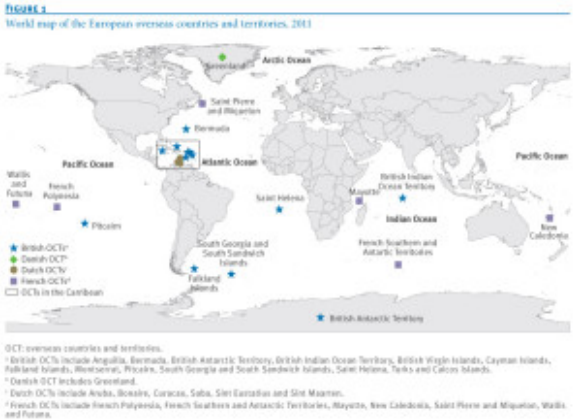
Extended Statehood In The Caribbean ~ The UK Caribbean Overseas Territories: Extended Statehood And The Process Of Policy Convergence



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Introduction

The chapter analyses the complex and ever-evolving relationship between the United Kingdom and its Overseas Territories (formerly known as Dependent Territories) in the Caribbean. The Territories are Anguilla, British Virgin Islands, Cayman Islands, Montserrat, and Turks and Caicos Islands. The chapter employs the term extended statehood, which is the focus of this study, in order to illustrate the nature of the relationship between the UK and its Caribbean Overseas Territories (COTs). In particular, there is an evaluation of the effectiveness of the arrangements in place, and a consideration of the extent to which the Territories are actually integrated into the world at large. The links between the UK and its COTs have been shaped and determined by particular historical, constitutional, political and economic trends. For many years the relationship between the COTs and the UK was rather ad hoc – a situation that can be traced back to the compromises, fudges and deals characteristic of pragmatic British colonial administration. The chapter traces the relationship between the UK and its COTs,

and the efforts on the part of the current Labour government to overcome the legacy of only sporadic UK government interest, through the imposition of greater coherence across the five Territories via a new partnership based on mutual obligations and responsibilities. It can be argued that the recent reforms have led to a greater convergence of policy across the COTs and a strengthening of Britain's role in overseeing the activities of the Territories. Nevertheless, problems of governance remain, which have implications for the operation of extended statehood in the COTs, and the balance of power between the UK and the Island administrations. In order to understand the nature of the relationship, it is first necessary to consider the constitutional provisions that underpin it.

The Constitutional Basis of the UK-Caribbean Overseas Territory Relationship

The collapse of the Federation of the West Indies precipitated a period of decolonisation in the English-speaking Caribbean, which began with Jamaica and Trinidad and Tobago gaining their independence in 1962, followed by Barbados and Guyana four years later. Despite the trend towards self-rule across the region a number of smaller British Territories, lacking the natural resources of their larger neighbours, were reluctant to follow suit. As a consequence the UK authorities had to establish a new governing framework for them. This was required as the West Indies Federation had been the UK's preferred method of supervising its Dependent Territories in the region. In its place the UK established constitutions for each of those Territories that retained formal ties with London. The West Indies Act of 1962 (WIA 1962) was approved for this purpose. As Davies states the Act .(…) conferred power upon Her Majesty The Queen to provide for the government of those colonies that at the time of the passing of the Act were included in the Federation, and also for the British Virgin Islands.**[i]** The WIA 1962 remains today the foremost provision for four of the five COTs. The fifth, Anguilla, was dealt with separately owing to its long-standing association with St Kitts and Nevis.**[ii]** When Anguilla came under direct British rule in the 1970s and eventually became a separate British Dependent Territory in 1980, the Anguilla Act 1980 (AA 1980) became the principal source of authority.

The constitutions of the Territories framed by WIA 1962 and AA 1980 detail the complex set of arrangements that exist between the UK and its COTs. Because, with the exception of Anguilla, the relationship between the Caribbean Territories and the UK is framed by the same piece of legislation, there are many

organisational and administrative similarities. However, there are also a number of crucial differences. Each constitution allocates government responsibilities to the Crown, the Governor and the Overseas Territory, according to the nature of the responsibility. In terms of executive power, authority is vested in Her Majesty the Queen. In reality, however, the office of Secretary of State for Foreign and Commonwealth affairs and the Territory Governors undertake decisions in the Monarch's name, with the Governors having a large measure of autonomy of action. Despite this, Governors must seek guidance from London when serious issues are involved, and at the level of the Territory they are obliged to consult the local government in respect of matters falling within the scope of their reserved powers. Those powers generally reserved for the Crown include defence and external affairs, as well as responsibility for internal security and the police, international and offshore financial relations, and the public service. strong>[iii] However, some COT constitutions provide Governors with a greater scope for departure when it comes to local consultation. In the British Virgin Islands the Governor is required to consult with the Chief Minister on all matters relating to his reserved powers. While in the Turks and Caicos Islands and the Cayman Islands the Governor is obliged merely to keep the Executive Council informed. With such a balance of authority it has been argued that .the Governor is halfway to being a constitutional monarch (…) taking his own decisions in those areas reserved for him.**[iv].** But as Drower has argued .[The Governor] has to have the authority to impose his will, but ability to do so in such a manner, which takes the people with him**.[v]**

