Helena Legislative Council Benchmark assessment report](#), April 2022 (PDF), p5

<sup>138</sup> FCDO correspondence, 13 September 2022

<sup>139</sup> CPA, [St Helena](#), p9

<sup>140</sup> FCDO correspondence, 13 September 2022

<sup>141</sup> [St Helena, Ascension and Tristan da Cunha Constitution Order 2009](#), Schedule, Chapter 2, Section 151

## Speaker

There is no Speaker: either the Governor or their Administrator presides.<sup>142</sup>

## Membership

The Island Council consists of the Governor, seven elected members, and three ex-officio members (the Administrator, Attorney General and Director of Resources). None of the three ex-officio members have a vote.<sup>143</sup>

## Control over budget

The Island Council recommends the budget for approval by the Governor, who holds ultimate responsibility.<sup>144</sup>

## Access to independent legal advice and recruitment and management of House staff

The Governor may direct any public officer to aid the Council, if the Governor sees fit.<sup>145</sup> The Ascension Island Crown Counsel provides legal advice, as well as serving as a non-elected member of the council.<sup>146</sup>

Other staff are provided by the Ascension Island Government and are not separately appointed or managed by the Council.<sup>147</sup>

## Building and security

The Island Council has no separate building, and instead meets at the Court House. Security is provided by police when needed.<sup>148</sup>

## Tristan da Cunha

### Independence from the executive

There is minimal independence from the Governor or the Administrator, who acts as the Governor's representative on the Island. The Governor retains full law-making power, only being required to consult with the Island Council. The Administrator also chairs the Council.

Subject to the approval of the Governor, the Administrator may also amend or revoke rules of procedure governing the business of the Council.<sup>149</sup>

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<sup>142</sup> [Island Government \(Ascension\) Ordinance 2008](#), Part II, Section 12 (PDF)

<sup>143</sup> As above, Part II, Section 3

<sup>144</sup> FCDO correspondence, 12 September 2022

<sup>145</sup> [Island Government \(Ascension\) Ordinance 2008](#), Part II, section 14

<sup>146</sup> FCDO correspondence, 12 September 2022

<sup>147</sup> FCDO correspondence, 12 September 2022

<sup>148</sup> FCDO correspondence, 12 September 2022

<sup>149</sup> [Island Council \(Tristan da Cunha\) Ordinance 1985](#), as amended, Section 17

## Law-making power

The Governor, acting after consultation with the Island Council, may make laws for the peace, order and good government of Tristan da Cunha. The Governor does not need to act in accordance with the advice of the Council.<sup>150</sup>

## Speaker

There is no Speaker. The Council's President is the Administrator.<sup>151</sup> A deputy President is elected from among the Council's members.<sup>152</sup>

## Membership

The Island Council consists of the Administrator, three members appointed by the Administrator, and eight elected members.<sup>153</sup>

## Control over budget

The Island budget is primarily set by the Government with consultation and input from the Council.<sup>154</sup>

## Access to independent legal advice

Under local laws, the Administrator may direct public offices to assist the Council as they see fit.<sup>155</sup> The Attorney General in St Helena is the primary source of legal advice.<sup>156</sup>

## Recruitment and management of House staff

Support staff are organised and managed by the Government, not the Island Council.<sup>157</sup>

## Building

Meetings for the Island Council are held in the same building that hosts the Administrator's Office, Treasury Department, Administration Offices and Internet Café. But there is a separate Council chamber.<sup>158</sup>

There is one full time police inspector on Tristan da Cunha, with two special constables. They perform a variety of tasks, including customs, immigration, search and rescue, as well as other police matters.<sup>159</sup>

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<sup>150</sup> [St Helena, Ascension and Tristan da Cunha Constitution Order 2009](#), Schedule, Chapter 3, Section 216

<sup>151</sup> [Island Council \(Tristan da Cunha\) Ordinance 1985](#), as amended, Section 3

<sup>152</sup> As above, Section 8

<sup>153</sup> As above, Section 3

<sup>154</sup> FCDO correspondence, 27 September 2022

<sup>155</sup> [Island Council \(Tristan da Cunha\) Ordinance 1985](#), as amended, Section 14

<sup>156</sup> FCDO correspondence, 27 September 2022

<sup>157</sup> FCDO correspondence, 27 September 2022

<sup>158</sup> Tristan da Cunha Island Council, [21<sup>st</sup> century Island Council](#), accessed 22 August 2022

<sup>159</sup> Tristan da Cunha, [Vacancy notice for a police officer: Background](#), 2021

## 3.11

# Turks and Caicos Islands

## Law-making power

The legislature has the primary responsibility of making laws for the peace, order and good governance of the Territory. However, it cannot proceed on bills for taxation, duties, revenues and debts, without the permission of the Governor.

The Governor must provide their assent for any Bill to become law. The Governor can enact laws if the Cabinet or Assembly are judged unlikely to introduce them. However, they must consult the Premier beforehand.<sup>160</sup>

## Speaker

The Speaker is elected from either the elected or appointed members of the House, or from among those who are not members.

The Deputy Speaker must be a member of the House.<sup>161</sup>

## Membership

The House of Assembly is constituted of a Speaker, 15 elected members, four appointed members and the Attorney General. The Attorney General has no right to vote.

Of the appointed members, two are appointed by the Governor at their discretion and another two after consultation with the Premier.<sup>162</sup>

There must be no more than seven Ministers, including the Premier.<sup>163</sup>

## Control over budget

The House of Assembly's Appropriations Committee, established by the constitution, is required to receive the estimates before they are considered by the House as a whole.<sup>164</sup> However, no specific or reserved process is detailed in the constitution for the Assembly's own budget.

The Governor also has a special responsibility in legislation when they judge that the House of Assembly's committees or wider institutions needed to

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<sup>160</sup> [Turks and Caicos Islands Constitution Order 2011](#), Schedule 2, Part IV, Sections 62, 71, 73

<sup>161</sup> As above, Schedule 2, Part IV, Section 44

<sup>162</sup> As above, Schedule 2, Part IV, Section 47

<sup>163</sup> As above, Schedule 2, Part III, Section 31

<sup>164</sup> As above, Schedule 2, Part IX, Section 114

protect good governance are judged underfunded. In these circumstances, they may prepare a supplementary estimate to procure sufficient funds.<sup>165</sup>

## Access to independent legal advice

Independent legal advice can be arranged when required. However, the Attorney General is the primary advisor.<sup>166</sup>

## Recruitment and management of House staff

The House is supported by a Clerk and other public officers that may be established (currently two).<sup>167</sup>

They are public servants, being recruited and managed in line with the wider public service.<sup>168</sup> The Deputy Governor heads and regulates the public service.<sup>169</sup>

## Building and security

While there is a separate space for the Assembly,<sup>170</sup> its building is shared with the Executive.<sup>171</sup>

The Assembly is based in the NJS Francis Building. In 2018, there were criticisms that the building's condition was experiencing "structural failures" and that not enough funds had been allocated for its maintenance. Parts of the building were prohibited from use.<sup>172</sup>

In February 2022, the Premier said the building is being refurbished and upgraded.<sup>173</sup>

An officer of the House has the powers and enjoys the privileges of a police officer. Under a 2012 ordinance, an officer of the House may arrest without warrant a person who commits an offence relating to either attempting to enter the precincts of the House's meeting place, creates or joins in a disturbance, or threatens, assaults or interferes with a Member. This also applies to any police officer on duty within the precincts of the House.<sup>174</sup>

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<sup>165</sup> [The Turks and Caicos Islands \(Finance\) Order 2017](#), Section 4

<sup>166</sup> FCDO correspondence, 6 September 2022

<sup>167</sup> [Turks and Caicos Islands The House of Assembly \(Powers and Privileges\) Ordinance 2012](#); The Government of the Turks and Caicos Islands, [Management structure](#), accessed 6 September 2022

<sup>168</sup> FCDO correspondence, 6 September 2022.

<sup>169</sup> [Turks and Caicos Islands Public Service Ordinance 2012](#)

<sup>170</sup> FCDO correspondence, 6 September 2022

<sup>171</sup> Office of the Premier, [Homepage](#)

<sup>172</sup> Turks and Caicos, [Misick calls for snap elections](#), 26 November 2018

<sup>173</sup> Office of the Premier, [State of the State Address](#), 17 February 2022

<sup>174</sup> [Turks and Caicos Islands The House of Assembly \(Powers and Privileges\) Ordinance 2012](#), Sections 15, 16 and 28

## 4 Judicial independence

For most inhabited Territories, their constitutions create a Court of Appeal (like the High Court in the UK) and a Supreme Court of the territory. For three Territories, the Eastern Caribbean Supreme Court (ECSC) instead performs these roles—Montserrat, the BVI and Anguilla have no equivalent local courts. Most Territories also have a lower summary/magistrates' courts.

Once legal processes are exhausted in an OT, [litigants can appeal to the Judicial Committee of the Privy Council in the UK](#), whose rulings are binding.<sup>175</sup>

This section focuses on the independence of these two higher courts, and briefly describes the appointment of magistrates. The below table focuses solely on the two highest courts (generally known as the Supreme Court and Court of Appeal, as well as the ECSC for relevant Territories).

Section 4.2 provides more on the ECSC and 4.3 on the situation in each OT. In general, older constitutions and uninhabited OTs have less protections.

Details and sources for each Territory constitution can be found in sections 4.2 and 4.3.

### 4.1 Summary

#### **The existence of courts is protected under the constitutions of most inhabited Territories**

All Territories permanently inhabited by British nationals have two courts established in their constitutions. This means these courts cannot be abolished by local legislation. For uninhabited Territories, power to create courts and judicial offices lies with the Administrator or Governor.

#### **Explicit constitutional provisions for judicial independence are rare**

Few Territory constitutions provide explicit protections for the judicial branch from the executive and legislative branches: These are St Helena, Ascension, and Tristan da Cunha (issued 2009), Cayman Islands (2009), Pitcairn (2010) and the Turks and Caicos (2012).

<sup>175</sup> Judicial Committee of the Privy Council (JCPC), [Role of the JCPC](#), accessed 3 October 2022

The Turks and Caicos Island constitution also gives the Governor a power to make a supplementary financial provision for the Territory's courts if they judge adequate provision is not made by the legislature. In the Cayman Islands, the executive and legislative branches are also required to make adequate sums available for the judiciary.

## Judicial Commissions exist in 6 of the 10 inhabited Territories

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For sources and details of Territory constitutions, see sections 4.2 and 4.3

All six Territories with judicial appointment commissions have some political input into their membership: Either through the Governor appointing a member at their discretion or following consultation with politicians, typically the Premier and/or the Leader of the Opposition.

However, in none of the Commissions are these appointees a majority. Other Commission members include Chief Justices, judges and Attorneys General.

## The Governor appoints judges to the highest courts in four inhabited Territories

In Bermuda (following consultation with the Premier and Leader of the Opposition), and the Falklands Islands, St Helena and Pitcairn (in line with any instructions issued by a UK Secretary of State), the Governor appoints Justices.

## The power of judicial commissions varies

In many Territories, the Governor must make decisions on judicial appointments and dismissals in line with the advice of local judicial service commissions.

The one exception to this is when the Governor judges that their advice “would prejudice [His] Majesty’s service.” Hendry and Dickson in their book on OT law state this means that their advice would be “prejudic[ial] to HM judiciary or to the administration of justice.”<sup>176</sup>

Three inhabited Territories have no judicial Commission: Bermuda, the Falklands Islands, and Pitcairn. Those for St Helena and the three Territories covered by the ECSC make decisions only for lower courts.

## Judges have security of tenure: Either through law or instructions

In all Territories, there is a form of security of tenure for judges. This is either through the initial instructions making their appointment which set out the

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<sup>176</sup> I. Hendry and S. Dickson, UK OT law, 2018, p121

terms of their office or through constitutional requirements for them to hold office under the term of their appointment or until they reach a certain age.

There is nothing to stop instructions, however, from including elements contrary to security of tenure.

## **Governors have limited roles to dismiss judges in inhabited Territories**

Judges can generally be dismissed on two grounds: That they are unable to fulfil their duties (eg due to illness) or on grounds of misbehaviour.

Even in Territories with no Judicial Commissions, the Governor must first seek the advice of a tribunal on whether to remove the judge before the case is sent to the Judicial Committee of the Privy Council in the UK. The Governor must abide by the Privy Council's judgement.

## Judicial appointments and independence in the UK OTs for courts of appeal and supreme courts

	Constitutional independence	Governor appoints (with or without UK Secretary of State Instructions)	Appointments Commission for two highest courts	Cabinet/Governor appoints some members of Commission at their discretion	Security of tenure	Governor can ignore Commission if advice prejudicial to judiciary or following UK instructions
Anguilla	X	N/A: ECSC jurisdiction	✓	✓ <sup>^</sup>	✓	N/A: ECSC jurisdiction
Bermuda	X	✓	X	N/A	✓	N/A: No commission
British Antarctic Territory	X	✓	X	N/A	✓*	N/A: No commission
BIOT	X	✓	X	N/A	✓*	N/A: No commission
BVI	X	N/A: ECSC jurisdiction	✓	✓ <sup>^</sup>	✓	N/A: ECSC jurisdiction
Cayman Islands	✓	X	✓	✓	✓	✓
Falkland Islands	X	✓	X	N/A	✓*	N/A: No commission
Gibraltar	X	X	✓	✓	✓	✓
Montserrat	X	N/A: ECSC jurisdiction	✓	✓ <sup>^</sup>	✓	N/A: ECSC jurisdiction
Pitcairn	✓	✓	X	N/A	✓*	N/A: No commission
St Helena	✓	✓	✓	✓	✓*	✓
South Georgia & South Sandwich Islands	X	✓	X	N/A	✓*	N/A: No commission
SBA Akrotiri and Dhekelia	X	✓	X	N/A	✓*	N/A: No commission
Turks and Caicos	✓	X	✓	✓	✓	✓

Notes:

<sup>^</sup> Some Commission members are appointed by the Governments of the independent states of the Eastern Caribbean Supreme Court (ECSC)

\*Judges are appointed under instruction from a UK Secretary of State. These instructions detail the terms on which the judge holds office.

Security of tenure includes age limits and statements that judges can only be removed on grounds of misbehaviour or inability to perform their judicial duties.

Sources: See section 4.2 and 4.3

## 4.2

# The Eastern Caribbean Supreme court in Antigua, Montserrat and the BVI

The Eastern Caribbean Supreme Court acts as the court of appeal for Antigua, Montserrat, and the British Virgin Islands (BVI). The supreme court consists of a court of appeal and a high court of justice. It has been in existence since the 1960s and covers six independent states in addition to the three OTs.<sup>177</sup>

The court of appeal is itinerant and moves to Territories/countries when needed. It consists of three justices and the Chief Justice.

Because of the Supreme Court, the constitutions of these three Territories do not provide for a local court of appeal.<sup>178</sup>

### Appointment of judges

These judges are appointed by a judicial and legal services commission. The Commission consists of the Chief Justice, one other judge designated by the Chief, an additional person appointed by the Chief with the concurrence of no less than four premiers of the independent states within its jurisdiction, and two members who chair public service commission of independent states, acting in rotation.

The Chief Justice is appointed by the UK Crown with the advice of Premiers in all the independent states.<sup>179</sup>

### Security of tenure

The judges of the Supreme Court hold office until they are 65.<sup>180</sup>

Their removal from office prior to this involves an independent tribunal and recommended removal by the Judicial Committee of the Privy Council.

The Governors of the UK OTs subject to its jurisdiction play no role. Instead, the Lord Chancellor for the Chief Justice and the Chief Justice in the case of other judges, would seek to recommend an investigation and await its outcome.<sup>181</sup>

The process of investigation is begun by the Premiers of any one of the six states making representations to the Lord Chancellor (for the Chief) or by the

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<sup>177</sup> [The Eastern Caribbean Supreme Court](#)

<sup>178</sup> I. Hendry and S. Dickson, UK OT law, 2018, p113

<sup>179</sup> As above, p121, see also [The West Indies Supreme Court Order 1967](#), section 5

<sup>180</sup> As above, p123

<sup>181</sup> Hendry and S. Dickson, UK OT law, 2018, p126

judicial and legal service commissions making representations to the Chief Justice.<sup>182</sup>

## 4.3

### Territory courts

#### Tests for judicial “misbehavior” and “inability” to conduct their duties

Judges in most Territories can only be removed on grounds of misbehaviour or being deemed unable to conduct their duties (eg through illness).

Hendry and Dickson state the removal of senior judges in an OT has been “extremely rare.”

In 2009, the removal of the Chief Justice of Gibraltar was considered. Its judicial committee recommended 4 to 3 his removal, citing his inability to perform his duties. They applied four tests for misbehaviour:

- 1) Conduct directly affecting their ability to carry out their duties
- 2) Conduct adversely affecting the perception of others as to their ability to perform their duties
- 3) Being perceived inimical to due administration of justice if they continued
- 4) Whether the office of chief justice had brought into disrepute by their conduct

For “inability”, the Committee considered both unfitness through illness and character, and whether cumulative instances of this would amount to an inability to discharge the functions of their office.<sup>183</sup>

Generally, in no Territories do their court of appeals sit continuously—most have two or three meetings a year.<sup>184</sup>

As these offices and courts are established in Territory constitutions, they cannot be amended or abolished without a new UK order in council.

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<sup>182</sup> Hendry and S. Dickson, UK OT law, 2018, p126

<sup>183</sup> As above, pp127-8

<sup>184</sup> As above, p114

## Anguilla

### Court system

The High Court and Court of Appeal of the Eastern Caribbean Supreme Court have jurisdiction in Anguilla.<sup>185</sup> Appeal can be made then to the UK Privy Council.<sup>186</sup>

Local legislation has created a subsidiary magistrate's court.<sup>187</sup>

### Judicial appointments for local magistrate courts

A judicial service commission exists of the Territory. This is constituted of the Chief Justice of the Eastern Caribbean Supreme Court, another judge of the Court of Appeal or High Court nominated by the Chief Justice after consultation with the Governor, and the Chair of the Public Service Commission.<sup>188</sup>

The Chair of the Public Service Commission is appointed after consultation with the Premier from its five members. Three of the members are appointed at the discretion of the Governor, and the remaining two by the Governor following consultation with public service staff associations.<sup>189</sup>

### Tenure and removal

The Governor must consult with the Judicial Service Commission when making appointments and when removing or exercising disciplinary control over them.<sup>190</sup> Eastern Caribbean Supreme Court judges are separately regulated.