Although the British Monarch retains a number of important reserved powers, there is significant autonomy for individual COTs. In theory individual Territory governments have control over all aspects of policy that are not overseen by the Crown, including the economy, education, health, social security and immigration. In addition, each Territory has a government set out in their respective constitutions, which allows the local populations to choose their legislative and executive representatives. However, the level of accountability is limited by the inclusion of non-elected members in the legislatures and executive councils, and the subordination of these authorities to the UK executive**[vi]**. The extent of the first of these two limitations is different amongst the five Territories. For example, in the British Virgin Islands the Legislative Council contains 13 elected members, a speaker and an ex-officio member, while the Turks and Caicos Islands legislature consists of 13 elected members, three appointed members and three

ex-officio members, as well as the governor and the speaker. The second limitation gives the Crown the right to introduce laws into the Territory or to override legislation that has been passed locally. In relation to the former aspect of legislative power, the primacy of Crown authority is laid down in the respective COT constitutions and framed by WIA 1962 and AA 1980. Both Acts provide Her Majesty with the power to 'declare that any legislative authority conferred upon a colony is not exclusive to the local legislature, but is subject to an ultimate legislative authority retained by the Crown'.**[vii]** This power has been used, albeit only occasionally, in 1990 to abolish the death penalty for murder, and in 2000 to decriminalise consensual private homosexual acts between adults.

In regard to the disallowance of legislation, a key provision comes in Section 2 of the Colonial Laws (Validity) Act 1865, which privileges an Act of Parliament over local Territory legislation. This has the effect of limiting the authority of overseas Territories in cases of legislative conflict between a Territory and the UK. As Davies argues, this is consistent with that logic that requires of a system of overseas-Territory government. Were the balance of power to lie the other way, the requisite UK control would be lost'.**[viii]**

Under such circumstances it is suggested that 'the formal use of this power is avoided by communications in the preparatory stages of legislation'.**[ix]** In a situation where a Territory proposes to introduce legislation that the UK government finds unacceptable, perhaps when it relates to one of Britain's treaty obligations, London would make plain its displeasure to the local government. On such occasions it is more than likely that the provision would be amended or withdrawn, and as Davies contends 'From the British government's point of view, this practice appears to have worked, in that confrontation by formal disallowance has been avoided'.**[x]** So even though it is true that the Crown has not formally disallowed any legislation from the COTs for many years, 'the existence of such power imposes an important potential restraint upon the powers of local authorities in these Territories'.**[xi]** The fact that the UK authorities can override local sensibilities and enact or disallow legislation (often out of public view) raises questions as to the rights of COT citizenry and the real autonomy of local legislatures. These issues are considered in more depth later in the chapter.

Although it seems that there is a clear privileging of UK executive and legislative authority with regard to the COTs the picture is not so clear-cut. The UK government has been reluctant to use the nuclear option of forcing change

through executive or legislative dictat, and as a consequence there can be uncertainty over who has responsibility for specific areas of policy. On occasion there may be a dispute as to whether a matter falls within the Governor's remit of reserved powers, or whether a Territory minister should oversee the issue. For example, in the Turks and Caicos Islands there is some concern locally over the number of illegal Haitians living in the Territory. Under normal circumstances the relevant minister deals with issues of immigration. However, if the Governor believes that a particular case has implications for external affairs or internal security he can assume the responsibility for decision-making.

Nevertheless, such decisions are controversial and can be contested. As Taylor argues in relation to Montserrat .(…) the Constitution provides continuous opportunities for turf wars between the [Governor and Ministers]. In my time in Montserrat Ministerial attempts to encroach on the Governor's areas of responsibility and to challenge his powers were the normal stuff of day-to-day administration as they are to a greater or lesser extent in all the Territories.**[xii]** In order to deal with this problem, alterations were made to most of the COT constitutions in an attempt to clarify the position when a case relates to business that has been assigned to a minister, but also impinges upon an area of the Governor's special responsibility. The requisite changes were made to the constitutions of Anguilla, the British Virgin Islands, Montserrat and the Turks and Caicos Islands in the late 1980s and early 1990s.**[xiii]** Despite these constitutional revisions, differences over administrative competences remain. The ramifications of which are considered a little later in the chapter.

The section has so far considered some of the more important aspects of the constitutional settlement between the UK and its Overseas Territories in the Caribbean. Many commonalities have been highlighted, and one or two of the differences. However, the distinctive aspects of the constitutions need to be considered further, as they help to define the attitudes of the five Territories towards the UK and its moves towards consolidating extended statehood. The constitutions of Montserrat and the British Virgin Islands overall afford greater executive and legislative autonomy than those of Anguilla, the Cayman Islands, and the Turks and Caicos Islands. To a large extent this is due to the fact that the former two Territories were never dependencies of other colonies. Montserrat and the British Virgin Islands have been administered either as colonies in their own right, or as a part of wider groupings such as the Federation of the Leeward

Islands, or (for Montserrat) as a part of the Federation of the West Indies.