## Bermuda

### Court system

The constitution provides for a Supreme Court and Court of Appeal. The Supreme Court consists of a Chief Justice and a number of judges prescribed by law. The Court of Appeal consist of a President and at least two judges.<sup>191</sup> Appeal can be made then to the UK Privy Council.<sup>192</sup>

### Judicial appointments

There is no judicial appointment commission.

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<sup>185</sup> [West Indies Associated State Supreme Court Order 1967](#), as amended by 1983 and 2000 legislation

<sup>186</sup> Judicial Committee of the Privy Council, [Section 1—general notes](#)

<sup>187</sup> Government of Anguilla, [Judicial Department](#)

<sup>188</sup> [Anguilla Constitution Order 1982](#), Schedule, Section 67

<sup>189</sup> As above, Schedule, Section 65

<sup>190</sup> As above, Schedule, Section 68

<sup>191</sup> [Bermuda Constitution Order 1968](#), Schedule 2, Sections 73 and 77 (PDF)

<sup>192</sup> Judicial Committee of the Privy Council, [Section 1—general notes](#)

The constitution states the Chief Justice is appointed by the Governor following consultation with the Premier who shall have first consulted the opposition leader. The other judges of the court are appointed by the Governor following consultation with the Chief.

Judges of the Court of Appeal are appointed by the Governor, acting at their discretion.<sup>193</sup>

### Tenure and removal

A Supreme Court judge must vacate their office when reaching 65 (though this can be extended). There is no upper age limit for a court of appeal judge—instead their office become vacant on expiration of the period of their appointment.<sup>194</sup>

A judge of the Supreme Court can only be removed because of their inability to discharge their duties or for misbehaviour. A judge can only be removed when the Governor has appointed a tribunal to consider the matter, that they recommend the question being sent to the judicial committee of the Privy Council, and the Council ruling that the judge should be removed.<sup>195</sup>

To remove a court of appeal judge requires the same process as the Supreme Court.<sup>196</sup>

## British Antarctic Territory

The Territory has no permanent population.

### Court system

The Constitution provides for no courts but allows the Commissioner to create them through local ordinances, as well as determine their jurisdiction and powers.<sup>197</sup>

Under local ordinances made by the Commissioner (rather than the constitution), the Territory has a Supreme Court and the ability to summon other courts, including the Magistrates Court and Summary Courts.<sup>198</sup>

The Falklands Islands courts have jurisdiction to hear and determine civil or criminal proceedings arising in the British Antarctic Territory courts.<sup>199</sup>

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<sup>193</sup> [Bermuda Constitution Order 1968](#), Schedule 2, Sections 73 and 77 (PDF)

<sup>194</sup> As above, Schedule 2, Sections 74 (1) and 77 (1)

<sup>195</sup> As above, Schedule 2, Section 74

<sup>196</sup> As above, Schedule 2, Section 78

<sup>197</sup> [The British Antarctic Territory Order 1989](#), Article 15

<sup>198</sup> [The Administration of Justice Ordinance 2021](#)

<sup>199</sup> [The Falkland Islands Courts \(Overseas Jurisdiction\) Order 1989](#), section 8

## Judicial appointments

Under the 1989 constitution for the Territory, the UK-appointed Commissioner has the power to establish a court and constitute any judgeships and other legal offices as they may consider necessary, including making appointments.<sup>200</sup>

Under local ordinances, the judge of the supreme court is appointed by the Governor following any instructions from the UK. The judge will hold office on such terms as the Commissioner, in accordance with any instructions, may proscribe.<sup>201</sup>

The Senior Magistrate is appointed by the Commissioner following consultation with the Judge of the Supreme Court. They will hold office on such terms as the Commissioner proscribes.<sup>202</sup>

Local magistrates are appointed from among British Antarctic survey personnel of the Territory.<sup>203</sup>

## Tenure and removal

Neither the constitution nor local ordinance detail measures for the term length of judges or the terms on which they can be removed or dismissed. Rather, the instructions issued by the Secretary of State will provide any protections.

## British Indian Ocean Territory

The Territory has no permanent population.

### Court system

Local ordinances allow for a Supreme Court, Court of Appeal and Magistrates Court. The final court of appeal is the UK Privy Council.<sup>204</sup>

### Judicial appointments

The Judge of the Supreme Court is appointed by the Commissioner in accordance with any instructions issued by the UK Government. They hold office on terms as the Commissioner, with any instructions from the UK, shall prescribe.<sup>205</sup>

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<sup>200</sup> [The British Antarctic Territory Order 1989](#), Article 15

<sup>201</sup> [The Administration of Justice Ordinance 2021](#), Section 9

<sup>202</sup> As above, Section 19

<sup>203</sup> I. Hendry and S. Dickson, *UK OT Law*, 2018, p326

<sup>204</sup> British Indian Ocean Territory Administration, [BIOT courts system](#)

<sup>205</sup> The Courts Ordinance 1983, section 9, accessed from British Indian Ocean Territory Administration (BIOT), [BIOT ordinances 1965-2010](#)

The Commissioner shall appoint officials to the Supreme Court following consultation with the Chief Justice.<sup>206</sup>

The Commissioner may appoint Magistrates as they see fit and meet certain qualifications (eg court experience). The Clerk of the Court is appointed by the Commissioner's representative.<sup>207</sup>

A local magistrate is generally the officer in command of the Royal Navy component on Diego Garcia.<sup>208</sup>

### Tenure and removal

There is no security of tenure or retirement age. Each judge is appointed in accordance with instructions given by the Crown through a Secretary of State. They therefore hold office on the terms of the instructions. Responsibility for protections therefore lies with the UK.<sup>209</sup>

## British Virgin Islands

### Court system

The constitution provides for the Eastern Caribbean Supreme Court to have jurisdiction in the BVI. It also allows for the creation of subordinate local courts.<sup>210</sup> Appeal can be made then to the UK Privy Council.<sup>211</sup>

Magistrate's courts are established by local act.<sup>212</sup>

### Judicial appointments for local magistrate courts

The constitution provides a judicial and legal services commission. This consists of:

- The Chief Justice of the Eastern Caribbean Supreme Court
- One judge of the Court of Appeal nominated by the Chief after consultation with the Governor and the Virgin Islands General Legal Council.<sup>213</sup>
- The Chair of the Public Service Commission (all five members of this commission are appointed by the Governor, though three following

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<sup>206</sup> The Courts Ordinance 1983, Sections 15, 24

<sup>207</sup> As above, Sections 27, 28, 35

<sup>208</sup> I. Hendry and S. Dickson, UK OT law, 2018, p330

<sup>209</sup> As above, p129

<sup>210</sup> [Virgin Islands Constitution Order 2007](#), Schedule 1, Chapter 6

<sup>211</sup> Judicial Committee of the Privy Council, [Section 1—general notes](#)

<sup>212</sup> [The Magistrate's Code of Procedure Act](#) and I. Hendry and S. Dickson, UK OT law, 2018, p380

<sup>213</sup> The General Legal Council consists of seven persons, nominated by the legal association, the premier, leader of the opposition, the Attorney General, and the Chief Justice, see [Virgin Islands Legal Profession Act 2015](#), Section 4 (PDF)

consultation with the Premier, Leader of Opposition and Civil Service Association).

- Two other members appointed by the Governor following consultation with the Premier and Leader of the Opposition, who both nominate one member. At least one should be a legal practitioner.

Commission members have security of tenure, and the commission should not be subject to the direction or control of any other person or authority.<sup>214</sup>

Power to make appoints lies with the Governor, acting in accordance with the Commission's advice. However, they can decide not to follow their advice if they judge that it "would prejudice [His] Majesty's service."<sup>215</sup>

The senior judiciary is not within the remit of the commission as they are supplied from the Eastern Caribbean Supreme Court.

### Tenure and removal

When removing a magistrate, the Governor must follow the advice of the Commission unless they judge that it "would prejudice [His] Majesty's service."<sup>216</sup> Judges on the Eastern Caribbean Supreme Court are separately regulated.

## Cayman Islands

### Independence of the judiciary

The Cayman Islands constitution states that the Legislature and the Cabinet "shall uphold the rule of law and judicial independence" and should ensure that adequate funds are provided to support the administration of justice on the Islands.<sup>217</sup>

The Governor is also required to reserve assent to laws if they judge them as affecting the integrity or independence of the administration of justice.<sup>218</sup>

### Court system

The constitution establishes a Grand Court and Court of Appeal. The Grand Court consist of a Chief Justice and a number of judges prescribed by law. The Court of Appeal consists of a President and at least two other judges.<sup>219</sup> Appeal can be made then to the UK Privy Council.<sup>220</sup>

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<sup>214</sup> [Virgin Islands Constitution Order 2007](#), Schedule 1, Sections 91, 94

<sup>215</sup> As above, Schedule 1, Section 95

<sup>216</sup> As above, Schedule 1, Section 95

<sup>217</sup> [Cayman Islands Constitution Order 2009](#), Schedule 2, Section 107

<sup>218</sup> As above, Schedule 2, Section 78

<sup>219</sup> As above, Schedule 2, Sections 95 and 100

<sup>220</sup> Judicial Committee of the Privy Council, [Section 1—general notes](#)

Local legislation allows for a lower summary court.<sup>221</sup>

### Judicial appointments

The constitution creates a judicial and legal services commission, with whose advice the Governor must act in line with. The exception is if the Governor judges their advice would “would prejudice [His] Majesty’s service.”<sup>222</sup>

The Commission consists of:

- A Chairman and one other member, appointed by the Governor following consultation with the Premier and Leader of the Opposition.
- The President of the Court of Appeal.
- A person appointed by the Governor, at their discretion. They must have held high judicial office in the Cayman Islands.
- Two persons appointed by the Governor, at their discretion. They must have held high judicial office in a Commonwealth country or Ireland.
- Two attorneys at law qualified to practice in the Cayman Islands, appointed by the Governor acting after consultation with local representative legal organisations and, where appropriate, the Attorney General.<sup>223</sup>

Magistrates are appointed by the Governor at their discretion.<sup>224</sup>

### Tenure and removal

The Commission is responsible for drawing up a disciplinary code and dealing with complaints.<sup>225</sup> A constitutional amendment in 2016 gave the power to exercise disciplinary control over a magistrate or judge of the Grand Court to the Chief Justice, and a judge of the Court of Appeal to the President.<sup>226</sup>

The Governor is to act in line with the Judicial Commission’s advice when exercising disciplinary control, unless they judge that it would “prejudice [His] Majesty’s service.”<sup>227</sup>

There is no upper age limit for Court of Appeal judges: They are appointed for a term as specified in their instruments of appointment. They can only be removed for inability to discharge their duties or for misbehaviour. A judge can only be removed if the Governor has referred the matter to the

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<sup>221</sup> [Summary Jurisdiction Law 2019](#) (PDF), Section 3

<sup>222</sup> [Cayman Islands Constitution Order 2009](#), Schedule 2, Section 106

<sup>223</sup> As above, Schedule 2, Section 105

<sup>224</sup> [Summary Jurisdiction Law 2019](#) (PDF), Section 6

<sup>225</sup> As above, Schedule 2, Section 106

<sup>226</sup> [The Cayman Islands Constitution \(Amendment\) Order 2016](#), Section 3

<sup>227</sup> As above, Section 3

Commission, and on their recommendation sent the issue to the Judicial Committee of the Privy Council, who advise their removal.<sup>228</sup>

A constitutional amendment in 2016 raised the retirement age of Grand Court judges from 65 to 70.<sup>229</sup> A judge can only be removed from office for an inability to discharge their functions or for misbehaviour. The Governor must first refer the matter to the Judicial Commission, and on their recommendation send the issue to the Judicial Committee of the Privy Council. Only on Council advice can the judge be removed.<sup>230</sup>

## Falkland Islands

### Court system

The constitution establishes a Supreme Court and Court of Appeal. The Supreme Court consists of a Chief Justice. The Court of Appeal consist of a President and two Justices of Appeal (plus any others prescribed by ordinance).<sup>231</sup> Appeal can be made then to the UK Privy Council.<sup>232</sup>

Local legislation allows for a summary court,<sup>233</sup> though the appointment of the Magistrate is considered in the constitution.<sup>234</sup>

The courts of the Falkland Islands have jurisdiction to deal with certain civil and criminal proceedings arising under the law of the British Antarctic Territory and the South Georgia and the South Sandwich Islands.<sup>235</sup>

### Judicial appointments

There is no judicial appointments commission. Instead, the Chief Justice, President of the Court of Appeal and the Justices of Appeal are appointed by the Governor in accordance with instructions issued by a Secretary of State.

The Senior Magistrate is appointed by the Governor, acting at their discretion.<sup>236</sup>

### Tenure and removal

The constitution provides no specific term or age limit. Any term of office will be detailed in the original instrument appointing them.

However, they cannot be removed from office for reasons other inability to discharge their office or misbehaviour. They can be removed by the Governor

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<sup>228</sup> [Cayman Islands Constitution Order 2009](#), Schedule 2, Section 101

<sup>229</sup> [The Cayman Islands Constitution \(Amendment\) Order 2016](#), Section 3

<sup>230</sup> [Cayman Islands Constitution Order 2009](#), Schedule 2, Section 96

<sup>231</sup> [The Falkland Islands Constitution Order 2008](#), Schedule, sections 86 and 87

<sup>232</sup> Judicial Committee of the Privy Council, [Section 1—general notes](#)

<sup>233</sup> [Administration of Justice Ordinance 1949](#), as amended

<sup>234</sup> [The Falkland Islands Constitution Order 2008](#), Schedule, Section 88

<sup>235</sup> [The Falkland Islands Courts \(Overseas Jurisdiction\) Order 1989](#), Sections 8 and 9

<sup>236</sup> [Falkland Islands Constitution Order 2008](#), Schedule, section 88

only when the judge/magistrate has been referred to the Judicial Committee of the Privy Council and that the committee has advised them to remove them from office.

If the Governor considers removing them from office or to investigate them, they must first appoint a tribunal which will include at least three members who have held or hold high judicial offices, chosen by the Governor. If the tribunal agrees, the question should be referred to the Judicial Committee of the Privy Council for its decision.<sup>237</sup>

## Gibraltar

### Court system

The constitution creates a Supreme Court and Court of Appeal. The Supreme Court consist of a Chief Justice and a number of judges prescribed by law. The Court of Appeal consist of a President and two Justices.<sup>238</sup> Appeal can then be made to the UK Privy Council.<sup>239</sup>

A Magistrate's court is established by local legislation.<sup>240</sup>

### Judicial appointments

The constitution establishes a Judicial Service Commission for Gibraltar. This consist of:

- The President of the Court of Appeal
- The Chief Justice
- The Stipendiary Magistrate
- Two members appointed by the Governor, on the advice of the Chief Minister
- Two members appointed by the Governor, at their own discretion.

The Governor must make appointments in line with the Commission's advice. However, with the prior approval of a UK Secretary of State the Governor can disregard the advice of the Judicial Services Commission if they judge the advice would prejudice [His] Majesty's service.<sup>241</sup> =

The Commission must not be subject to the direction or control of any other body.<sup>242</sup>

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<sup>237</sup> [Falkland Islands Constitution Order 2008](#), Schedule, section 90

<sup>238</sup> [Gibraltar Constitution Order 2006](#), Sections 60 and 61 (PDF)

<sup>239</sup> Judicial Committee of the Privy Council, [Section 1—general notes](#)

<sup>240</sup> [Magistrates' Court Act 1961-23](#) (PDF)

<sup>241</sup> [Gibraltar Constitution 2006](#), Section 57 (PDF)

<sup>242</sup> As above, Section 58

## Tenure and removal

Judges in the Supreme Court hold office until 67. Those in the Court of Appeal must vacate their office upon expiration of the period as specified in the Instrument of their appointment.<sup>243</sup>

Judges can only be removed by the Governor on the grounds of an inability to discharge their functions or misbehaviour. The Governor must first seek the recommendation of a tribunal before referring the matter to the Judicial Committee of the Privy Council. The Governor must adhere to the decision of the Privy Council.<sup>244</sup>

## Montserrat

### Independence of the judiciary

The Governor is required to reserve assent to legislation if they judge it likely to prejudice the efficiency of the judiciary.<sup>245</sup>

### Court system

The constitution provides for the High Court and the Court of Appeal of the Eastern Caribbean Supreme Court to have jurisdiction in the Territory.<sup>246</sup> Appeal can be made then to the UK Privy Council.<sup>247</sup>

By local legislation, a Magistrates court is in place.<sup>248</sup>

### Judicial appointments for local magistrate courts

There is no judicial services commission. The Magistrate is appointed by the Magistrate following consultation with the Chief Justice.<sup>249</sup>

### Tenure and removal

The Magistrate is appointed on such terms and for such period as the Governor determines, following consultation with the Chief Justice.<sup>250</sup>

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<sup>243</sup> [Gibraltar Constitution 2006](#), Section 64 (PDF)

<sup>244</sup> As above, Section 64

<sup>245</sup> [The Monserrat Constitution Order 2010](#), Article 74

<sup>246</sup> As above, Article 80

<sup>247</sup> Judicial Committee of the Privy Council, [Section 1—general notes](#)

<sup>248</sup> [Magistrate's Court Act](#), Chapter 2.02 (PDF)

<sup>249</sup> As above, Section 4

<sup>250</sup> As above, Section 4

## Pitcairn

### Independence of the judiciary

The Constitution allows for the independence of the judiciary from the legislative and executive branches of Government.<sup>251</sup>

### Court system

The constitution creates a Court of Appeal and Supreme Court. The Supreme Court consists of a Chief Justice and a number prescribed by law. The Court of Appeal consists of a President and two or more justices of Appeal.<sup>252</sup> Appeal can be made then to the UK Privy Council.<sup>253</sup>

Judges sit when needed, and none are usually resident. A local magistrate has been established by local ordinance. They do not have to be legally qualified but must have resided on Pitcairn for at least five years.<sup>254</sup>

### Judicial appointments

There is no judicial services commission.