The fact that Montserrat was part of the West Indies Federation meant that it benefited from relatively advanced constitutional provisions, which were designed to smooth the country's path towards becoming a single independent federal state after a period of five years. However, this of course never happened. Nevertheless, the 1959 constitution remained in place, and formed the basis of a new constitution in 1989.

However Montserrat's relatively advanced constitutional position was undermined by two developments. Firstly, the 1989 constitution, added oversight of international finance to the Governor.s reserved powers. This was done in response to a series of banking scandals that were uncovered.**[xiv]** Secondly, and certainly more importantly was the eruption of the Mount Soufrière volcano in July 1995, and the subsequent destruction that it caused.**[xv]** The outcome was a reliance on the UK government for budgetary support, and an associated decline in local political and economic autonomy. Despite these curbs Montserrat has, at least in principle, the most freedom of action when compared to the other COTs. This is true even for the British Virgin Islands, which was a separate colony like Montserrat, but did not join the West Indies Federation. And as Davies argues 'This my explain some differences found in the BVI constitution, which place it lower on the constitutional advancement scale than (…) Montserrat'.**[xvi]**

In contrast Anguilla, the Cayman Islands, and the Turks and Caicos Islands have, for much of their history, been dependencies of some other British colonies. To varying degrees this has limited their constitutional development. For much of the last 150 years the Cayman Islands and the Turks and Caicos Islands shared a constitutional link with Jamaica, as its dependencies. The link was broken when Jamaica gained its independence in 1962, while the two dependencies preferred to maintain a strong relationship with the UK. After its separation from Jamaica, the Cayman Islands gained its own constitution under WIA 1962 and then followed a period of economic growth, with few constitutional problems, and little constitutional change. Conversely, the Turks and Caicos Islands went through a period of great economic, political and constitutional upheaval in the mid to late 1980s. The Territory's problems reached their height in 1986, when ministerial government was suspended and direct rule was imposed from London.**[xvii]** A new constitution was subsequently implemented in 1988, which extended the Governor's reserved powers and gave him greater influence over membership of

the legislature.

These measures guaranteed a substantial level of Crown control over the Territory. Anguilla, as with the Cayman Islands and the Turks and Caicos Islands, acquired a separate identity much later than either the British Virgin Islands or Montserrat. Anguilla did not fully become a separate entity until 1980, and as a consequence its constitutional development was restricted. In addition, a degree of the Territory's autonomy was lost in 1990 when the UK government imposed constitutional safeguards to secure the proper functioning of its offshore financial sector. It can be argued that for Anguilla, the Cayman Islands and the Turks and Caicos Islands, who gained their separate Dependent-Territory status at a relatively late stage, the UK government provided '(…) these Territories with constitutions (…) with more potential constraints than is the case in the more mature Territory of Montserrat, and to a lesser extent, the BVI'.**[xviii]**

The balance of power and influence between the UK government, the Governors, and the Island administrations is complex and sometimes confusing. What is most apparent, however, is that the UK government, through the reserved powers of the Governor has the upper hand when it comes to overseeing policy-making in the Territories. Nevertheless, it is clear that the UK government does attempt to consult with the COTs on matters of importance, and is reluctant to openly overrule local governments and legislatures. Furthermore, the UK relationship with the Territories is made more difficult by the different degrees of autonomy for each of the COTs, which can cause problems both for the Crown and the local Territory administration.

Despite the difficulties, the constitutional link with the UK retains its popularity, in particular because it helps to preserve a degree of political stability for the Territories. As Taylor argues 'The people (…) regard continuing dependence as a safeguard against weak or corrupt government (…)'.**[xix]** The political ties are also important for the economies of the COTs, as they provide a measure of sovereign protection, which helps to reassure potential investors. The influence of English law and language, and the UK's responsibility for defence and external affairs has been valuable. In addition, even the 'pomp and pageantry of the colonial government, with its venerable yet quaint British customs, are used to sell the islands as changeless (and hence stable) to both tourists and financiers'.**[xx]** Such political support provided by the UK has meant that many of the Territories have become highly successful economies. A related area of

advantage is the Territories sometimes-uncertain constitutional relationship with the UK. As has been noted the constitutional arrangements that link the Territories with the metropolis are rather ill defined with the Territories having autonomy in some areas, but maintaining close ties with the UK in others. The quasi-independent status that exists provides room for manoeuvre in political and economic matters, and creates an ambiguity, which attracts international financial capital. In short, the Territories recognise the advantages of retaining their present status.

*Two Steps Forward, One Step Back***[xxi]**
The implementation of the West Indies Act of 1962 precipitated a period of significant decolonisation across the Caribbean. By the end of 1983 British colonial responsibilities in the Caribbean extended to only five very small Territories – in fact the five Territories that remain under UK authority today. Anthony Payne argued at the time that 'these Territories scarcely constitute compelling reasons for Britain to maintain a close interest in Caribbean affairs'.**[xxii]** Rather the UK recognised and accepted the United States' hegemonial role in the region, while Britain felt embarrassed about its colonial possessions in such fora as the United Nations (in part via its Special Committee on Decolonisation)**.[xxiii]** Further, the growing geo-political importance of the European Community was recognised by UK governments of all political hues, which in turn led to a downgrading in Commonwealth ties. Under such circumstances Payne suggested that the UK's presence in the region would diminish further. The Foreign Affairs Select Committee of the House of Commons, which held an inquiry into Central America and the Caribbean during 1981-82, concurred.[xxiv] Writing later in the decade, Thorndike stated that the period from the late 1970s to the early 1980s had been one of benign neglect on the part of the UK.**[xxv]**

However, it can be argued that as far back as the late 1960s there was a clear attitude of detachment on the part of the UK in relation to its Caribbean dependencies. For example, in January 1969 the Daily Telegraph inquired at the Foreign and Commonwealth Office (FCO) about the number of remaining Territories. Although the paper was given the correct figure, it took the FCO another two and half hours to discover the Territories names.**[xxvi]** There were indications that civil servants in the FCO, realising that colonialism was coming to an end, felt there was 'no personal kudos, or career advantage, to be had from

being associated with the Dependent Territories'.**[xxvii]** The effect of this growing civil service disinterest in the dependencies was exacerbated by the fact the FCO's Dependent Territories Division (DTD) was lightly staffed. On an institutional level there were also problems. One particularly ill-conceived change was the disbursement of responsibility for the Territories after the closure of the DTD in 1980.

Rather than a single bureaucracy overseeing all the Territories, FCO responsibility was dispersed between six geographical departments: West Indian and Atlantic, South Atlantic and Antarctic, Hong Kong, Southern European, East Africa, and South Pacific. Further, the fact that the majority of Governorships were awarded to FCO staff as preretirement postings meant that the necessary dynamic representation at the Territory level was not present. Therefore at all levels of UK authority, the interest in, and concern for the Dependent Territories was not present. As a consequence a rather laissez-faire attitude existed, but this was not too last.

The re-engagement on the part of the UK in the overseas dependencies, and indeed the Caribbean more generally was prompted by two particular considerations. Firstly, British policy towards the Caribbean reversed itself after the US-led invasion of Grenada, which highlighted the extent of Britain's disengagement in the region.**[xxviii]** A report on Grenada by the House of Commons Foreign Affairs Committee supported a change in policy, and the government agreed noting that 'an increased American involvement in the Caribbean need not inhibit Britain from maintaining a distinctive policy to the area'.**[xxix]** Secondly, Britain's neglect had allowed serious problems to fester in the Dependent Territories, which subsequently required attention. As Thorndike argues British policy allowed 'in one instance, a scandalous degree of drug related activity and corruption to flourish (…) almost to the point of subversion'.**[xxx]** The case referred to occurred in the Turks and Caicos Islands when the chief minister and other senior political figures were arrested for drug trafficking in Miami. These arrests represented the tip of far broader problems of corruption and drug trafficking.**[xxxi]** The allegations were not solely against local officials. The British Attorney-General was exposed over improper land sales, while British Governor John Strong regarded his post as a pre-retirement haven and avoided taking action to address the growing problems. However, as Thorndike contends 'One cannot blame the Governor over much as the British

Government was anxious to withdraw from the Caribbean and looked to the day when its decolonisation programme could be completed'.**[xxxii]**

Despite Britain's reluctance to intervene, the authorities were finally forced to act by the worsening situation in the Turks and Caicos Islands, and the growing criticism from the US government about the lack of law and order on the Territory and its growing reputation as a drug transit centre. The UK began to cooperate with the US Federal Bureau of Investigation and the Drug Enforcement Agency, and took the decision to dismiss the entire government in July 1986 following a damning report by Louis Blom-Cooper, QC.**[xxxiii]** In its place the FCO imposed direct rule on the Territory, while in September it established a Constitutional Commission to review possible changes, chaired by Sir Roy Marshall, former Vice-Chancellor of the University of the West Indies**.[xxxiv]** The Commission submitted its report in 1987 and a new constitution followed, which laid down a number of reforms including provisions to increase British reserve powers.**[xxxv]**

The crisis in the Turks and Caicos Islands starkly highlighted the risks of UK disengagement from its Dependent Territories. The UK government realised that a halfhearted approach to the Territories was not sufficient to secure acceptable standards of political and economic conduct in the local administrations. The strong criticisms by the US also brought home to the UK that it had to make sure that its Dependent Territories in the Caribbean maintained acceptable international standards of governance. Indeed, for the first time since the West Indies Act of 1962 became law, the UK recognised that it needed to use its power to enforce good practice when required. Once the UK began to recognise its responsibilities, a broader review of policy towards the Dependent Territories was undertaken.

The review examined factors for and against independence, the costs and benefits of the Dependent Territories, a range of future statuses, and the requirements underlying further moves towards independence.**[xxxvi]** The general conclusion was the Territories would remain dependencies for the foreseeable future. In announcing the review's findings to the House of Commons in December 1987, the minister responsible, Tim Eggar stated: 'The review concluded that we should not seek in any way to influence opinion in the Territories on the question of independence. We would not urge them to consider moving to independence, but we remain ready to respond positively when this is the clearly and constitutionally

expressed wish of the people'.**[xxxvii]** This statement was important, as it made clear the UK government would not put pressure on the Dependent Territories to move towards independence.**[xxxviii]** However, with the Territories retaining their links to the Crown, there was an implicit recognition that the UK would intervene in local affairs when there was a need to do so.