Judges for both courts are appointed by the Governor upon instruction from the UK Government. Their remuneration is determined by agreement between the Governor and the judge on their appointment and cannot be changed to their detriment.<sup>255</sup>

### Tenure and removal

Judges serve until they are 75. They may permit those attaining that age may remain in office for up to two years after this. Judges can only be removed for “inability to discharge their office” or for misbehaviour by the Governor.

Before removing a judge, the Governor must establish a tribunal and, upon its recommendation, send the issue to the Judicial Committee of the Privy Council. Only upon the advice of the Judicial Committee can the judge be then removed.<sup>256</sup>

## St Helena, Ascension, and Tristan da Cunha

The three Islands form part of the same Territory but have separate constitutions.

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<sup>251</sup> [The Pitcairn Constitution Order 2010](#), Schedule 2, Part 6, Section 44

<sup>252</sup> As above, Part 6, Sections 47 and 49

<sup>253</sup> Judicial Committee of the Privy Council, [Section 1—general notes](#)

<sup>254</sup> [Judicature \(Courts\) Ordinance](#), revised 2012, Part III (PDF)

<sup>255</sup> [The Pitcairn Constitution Order 2010](#), Schedule 2, Part 6, Sections 52-3

<sup>256</sup> As above, Schedule 2, Part 6, Section 54

## 1) St Helena

### Independence of the Judiciary

The constitution states judges shall exercise their judicial functions independently from the legislative and executive branches of government.<sup>257</sup>

The Partnership Values between the UK and St Helena state include the rule of law and the impartial administration of justice. All organs of Government have a duty to adhere to these values and the Supreme Court of St Helena has the power to acquire into whether a government organ (other than the Governor) has complied with the values.<sup>258</sup>

### Court system

The constitution established a Supreme Court and Court of Appeal. The Supreme Court consists of a Chief Justice and a number of other judges determined by law. The Court of Appeal consist of President and two or more justices of appeal.<sup>259</sup> Appeal can be made then to the UK Privy Council.<sup>260</sup>

A Magistrate's Court is established by local ordinance.<sup>261</sup>

### Judicial appointments

The constitution creates a Judicial Service Commission. This consists of the Chief Justice, the Attorney General, the Public Solicitor, and a person who has St Helenian status but is not a judge, member of the legislature or an officer in the public service. They are appointed at the discretion of the Governor, for a term of three years.<sup>262</sup>

The Commission may make recommendations to the Governor on the appointment and removal of judicial officers (not judges), which are binding. The Commission must act independently of any external authority.<sup>263</sup>

The Governor must appoint the judges of the Supreme Court and Court of Appeal in line with the instructions issued by a UK Secretary of State. The Commission can only recommend on this issue.<sup>264</sup>

The Chief Magistrate is appointed in line the advice of the Commission.<sup>265</sup>

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<sup>257</sup> [The Constitution of St Helena, Ascension, and Tristan da Cunha 2009](#), as amended, Schedule, Section 81

<sup>258</sup> As above, Schedule, Section 2

<sup>259</sup> As above, Schedule, Sections 84 and 86

<sup>260</sup> Judicial Committee of the Privy Council, [Section 1—general notes](#)

<sup>261</sup> [Magistrates' Court Ordinance 2011](#) (PDF)

<sup>262</sup> [The Constitution of St Helena, Ascension and Tristan da Cunha 2009](#), as amended, Schedule, Section 94

<sup>263</sup> As above, Section 94

<sup>264</sup> As above, Sections 90 and 94

<sup>265</sup> [Magistrates' Court Ordinance 2011](#), Section 7 (PDF)

## Tenure and removal

The Chief Justice and any other judge of the Supreme Court is appointed for a term ending when they reach 70. The President and justices of the Court of Appeal are also appointed until they reach 70.<sup>266</sup>

Judges can only be removed due to their inability to discharge their duties or for misbehaviour. The Governor can remove them only once a tribunal has recommended the matter be considered by the Judicial Committee of the Privy Council, and that the Council recommends their removal.<sup>267</sup>

The Judicial Committee can provide binding advice to the Governor on the removal of Judicial officers (not judges).<sup>268</sup>

Judicial officers are appointed for life, or until the appointee reaches such an age as prescribed by law.<sup>269</sup>

## 2) Ascension

### Independence of the Judiciary

The Partnership Values include the rule of law and the impartial administration of justice. All organs of Government are required to give effect to these values. The local Supreme Court may inquire into whether or not any organ of government (other than the Governor) has acted improperly when giving effect to a Partnership Value.<sup>270</sup>

The constitution also states that all judges and judicial officers must exercise their judicial functions independent of the legislative and executive branches of government.<sup>271</sup>

### Court System

The Supreme Court and Court of Appeal of St Helena governs Ascension. Local courts may be established by law.<sup>272</sup>

Local legislation establishes a Magistrates Court.<sup>273</sup>

### Appointments

There is a Judicial Service Commission. The Commission consists of the Chief Justice, the Attorney General, the Public Solicitor, and a person appointed by

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<sup>266</sup> [The Constitution of St Helena, Ascension and Tristan da Cunha 2009](#), as amended, Schedule, Section 91

<sup>267</sup> As above, Schedule, Section 93

<sup>268</sup> As above, Schedule, Section 93

<sup>269</sup> As above, Schedule, Section 91

<sup>270</sup> As above, Schedule, Section 121

<sup>271</sup> As above, Schedule, Section 153

<sup>272</sup> As above, Schedule, Section 153

<sup>273</sup> [Magistrates' Court \(Ascension\) Ordinance 1968](#) (PDF)

the Governor who is not a member of the Island Council, an officer or the Public Service, or a member of the judiciary.<sup>274</sup>

Judicial officers are appointed by the Governor in accordance with the Ascension Judicial Service Commission.<sup>275</sup>

The Commission may make recommendations to the Governor for the appointment to judicial officers (not judges) only.<sup>276</sup>

### Tenure and removal

Judicial officers are appointed for life or to when their appointment expires.<sup>277</sup>

They can only be removed on the grounds of being unable to fulfil their duties or for misbehaviour. The Governor must ask this to be considered by the Judicial Service Commission and only remove them if the commission agrees.<sup>278</sup>

## 3) Tristan da Cunha

### Independence of the Judiciary

Tristan da Cunha has the same Partnership Values as Ascension and St Helena and requirement for the judicial branch to be independent of the other branches of government.<sup>279</sup>

### Court System

The courts of St Helena are the courts of Tristan da Cunha.<sup>280</sup> Local legislation allow for a Magistrate's court.<sup>281</sup>

### Appointments, tenure and removal

Local legislation does not detail the appointment process for the magistrate, other than noting the Administrator can appoint a Clerk and other offices necessary for the jurisdiction of the court.<sup>282</sup>

The constitution does not create a judicial services commission for Tristan da Cunha.<sup>283</sup>

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<sup>274</sup> [The Constitution of St Helena, Ascension and Tristan da Cunha 2009](#), as amended, Schedule, Section 162

<sup>275</sup> As above, Schedule, Section 161

<sup>276</sup> As above, Schedule, Section 162

<sup>277</sup> As above, Schedule, Section 161

<sup>278</sup> As above, Schedule, Section 161

<sup>279</sup> As above, Schedule, Section 186 and 219

<sup>280</sup> As above, Schedule, Section 218

<sup>281</sup> [Magistrate's Court \(Tristan da Cunha\) Ordinance 1968](#) (PDF)

<sup>282</sup> As above, Section 7

<sup>283</sup> As above, Schedule, Part 6

The Government says the Administrator has “in the past” acted as a magistrate but is to be transferred to a person who is not a member of the executive or legislative branches.<sup>284</sup>

## South Georgia and the South Sandwich Islands

The Territory has no permanent population.

### Court system

The constitution does not create any courts but allows the Commissioner to establish a supreme court and any other courts that they see fit and make provision for their jurisdiction and creation of judicial offices.<sup>285</sup>

Local ordinances have established a supreme court and a magistrate’s court. There is no local court of appeal and instead this is shared with the Falkland Islands.

Final appeal lies to the judicial committee of the Privy Council.<sup>286</sup>

### Judicial appointments, tenure and removal

A local magistrate is appointed from among the staff of the British Antarctic survey on South Georgia. There is no security of tenure or age limit. Each judge is appointed in accordance with instructions given by the Crown through a Secretary of State. They therefore hold office on the terms of the instructions. Responsibility for protections therefore lies with the UK.<sup>287</sup>

## Sovereign Base Areas (SBA) of Akrotiri and Dhekelia

The Territory has no permanent UK population.