The first real test of the more pro-active British policy came in 1989 when a banking scandal was uncovered in Montserrat. However, the subsequent response of the British government was criticised by some on the island, and highlighted the contentious nature of extended statehood when British concerns override local interests. The origins of the dispute came in February 1989 when having received reports of widespread failure in licensing and supervision of banks across the Caribbean Territories, the FCO appointed Rodney Gallagher, of the consultants Coopers and Lybrand Deloitte, to carry out a review of their offshore financial sectors.**[xxxix]** For Montserrat, the review found most of the islands. banks were involved in money laundering, while the island's police uncovered a conspiracy involving twenty banks. Subsequently, over 90 percent of the banks on Montserrat had their licences revoked.**[xl]** The Gallagher report criticised the Montserrat government for its 'flawed administration of offshore banking including its failure to apply extant laws of scrutiny and discipline'.**[xli]** Gallagher recommended that most of the banking and insurance legislation should be replaced, and paved the way for the UK government to re-write Montserrat's constitution to ensure the Governor would in future have supervisory power over the island's international financial affairs.**[xlii]** Fergus argues that the UK government instituted such reform in order 'to rid themselves of international embarrassment which is connected with offshore banking corruption scandals, and which inevitably attaches to them as the administering power'.**[xliii]**

Prior to the passing of the Constitution Order in the British Parliament, there were strong protests from Montserrat's Chief Minister John Osborne**[xliv]**, and others that the plans for constitutional change had been designed without any local consultation, and highlighted a lack of sensitivity on the British government's part. They also questioned the professionalism of the Gallagher enquiry. The local opposition did have some effect on the British government in that it withdrew a number of controversial provisions, such as the one giving the Governor the power to legislate. Nevertheless, Fergus suggests that the ' British

came over as being excessively and unnecessarily authoritarian' and 'that the new constitution was pressure-cooked by the Motherland without local ingredients'.**[xlv]** Perhaps it is not surprising that the UK government over-played its hand in regard to Montserrat. Having followed a policy of benign neglect for so many years it was always going to take some time for the UK authorities to readjust to the subtleties of extended statehood. Yes, the UK government recognised its responsibilities to reform Montserrat's malfunctioning offshore financial sector, but was less sensitive to the importance of local consultation. Nevertheless, the UK was the sovereign power, and ultimate authority rested with the Crown.

After the serious disagreements over the constitutional reform process in Montserrat there was an expectation that the UK would become more receptive to local sensitivities, but in 1991 the government implemented the Caribbean (Abolition of Death Penalty for Murder) Order, again without consulting the Territories. Until the Order was implemented in 1991 the death penalty was the mandatory sentence for murder in each of the UK's COTs. However, there had not been an execution in any of the Territories for many years. Nevertheless, in May 1991 the British government abolished the death penalty in the Dependent Territories, doing so without the involvement of the UK Parliament, other than to lay a Statutory Instrument before it – the Caribbean (Abolition of Death Penalty for Murder) Order. Statutory Instruments allow ministers or the Queen in Council to pass legislative measures without formal parliamentary oversight. The UK government announced its intention to implement the change on 28 March 1991, leaving little opportunity for the Territories to debate the matter. The Secretary of State for Foreign and Commonwealth affairs, Douglas Hurd, said 'In order to be consistent with the position in the UK where Parliament has expressed a clear view [against restoring the death penalty], the British Government consider that the death penalty for murder should be abolished in those Dependent Territories which elect to remain under the Crown'.**[xlvi]** In addition, the FCO suggested that the Order was necessary to meet Britain's international obligations, emanating from the UN's International Covenant on Civil and Political Rights and the European Convention on Human Rights.**[xlvii]**

The immediate reaction of many in the Dependent Territories was outrage and to call for the reinstatement of the death penalty, but as Davies argued 'in view of the Colonial Laws (Validity) Act 1865, no DT legislature could override the

provision by Order in Council…'.**[xlviii]** A legislator in the Cayman Islands argued 'Nowhere and at no time were we told that the UK was thinking of passing legislation to abolish the death penalty … This really came to me as a shock … because it is probably the first time that the UK has used UK legislation, a statutory instrument, to deal with amending a normal law'.**[xlix]** The implementation of the Caribbean (Abolition of Death Penalty for Murder) Order highlighted again the UK.s desire to meet its obligations, and it can be argued there was growing international political and legal consensus against the death penalty and the UK government was correct to hold the Dependent Territories to this standard. The principles of extended statehood would suggest that the Dependent Territories should recognise and adopt international norms for human rights in order to play a full role in the international sphere. However, the fact that the death penalty was abolished via an Order in Council meant that the measure was effectively imposed without any input from the House of Commons or the Territories themselves. Such conduct generated tremendous ill feeling among many in the Territories, because they felt that the Order encroached upon an area of responsibility formerly overseen at the local level. The tensions inherent in the operation of extended statehood are well highlighted in the death penalty example, because there was a clear difference between British and Dependent Territory attitudes over the issue.

From the preceding examples of offshore finance and the death penalty it is evident that the UK government was prepared to play a more hands on role in relation to its Dependent Territories. However, appearances were deceptive and question marks remained about how all-embracing UK policy was. It was true that the British authorities had acted to resolve a number of high profile issues, which had concerned them in relation to the Dependent Territories. But to a large extent British interventions were reactive and piecemeal in nature. There was no strong, identifiable set of priorities that defined and guided UK policy. A number of observations have been made, which illustrate the concern. There were accusations that the FCO had not improved the quality of officials working with Dependent Territory governments. In November 1991, for example, Lavity Stoutt, Chief Minister of the BVI, complained that 'green officials with little or no experience – or for that matter, interest – in the problems of administering the needs of Dependent Territories, are left to make decisions that have far reaching effects'.**[l]** While, in Anguilla there was a perception that British policy towards the Territory was 'aggressively non-interventionist', leading to widespread

corruption in political life.**[li]** It was reported that the Anguillan government was asking Britain, via the Governor, to intervene more actively in local affairs. While illustrative of Britain's still rather ad hoc policy towards the Dependent Territories, it is interesting to note that whereas Anguilla wanted the UK to play a more hands-on role in the Territory, Montserrat was criticising London for its authoritarianism. It is clear from this that the UK was in a very difficult position trying to balance particular Territory interests. However, the British realised that such conflicting demands could perhaps be mitigated by a more structured and coherent relationship with its Territories.

In late 1991 and early 1992, the British government undertook a second review of policy on the subject of the Dependent Territories, considering issues such as drug trafficking, money laundering, good government, economic development, and the liabilities which the UK might have to finance resulting from the Territories'actions.**[lii]** The results of the review were announced in October 1992, and the British government enacted a number of measures to develop a more integrated approach with regard to the Dependent Territories. In particular, the FCO sought to strengthen the links between Governor, the local elected government and UK ministers 'to enable more timely
attention to be given to Dependent Territory matters'.**[liii]** A Dependent Territories Regional Secretariat in Barbados was established in April 1993 to coordinate the implementation of UK policies, and to manage local bilateral aid programmes. In addition, an interdepartmental ministerial group was created for the Dependent Territories, chaired by the FCO minister responsible for the Caribbean. Further, the number of officials responsible for British Dependent Territories located in the Territories and in the FCO in London, was doubled.**[liv]** In response to these change the Territories established the Dependent Territories Association to promote their interests and to further cooperation between them.**[lv]**

With these new structures in place the UK government undertook a number of policy initiatives. In January 1993 ministers proposed the introduction of jointly agreed Country Policy Plans for each of the Caribbean Territories aimed at identifying policy priorities to which both governments would be committed. The UK also attempted to bring the regulation of the Territories' offshore financial sectors into line with internationally accepted standards.**[lvi]** Similarly the UK tried to ensure that the Territories implemented legislation that observed

international norms. For example, in 1994 all of the Caribbean Territories introduced legislation to facilitate international cooperation against drug trafficking and to comply with the requirements of the 1988 UN Drugs Convention. Other measures included improving the administration of justice and streamlining the methods of budgetary and financial accountability. After the policy review of 1991/92 and the subsequent raft of policy initiatives there was an expectation on the part of both the UK and the Territories that the process of UK re-engagement was secure, the application of extended statehood would become less inconsistent and that the
rather unsatisfactory 'Two steps Forward, One Step Back' approach would be a thing of the past.

It is true there was a clear re-engagement with the Caribbean on the part of the UK government from the mid-1980s, but there was no comprehensive plan of action. To a large extent the UK was forced to respond to crises and scandals in the Territories, rather than putting forward a positive agenda. There seemed to be a great deal of reluctance on the UK's part to engage pro-actively with the Caribbean dependencies, even though they had the constitutional and institutional mechanisms to do so. As a consequence, extended statehood was rather ill defined and uneven, with some of the Territories themselves wanting, or indeed needing, a stronger lead from London. It was not until the early 1990s, when the issue of the UK's contingent liabilities was highlighted, that a more integrated approach was instituted. And even then, the situation remained problematic.

Taking Stock: Volcanic Eruptions and Contingent Liabilities

There was an expectation, certainly on the part of the UK government, that the reforms instituted in the early 1990s would lead to a more effective and responsive relationship with its Dependent Territories in the Caribbean. However, one crisis in Montserrat and one UK National Audit Office (NAO) report highlighted the still inadequate organisational and regulatory framework instituted by Britain in regard to the Dependent Territories. The crisis in Montserrat began in July 1995 when the Soufrière Hills Volcano erupted, precipitating a period of great uncertainty and insecurity for the island. While the NAO report, published in May 1997, investigated the action taken by the FCO to minimise the risk of potential contingent liabilities falling on the UK. These two developments highlighted significant deficiencies in the operation of extended

statehood, and would precipitate a wholesale review of the constitutional, political, economic and social settlement between the Dependent Territories and the UK.