### Court system

The Order in Council establishing the Territory’s constitution does not itself establish any courts but gives the Administrator the power to do so.<sup>288</sup>

Local legislation has established a first instance resident judge’s court with jurisdiction in criminal and some civil matters and a senior judge’s court responsible for some civil matters.<sup>289</sup>

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<sup>284</sup> Tristan da Cunha, [Tristan Government home page](#), accessed 6 September 2022

<sup>285</sup> [The South Georgia and South Sandwich Islands Order 1985](#), as amended, Section 13

<sup>286</sup> Government of the South Georgia & the South Sandwich Islands, [Consultation document](#), 2016, p2 (PDF) and I. Hendry and S. Dickson, UK OT Law, 2018, p365

<sup>287</sup> I. Hendry and S. Dickson, UK OT law, 2018, pp129, 365

<sup>288</sup> [The SBA Akrotiri and Dhekelia Order 1960](#), Section 4

<sup>289</sup> [Courts \(Constitution and Jurisdiction\) Ordinance 2007](#), Section 3 (PDF)

There is a resident judge based in the Territory and no local magistrates. The judges of the senior court attend when required. Final appeal lies to the Privy Council.<sup>290</sup>

### Judicial appointments

The Senior judge is appointed by an instrument in writing by the administration in accordance with any instructions from a UK Secretary of State.<sup>291</sup> The Resident judge is appointed by an instrument in writing by the Administrator.<sup>292</sup>

### Tenure and removal

Any senior judge and resident judge are appointed during good behaviour and for a period specified in their instrument of appointment. There are no upper age limits or protections against dismissal in law. Instead, instructions govern the tenure of judges.<sup>293</sup>

## Turks and Caicos Islands

### Independence of the Judiciary

The constitution states that the legislature and cabinet:

Shall uphold the rule of law and judicial independence, and shall ensure that adequate funds are provided to support the judicial administration in the Islands.<sup>294</sup>

The Governor is also required to reserve any legislation which may affect the integrity or independence of the administration of justice.<sup>295</sup>

In addition, the Governor is required to prepare a supplementary Appropriation bill to provide for the upholding of the rule of law and judicial independence (or for the effective working of the courts more widely) if they judge there has been a “failure” to appropriate and provide reasonable resource. The Governor can give assent to this Bill if the cabinet are unwilling to give support.<sup>296</sup>

### Court system

The constitution establishes a supreme court and court of appeal.

The supreme court consists of a chief justice and such other number of justices as determined by the Governor following consultation with the chief

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<sup>290</sup> I. Hendry and S. Dickson, UK OT law, 2018, p368

<sup>291</sup> [Courts \(Constitution and Jurisdiction\) Ordinance 2007](#), Section 6 (PDF)

<sup>292</sup> As above, Section 7

<sup>293</sup> As above, Sections 6 and 7

<sup>294</sup> [The Turks and Caicos Islands Constitution Order 2011](#), Schedule 2, Section 83

<sup>295</sup> As above, Schedule 2, Section 73

<sup>296</sup> [The Turks and Caicos Islands \(Finance\) Order 2017](#), Section 4

justice. The court of appeal consists of a President and at least two justices of appeal (more can be added by the Governor following consultation with the President).<sup>297</sup>

Appeal can be made then to the UK Privy Council.<sup>298</sup>

Local magistrate courts are provided for under law.<sup>299</sup>

### Judicial appointments

The constitution establishes a judicial service commission. This consists of a chair, appointed at the discretion of the Governor, and two other members. These are appointed after consultation with the Premier and the Leader of the Opposition. Appointees must have held high judicial office.

The tenure of commission members is protected by their instruments of appointment.<sup>300</sup>

The Commission is responsible for making appointments to the Supreme Court, Court of Appeal and Magistrate, as well as holding and exercising disciplinary control.

The Governor must act in accordance with the advice of the Commission unless they are instructed by a Secretary of State to do otherwise.<sup>301</sup>

### Tenure and removal

The Commission exercises disciplinary control over judicial offices and draws up a code of conduct for this after acting in consultation with the Chief Justice.<sup>302</sup>

A judge of the Supreme Court must leave office at 65 (unless separate arrangements are made). A Court of Appeal judge must vacate their office at the expiration of their period of appointment to that office.

A judge or magistrate can only be removed from office for being unable to discharge their duties or for misbehaviour. To be removed, the Governor must first refer the case to the Judicial Committee of the Privy Council following agreement from a Governor-appointed Tribunal. The Tribunal consists of a chairman and two other members selected by the Governor (these two must have held high judicial office). If they advise, the Governor should refer the case to the Privy Council.<sup>303</sup>

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<sup>297</sup> [The Turks and Caicos Islands Constitution Order 2011](#), Schedule 2, Sections 77 and 80

<sup>298</sup> Judicial Committee of the Privy Council, [Section 1—general notes](#)

<sup>299</sup> [Magistrate's Court Ordinance, Chapter 12](#)

<sup>300</sup> [The Turks and Caicos Islands Constitution Order 2011](#), Schedule 2, Section 86

<sup>301</sup> As above, Schedule 2, Section 87

<sup>302</sup> As above, Schedule 2, Section 87

<sup>303</sup> As above, Schedule 2, Section 85

## 4.4

# Power of judiciary in the OTs

## Role of UK courts

The final court of appeal for all UK OTs is the judicial committee of the Privy Council in the UK. The Privy Council is the highest judicial authority for each territory and its decisions are binding for its courts.<sup>304</sup>

Otherwise, UK courts are not courts of the UK Overseas Territories and their decisions have no binding authority for them.

## Power of UK courts to review OT law

Territory constitutions are made by the UK. In 2001 the House of Lords, then the UK's highest court, determined that the courts have jurisdiction to review, and if necessary, annul, orders in council making law for an OT on grounds of irrationality, illegally and procedural impropriety.<sup>305</sup>

Hendry and Dickson say it is “questionable” whether a court of the UK, excluding the judicial committee, has jurisdiction to review laws enacted by local legislatures of an OT. It could, for example, consider an ordinance made under instruction by a UK Secretary of State and the Commissioner as the sole legislator in the Territory. It would be “likely,” Hendry and Dickson judge, that the UK courts would be slower to act in cases where Territories have elected legislatures.<sup>306</sup>

Executive acts in the UK made in relation to the Territories, such as an order in council or instructions to a Governor by a UK Secretary of State, are reviewable in the UK courts on grounds of illegality, irrationality, and procedural impropriety.<sup>307</sup>

## Territory courts and local exercise of power

The courts of each Territory have jurisdiction to review legislation passed by local legislatures (as well as that made by the Governor or any other polity).

All legislation and exercise of executive functions are made under powers detailed in each Territory's constitution, and questions of whether the laws are in line with the constitution and any relevant Acts of Parliament can be considered by their courts (and ultimately the Privy Council).<sup>308</sup>

The Privy Council has also held that Territory courts have jurisdiction to inquire into the conduct of members of Territory legislatures to the extent

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<sup>304</sup> I. Hendry and S. Dickson, UK OT law, 2018, pp21-22, 28

<sup>305</sup> As above, p81

<sup>306</sup> As above, p81

<sup>307</sup> As above, p99

<sup>308</sup> As above, p81

necessary to determine the lawfulness of the proceedings and the validity of their legislation. Hendry and Dickson note this “is exceptional” but does allow for pre-enactment relief.<sup>309</sup>

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<sup>309</sup> I. Hendry and S. Dickson, UK OT law, 2018, pp81-2. See [Rediffusion \(Hong Kong\) Limited v The Attorney General \[1970\] UKPC 12](#)

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## 5 Powers of the executive and its accountability

### 5.1 Who is the executive in the OTs?

#### The UK Crown and the Governor

In each of the Territories, executive authority is vested in the Crown, but is largely exercised on the King's behalf by the Governor, who is the Head of the executive. The Governor:

- Must exercise their power in line with the provisions of the constitution (eg requirements to consult the local cabinet in some cases)
- Remains subject to instructions issued by the Crown (eg relating to appointments or law-making).<sup>310</sup>

#### Role of other officials and Ministers

Under Territory constitutions, executive authority is exercised not only by the Governor but also through those bodies subordinate to them:

- In most inhabited Territories, there is an executive council or cabinet that the Governor must consult and in accordance with whose advice they must act.
- For those with a ministerial system of government, many executive functions are also performed by locally elected or appointed ministers.
- Public bodies such as Public Service Commissions also perform some executive roles.<sup>311</sup>

In all the inhabited Territories aside from Bermuda, Gibraltar, and the Pitcairn Islands they also preside over meetings of the Cabinet/Executive Council (note Pitcairn has an Island Council rather than executive).

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<sup>310</sup> I. Hendry and S. Dickson, *British Overseas Territories Law*, 2018, pp83-4

<sup>311</sup> As above, pp83-4

## 5.2 Exercising legislative power: Governor

### Governor's law-making powers

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).

There is a broad distinction between Territories where the Governor can make laws for “good government” and those where they cannot. “Good government” can include the rule of law, protection of human rights, and strong standards of public service (this is not exhaustive).<sup>312</sup>

Where the Governor can make laws, this generally requires them to have been previously introduced into the local assembly or parliament, limited to the Governor's areas of responsibility (eg internal security), or have agreement from the UK or local government (only one of these may apply).

In Territories where they can make law for a Territory's good government, their powers are less impeded by these conditions. These Territories are:

- **Inhabited:** Anguilla, Pitcairn, and Turks and Caicos Islands
- **Uninhabited:** British Antarctic Territory, British Indian Ocean Territory, South Georgia and the South Sandwich Islands.

For further detail, see section 4 of the Commons Library briefing [The UK Overseas Territories and their Governors](#).

### Governor's veto powers over proposed laws

The power to reject laws is common to all Governors. However, in most cases the grounds on which they can do so is limited. These generally include the proposed bill being contrary to the Territory's constitution, being inconsistent with the UK's international obligations, or prejudicing the royal prerogative.

For more, see the Commons Library Briefing, [The UK Overseas Territories and their Governors](#), section 4.

## 5.3 Accountability of ministers and Governors

### Governors

Local control over Governors is limited, though they are accountable to the UK Government and must act in line with their instructions and any Orders in

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<sup>312</sup> See Foreign & Commonwealth Office, [The Overseas Territories](#), CM 8374, 28 June 2012, section 4

Council or Acts of Parliament that are made. All Governors are appointed by the Crown, and they have usually served in the UK civil service/armed forces. No constitution details how they should be appointed, but in almost all cases they are done so by a Royal Commission and on the advice of UK Ministers.<sup>313</sup>

While some Territories have called for greater consultation over their appointment, the UK has rejected such proposals. It argues there is some consultation with the elected leaders of a Territory but seeking local views on individual candidates runs the risk of making their appointment “untenable” if the candidate lacked local support.<sup>314</sup>

The Governors are ultimately accountable to the FCDO.<sup>315</sup>

Most Deputy Governors are locally appointed. It should be noted this is distinct role from acting Governor in some cases.

The Falklands Islands has a Deputy Governor, or a Deputy Head of Mission from the UK. The 2008 constitution provides for no role.<sup>316</sup> Similarly, the FCDO appoints a Deputy Governor to the Pitcairn Islands, but no role is detailed in the constitution.<sup>317</sup>

Deputy Governors in the OTs			
	Local or UK official?	A member of legislature of executive?	How appointed
Anguilla	Local	Executive Council	Public Service Commission, Governor
Bermuda	UK	Neither	Governor/FCDO
British Virgin Islands	Local	Neither	Governor/FCDO
Cayman Islands	Local	Cabinet	Governor/FCDO
Gibraltar	UK	Neither	FCDO
Montserrat	Local	Neither	Governor/FCDO/Premier (consultation only)
St Helena	Local	Neither	Governor
Turks and Caicos	Local	Cabinet	FCDO/Governor

Note: Ascension and Tristan da Cunha form part of the same Territory as St Helen and have no separate Governor.

Sources: See page pp71-73, below

<sup>313</sup> I. Hendry and S. Dickson, UK OT law, 2018, p37

<sup>314</sup> Commons Library, [The UK OTs and their Governors](#), Section 2.3

<sup>315</sup> Foreign & Commonwealth Office, [Response to the FAC report on The OTs: Resetting the relationship](#), HC 1464, 29 April 2019, para 3

<sup>316</sup> Gov.UK, [Deputy Head of Mission, Governor's Office Stanley](#), accessed 23 August 2022

<sup>317</sup> [The Pitcairn Constitution Order 2010](#), Schedule 2, Part 4; Gov.UK, [British Consul General in Auckland](#)

## Territories with a ministerial system of government

The constitutions of these Territories generally allow for votes of no confidence in the Government. This would result in a general election and/or the dismissal of the Premier/Chief Minister and their Cabinet.

The Governor must also remove and replace individual ministers if advised by the Premier/Chief Minister. Most constitutions provide for the Ministers to be responsible to their legislature for their conduct and policy in office.

Appointment and accountability of ministers in the OTs				
	Number in Cabinet (min)	How ministers appointed	Vote of confidence	Governor attends Cabinet/Executive Council?
Anguilla	2 ex-officio 4 Ministers	Likely to command majority support of legislature	2/3 of legislature	Yes
Bermuda	7 Ministers	Likely to command majority support of legislature	Majority vote	No—separate Governor's council
BVI	1 ex-officio 5 Ministers	Likely to command majority support of legislature	Majority vote	Yes
Cayman Islands	2 ex-officio 7 Ministers	Likely to command majority support of legislature	2/3 of legislature	Yes
Gibraltar	5 Ministers	Likely to command majority support of legislature	Majority vote +7 days to overturn	No
Montserrat	2 ex-officio 4 Ministers	Likely to command majority support of legislature	Majority vote	Yes
St Helena	1 ex-officio 5 Ministers	Legislative Council elects Chief Minister, ministers appointed	Majority vote	Yes
Turks and Caicos	3 ex-officio 7 Ministers	Demonstrate in writing majority support of legislature	Majority vote	Yes

Source: see pages 71-73, below.

## The Committee system in the Falklands Islands

In the Falkland Islands, there is no ministerial system or political parties. They instead have an elected Legislative Assembly and Executive Council which consists of some members of the legislative body, who are elected for 12 months. The Assembly can pass a resolution to revoke the appointment. The Governor presides over the Executive Council.<sup>318</sup>

## OTs with authority residing with the Governor or Administrator

For Pitcairn, the Governor retains executive authority.<sup>319</sup> Executive authority is also exercised by the Governor-appointed Administrator in Tristan da Cunha and Ascension.<sup>320</sup>

## 5.4 Scrutinising OT government: Committees

The below table details committee scrutiny of public spending by OT legislatures. It does not include ad-hoc committees, or other procedures such as the Committee of the Whole House or departmental question times.

Standing committees monitoring public finance in the OT legislatures		
	Committees	Powers and responsibilities
Anguilla	<ul style="list-style-type: none"> <li>Finance Committee</li> <li>Public Accounts Committee</li> </ul>	<ul style="list-style-type: none"> <li>Considers finance bills</li> <li>Chaired by opposition member and evaluates spending to ensure it has been spent for appropriated purposes. Has power to send for papers, officials. Minister of Finance provides office and secretarial support.</li> </ul>
Bermuda (House only)	<ul style="list-style-type: none"> <li>Committee on the Office of the Auditor</li> <li>Public Accounts Committee</li> </ul>	<ul style="list-style-type: none"> <li>Reviews estimates and can make recommendations to the Minister of Finance and the House of Assembly</li> <li>Chaired by opposition member and evaluates public expenditure. Can consider any accounts</li> </ul>
BVI	<ul style="list-style-type: none"> <li>Public Accounts Committee</li> <li>Finance Committee</li> </ul>	<ul style="list-style-type: none"> <li>Considers the accounts of the government, reports to the house, and considers Auditor General reports.</li> <li>Committee of Whole House to examine Estimates</li> </ul>
Cayman Islands	<ul style="list-style-type: none"> <li>Public Accounts Committee</li> <li>Finance Committee</li> </ul>	<ul style="list-style-type: none"> <li>Can access documents related to scrutinising government expenditure</li> </ul>

<sup>318</sup> [The Falkland Islands Constitution Order 2008](#), Sections 57, 58, 59, 63

<sup>319</sup> [The Pitcairn Constitution Order 2010](#), Part 4

<sup>320</sup> [Constitution of St Helena, Ascension and Tristan da Cunha, 2009](#), Chapter 2, Part 4, and Chapter 3, Part 4

		<ul style="list-style-type: none"> <li>Assesses revenue, expenditure and finance bills. Consists of all elected Assembly members.</li> </ul>
Falklands Islands	<ul style="list-style-type: none"> <li>Public Accounts Committee</li> </ul>	<ul style="list-style-type: none"> <li>Constituted of two Assembly members and three others appointed by the Governor, following consultation. Can summon witnesses and makes reports to the Council.</li> </ul>
Gibraltar	<ul style="list-style-type: none"> <li>None</li> </ul>	
Montserrat	<ul style="list-style-type: none"> <li>Public Accounts Committee</li> </ul>	<ul style="list-style-type: none"> <li>Can call witnesses and make recommendations.</li> </ul>
Pitcairn	<ul style="list-style-type: none"> <li>None</li> </ul>	
St Helena	<ul style="list-style-type: none"> <li>Public Accounts Committee</li> <li>“Select Committee 2”</li> </ul>	<ul style="list-style-type: none"> <li>Report to legislature on accounts of Auditor and has power to call for papers and witnesses</li> <li>Responsible for treasury, infrastructure, sustainable development, security, and home affairs.</li> </ul>
Turks and Caicos	<ul style="list-style-type: none"> <li>Public Accounts Committee</li> <li>Appropriations Committee</li> </ul>	<ul style="list-style-type: none"> <li>Constituted of three members and two external experts appointed by the Governor. Can require papers and witnesses and make reports and recommendations</li> <li>Scrutinises budget. May have two external experts.</li> </ul>

Sources: See below, pages 71-73

## Territories with no Public Accounts Committee

Gibraltar had a Public Accounts Committee from 1980 to 1984. A Gibraltar Commission on the constitution in 2013 concluded there was no reason for a standing public accounts committee, given members have the opportunity to scrutinise expenditure and debate annual auditor reports.<sup>321</sup>

Both the CPA and opposition figures in Gibraltar have called for a Public Accounts Committee to be established in recent years.<sup>322</sup>

There is no Public Accounts Committee in Tristan da Cunha or Ascension.