The eruption of the Soufrière Hills Volcano in Montserrat began on 18 July 1995 and subsequently devastated the country. As was reported by 26 December 1997 when the most extreme explosive event took place (…) approximately 90 percent of the resident population of over 10,000 had had to relocate at least once and over two-thirds had left the island. Virtually all the important infrastructure of the island was destroyed or put out of use for the short to medium term. The private sector collapsed and the economy became largely dependent on British aid.**[lvii]** The worst single day came on 25 June 1997 when nineteen people died in the volcano's pyroclastic flows. Under such circumstances the UK government was forced to act and assist the island's people to overcome this natural and human disaster. Although a report commissioned by the Department for International Development (DFID) argued the 'disaster response by HMG (…) has been a success in comparison with many other recent natural disasters elsewhere in the developing world', it went onto highlight the less satisfactory aspects of the UK's performance.**[lviii]** Indeed the Montserrat crisis placed into stark relief the responsibilities Britain should have had towards the inhabitants of the Dependent Territories.**[lix]**

The failures of the British government, both Conservative and Labour, were highlighted in a series of reports produced by the House of Commons International Development Committee and the Overseas Development Institute for DFID in the late 1990s.**[lx]** The investigations were extremely important in highlighting a number of
deficiencies in the extended statehood provisions at that time. One of the most important observations made concerned the confused division of responsibility for Montserrat between the FCO and DFID. The FCO was responsible for overall policy towards the Territory, while DFID oversaw the disbursement of aid. In his memorandum of evidence to the International Development Committee, David Taylor, Governor of Montserrat from 1990-93 stated, The Constitutional and Administrative arrangements in normal times were unsatisfactory enough without having to cope with an open-ended emergency.**[lxi]** The point was taken further in the DFID report, which noted. Many of the delays, omissions and shortcomings in HMG's response are linked to the complexity of HMG management and the

administrative system for Montserrat as a self-governing Overseas Territory (…) there was poor internal communication, separating information from points of decision and a lack of clarity about the point of final responsibility for action.**[lxii]** Tasks such as organising emergency evacuation plans, dealing with the health needs of the Montserratians and providing new housing in safe zones were all compromised by differences between the various UK and Montserratian actors.

A number of areas of particular concern were highlighted. The DFID report criticised the triangular relationship between Montserrat, Barbados (via the Dependent Territories Regional Secretariat) and London for creating unnecessary confusion and prolonging the process of decision-making. Further the attempt by UK government departments to work within existing managerial arrangements was criticised for impeding an effective response. Comment was also made that there was apparently no contingency planning on how the FCO and the Overseas Development Agency/DFID**[lxiii]** would manage an emergency in a Dependent Territory. Ad hoc arrangements had to be put in place, and this was done reactively as the eruption progressed.**[lxiv]** Under these conditions, even Claire Short, Secretary of State for International Development admitted, 'there are so many players in this thing that it is very difficult to have authority over people who make the decisions or know the answers'.**[lxv]**

Unfortunately collective failures were exacerbated by specific departmental failures. For example, the FCO failed for many months to appreciate the seriousness of the situation in Montserrat and adopted a 'wait and see' approach.**[lxvi]** As Taylor noted, 'My heart goes out to the Governor of the time (…) who sent 400 telegrams to the Foreign Office and did not feel sufficient weight was given to his views'.**[lxvii]** In terms of DFID, the department was unsure as to whether the disaster should be treated as an urgent development problem or as a true emergency. Further, there was no clear budgetary ceiling or jointly accepted standards on what level of spending was appropriate, which resulted in delaying the disbursement of funds. As a consequence, 'There was a growing perception on the Montserratian side that DFID (…) was acting ungenerously, preferring cost-minimising solutions to immediate needs that jeopardised long-term development'.**[lxviii]**

All these problems reinforced the impression that no one had full control over the situation in Montserrat, and that many of the difficulties were caused by the operation of extended statehood that existed at the time, which was rather ill

defined and ad hoc. Beyond the bureaucratic issues raised as a consequence of the Montserrat crisis, the volcano also focused attention on the issue of citizenship rights. With much of the island under ash, many Montserratians had to make the judgement about whether to leave or stay. The UK government reacted, albeit with some delay, to enable islanders to travel to the UK, be housed, settled and educated.**[lxix]** However, it was at this time that many Montserratians began to realise that although they were British dependents they did not have British citizenship. As Skelton states, '[Montserratians] could travel to the UK but had no legal right to enter and had repeatedly to apply for special leave to Remain'.**[lxx]** Up until 1962 citizens from the Dependent Territories were able to stay in the UK. However, the Commonwealth Immigrants Acts of 1962 and 1968 introduced controls that greatly restricted the ability of Territory citizens to settle. While all rights to remain were ended by the Immigration Act of 1971. The Montserrat crisis highlighted the lack of legal status for Dependent Territory citizens, and reminded the British government of this anomaly. Indeed citizenship was a glaring omission in the UK government's previous attempts to construct an effective form of extended statehood for its Dependent Territories. However, no action would be taken until Hong Kong, Britain's most populous dependency, returned to Chinese rule in 1997.