## Requirements for further scrutiny committees

The constitutions of some Territories also require further committees, including:

- Montserrat’s** constitution requires two committees to scrutinise the Government: Only one of these is currently in place.<sup>323</sup>

<sup>321</sup> Commission on Democratic and Constitutional Reform, [Report to Parliament on democratic and parliamentary reform](#), 2013, p10

<sup>322</sup> Gibraltar Chronicle, [Gibraltar “should have public finance committee,” Lord Faulkes says](#), 27 May 2017; Gibraltar Chronicle, [GSD highlights Gibraltar’s “frankly embarrassing” lack of public accounts committee](#), 7 December 2021

<sup>323</sup> CPA, [Montserrat](#), 2022 (PDF), p2

- For **St Helena**, under 2021 constitutional amendments the Governor is required to make provision for two scrutiny committees for St Helena (through their functions and procedures will be determined by the Governor).<sup>324</sup> These were established in 2021.
- The 2011 constitution of the **Turks and Caicos Islands** requires two standing committees in addition to the appropriations and public accounts committees to monitor specific ministerial portfolios. They have the power to summon ministers and report on activities.<sup>325</sup>

## 5.5

## Audit Offices

### Anguilla

The constitution allows for a chief Auditor who is responsible for assessing the public accounts and laying them before the House of Assembly. They have access to relevant papers and can call persons under oath.<sup>326</sup>

### Bermuda

Under the constitution, the Governor appoints an Auditor General. The Auditor General can remain in office until they are 65 unless they become unable to discharge their duties or for reasons of misbehaviour.<sup>327</sup>

All government departments and the legislature are subject to review. The Auditor submits their reports to Parliament.<sup>328</sup>

### British Virgin Islands

The constitution provides for an Auditor General, appointed by the Governor. All government departments and the legislature are audited.<sup>329</sup>

### Cayman Islands

The constitution provides for an Auditor General, appointed by the Governor. They can only be removed from office if they are unable to discharge their role or for misbehaviour. They are responsible for auditing the accounts of both the legislature and government. They submit their reports to the Public Accounts Committee.<sup>330</sup>

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<sup>324</sup> [Constitution of St Helena, Ascension, and Tristan da Cunha](#), 2009, Schedule 1, Section 69 A

<sup>325</sup> [The Turks and Caicos Constitution Order 2011](#), Schedule 2, Section 64

<sup>326</sup> [Anguilla Financial Administration and Audit Act](#), Sections 1 and 50-53 (PDF)

<sup>327</sup> [Bermuda Constitution Order 1968](#), Section 88 (PDF)

<sup>328</sup> As above, Section 101

<sup>329</sup> [The Virgin Islands Constitution 2007](#), Schedule, Section 109

<sup>330</sup> [The Cayman Islands Constitution Order 2009](#), Schedule 2, Section 114

## Falklands Islands

The constitution requires the Governor to make arrangements to audit to finances of the Falkland Islands Governments. The Auditor will have access to any related documents.<sup>331</sup>

## Gibraltar

The constitution creates a Principal Auditor as an officer of Parliament. They are responsible for auditing all government offices and have access to necessary documentation.<sup>332</sup>

The Auditor is appointed by the Governor in accordance with the advice of the Specified Appointments Commission. The Commission is constituted of two members appointed by the Governor following consultation with the Chief Minister and another two on the advice of the Chief Minister. The Commission can make decisions regarding terminating employment.<sup>333</sup>

## Montserrat

The constitution states the Governor is responsible for appointing an Auditor General, after acting in consultation with the Public Accounts Committee of the legislature.

The Governor can remove the Auditor General if they become bankrupt or violate any ethnics law covering public leaders, or the Legislative Assembly submits a resolution stating the Auditor cannot continue for reasons of misconduct, incapacity or incompetence. The Governor must appoint a special tribunal before determining whether to terminate their employment.<sup>334</sup>

The Auditor is an officer of the Legislative Assembly.<sup>335</sup>

The Auditor is required to submit reports to the legislature and scrutinise spending by all public bodies. They have the power to access documents.<sup>336</sup>

The legislature is tasked with making provision for a national audit office by law.<sup>337</sup>

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<sup>331</sup> [The Falkland Islands Order 2008](#), Schedule, Paragraph 80

<sup>332</sup> [The Gibraltar Constitution Order 2006](#), Section 74 (PDF)

<sup>333</sup> As above, Section 56

<sup>334</sup> [The Montserrat Constitution Order 2010](#), Article 101

<sup>335</sup> As above, Article 102

<sup>336</sup> As above, Article 103

<sup>337</sup> As above, Article 104

## Pitcairn

Responsibility for making arrangements to audit the public accounts and all offices of Pitcairn rests with the Governor.<sup>338</sup>

## St Helena, Ascension and Tristan da Cunha

The constitution provides for a Chief Auditor, who is appointed by the Governor acting at their discretion and with the approval of a UK Secretary of State. The Legislature can pass a resolution calling for their removal—in response, the Governor must appoint a tribunal and adhere to its decision.

The Auditor acts as an adviser to the Public Accounts Committee and has the power to seek documents relating to the finances of St Helena.<sup>339</sup>

The Governor is required to make appropriate arrangements for the audit of accounts for Ascension and Tristan da Cunha.<sup>340</sup>

## Turks and Caicos

Under the 2011 constitution, the Governor should consult the Premier and the Leader of the Opposition before making an appointment of the Auditor General.<sup>341</sup>

The constitution provides for an Auditor General and National Audit Office. The Auditor is charged with promoting accountability in the public finances and has the right to access documents.<sup>342</sup>

The Auditor General acts as an adviser to the Public Accounts Committee.<sup>343</sup>

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<sup>338</sup> [The Pitcairn Constitution Order 2010](#), Schedule 2, Paragraph 58

<sup>339</sup> [Constitution of St Helena, Ascension, and Tristan da Cunha, 2009](#), Schedule, Section 111

<sup>340</sup> As above, Schedule, Section 178 and

<sup>341</sup> [The Turks and Caicos Constitution Order 2011](#), Schedule 2, Paragraphs 91

<sup>342</sup> As above, Schedule 2, Paragraphs 97, 98, 126

<sup>343</sup> As above, Schedule 2, Paragraph 122

## Sources for tables in Section 4

### Deputy Governors

#### Anguilla

- [Anguilla Constitution \(Amendment\) Order 1990](#), Section 4
- The Anguillan, [Announcement of Deputy Governor](#), 28 June 2021

#### Bermuda

- Government of Bermuda, [The Governor of Bermuda](#)
- [Bermuda Constitution Order 1968](#), Section 18 (PDF)

#### BVI

- [The Virgin Islands Constitution Order 2007](#), Section 36

#### Cayman Islands

- [The Cayman Islands Constitution 2009](#), Sections 34 and 44

#### Gibraltar

- [Gibraltar Constitution Order 2006](#), Section 23 (PDF)
- Your Gibraltar TV, [New Deputy Governor of Gibraltar](#), 3 August 2022

#### Montserrat

- [Montserrat Constitution Order 2010](#), Articles 23, 32 and 85

#### St Helena

- [Constitution of St Helena, Ascension and Tristan da Cunha 2009](#), as amended, Schedule, Section 28

#### Turks and Caicos

- [The Turks and Caicos Islands Constitution Order 2011](#), Schedule, Sections 25 and 36

## Appointment and accountability of Ministers

#### Anguilla

- [Anguilla Constitution Order 1982](#), as amended, Sections 23, 24, 25

#### Bermuda

- [Bermuda Constitution Order 1968](#), Sections 57, 58, 59, 70 (PDF)

## **BVI**

- [The Virgin Islands Constitution Order 2007](#), Section 47, 49, 52, 53

## **Cayman Islands**

- [The Cayman Islands Constitution 2009](#), Sections 44, 46, 49, 51

## **Gibraltar**

- [Gibraltar Constitution Order 2006](#), Sections 45 and 51 (PDF)

## **Montserrat**

- [Montserrat Constitution Order 2010](#), Articles 32, 33, 34, 42

## **St Helena**

- [Constitution of St Helena, Ascension and Tristan da Cunha 2009](#), as amended, Schedule, Sections 35, 37, 38, 39, 45B

## **Turks and Caicos**

- [The Turks and Caicos Islands Constitution Order 2011](#), Schedule, Sections 31 and 33

## **Standing committees**

### **Anguilla**

- [Legislative Assembly \(Procedure\) Rules 1976](#), as amended to 2000, Sections 66 and 66A (PDF)

### **Bermuda**

- [Bermuda House of Assembly Official Standing Orders](#), revised 2013, Section 34 (PDF)

### **British Virgin Islands**

- BVI Government, [House of Assembly ensuring a smooth budget process](#), 19 November 2021
- Sir Gary Hickenbottom, [BVI Commission of Inquiry: Report, Volume 1](#), 2022, para 1.138

### **Cayman Islands**

- [The Cayman Islands Constitution Order 2009](#), Schedule 2, Paragraphs 71 and 87

### **Falklands Islands**

- [The Falkland Islands Constitution Order 2008](#), Schedule, Section 81

### **Montserrat**

- [The Montserrat Constitution Order 2010](#), Part IV, Article 63

### **St Helena**

- [Constitution of St Helena, Ascension, and Tristan da Cunha, 2009](#), Schedule 1
- [Select Committees \(Establishment\) Order 2022](#)

### **Turks and Caicos**

- [Turks and Caicos Constitution Order 2011](#), Schedule 2, Sections 114, 122

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