At about the same time as the Montserrat crisis was at its height and the first official reports on the situation were being published, the National Audit Office investigated the action taken by the FCO to minimise the risk of potential contingent liabilities falling on the UK resulting from the actions of the Territories. As the report stated, 'Given the Foreign Office's responsibilities, there exists a continuing exposure to potential liabilities (…) Under English and Dependent Territory law, the governments of the Territories are answerable for their own actions. However, if the Territories' resources are insufficient, the UK government may come under pressure to provide assistance. Legal liability may fall on the UK if Territories fail to comply with international law, especially treaty obligations'.**[lxxi]** The report centred on three broad areas: governance, law and order, and financial issues. More specifically, the investigation considered issues such as disaster preparedness, offshore financial services and budgetary control in the Territories.

The report found that despite the FCO having undertaken a number of initiatives since 1991 to identify and minimise the risk of contingent liabilities in the

Dependent Territories, the UK remained exposed. In particular the NAO noted that the UK was vulnerable from 'financial sector failures, corruption, drug trafficking, money laundering, migrant pressure and natural disasters'.**[lxxii]** The NAO worryingly described the UK government as having 'extensive responsibilities but limited power'.**[lxxiii]** In a follow up report by the House of Commons Committee of Public Accounts its concern over the situation was starkly highlighted. The Committee wrote .We are worried by the mismatch between the extent of these responsibilities [for the Dependent Territories] and the inadequacy of the FCO's powers, strong in theory but limited in practice, to manage them. The Committee further stated, 'As a result of this mismatch, the UK taxpayer continues to be exposed to very significant liabilities in the Territories and, from time to time, these materialise. More generally, we are concerned at the Foreign Office's admission that everything is not wholly under control and that all risks are not weighed and properly covered'.**[lxxiv]** Both the NAO and the Committee of Public Accounts recommended a number of reforms to reduce Britain's potential contingent liabilities, and encouraged the UK government to strengthen its control over the Territories. It is clear that both the NAO and the Committee of Public Accounts felt that the attempts to re-engage with the Dependent Territories in the late 1980s and early 1990s had not been that successful. There was still the impression that the FCO and the British government more generally retained a rather detached relationship with the dependencies with resultant risks for both sides.

The combination of the Montserrat volcano disaster and the UK government's response to it, as well as the examination of Britain's contingent liabilities in the Dependent Territories opened up a Pandora's box, and led to a wide-ranging debate about good governance and the political, constitutional and economic future of the British Dependent Territories in a way that nothing had before. Indeed, the UK government had been forced to cover the contingent liabilities caused by the volcano in Montserrat, which amounted to £59 million from the start of the crisis to March 1998.**[lxxv]** The timing of events was also congruent with the election of a Labour government in May 1997 that had modernisation and reform at its heart. The government made clear from the outset that Britain's relationship with the Dependent Territories would come under the microscope. As early as August 1997 the new government established an interdepartmental Montserrat Action Group to co-ordinate relief activity, while in September the Crisis Investment Programme was created as part of a new coherent response to

all aspects of the emergency. In October, meanwhile, FCO minister Baroness Symons suggested that the entire relationship between Britain and the Dependent Territories was 'a piece of machinery that we have inherited which I think is not working in the way that a reasonable person would expect it to work'.**[lxxvi]** These examples of the Labour government's approach and attitude were only the beginning of a much more extensive review of Britain's relationship with its Dependent Territories. In short, the Labour government was aiming to strengthen and deepen the application of extended statehood to its dependencies in the Caribbean.

'Partnership for Progress and Prosperity': Extended Statehood Refined The arrival of a new government following the British general election result of May 1997, the ongoing crisis in Montserrat, the recent National Audit Office and Committee of Public Accounts reports, and the transfer of Hong Kong's sovereignty to China on 30 June 1997, led to the initiation of a further review of the UK.s relationship with its COTs in August 1997. The purpose of this review was 'to ensure that the relationship reflected the needs of the Territories and Britain alike, and to give the Territories confidence in our commitment to their future'.**[lxxvii]** It was based on the principle that 'Britain's links to the Dependent Territories should be based on a partnership, with obligations and responsibilities for both sides'.**[lxxviii]** In particular, it was noted that 'the relationship (…) needs to be effective and efficient, free and fair. It needs to be based on decency and democracy'.**[lxxix]** During the review the UK government consulted with a range of interested parties, however it was clearly a British led initiative and this led to some uncertainty amongst the Dependent Territories. In a memorandum of evidence provided by the Dependent Territories Association (DTA) to the House of Commons Foreign Affairs Committee it was claimed that 'It has never been clear to the DTA what the precise terms of reference of the review are and to what extent departments other than the FCO are involved'.**[lxxx]**

Despite such uncertainty the review process was undertaken relatively quickly and by February 1998 interim findings of the investigation were announced. The process of review was supported by an enquiry conducted by the Foreign Affairs Committee of the House of Commons in late 1997 and an earlier debate in the House of Lords.**[lxxxi]** Then in March 1999 the completed review was published as a White Paper entitled 'Partnership for Progress and Prosperity'.**[lxxxii]** The White Paper set out a number of recommendations on issues, such as the

constitutional link, citizenship, the environment, financial standards, good governance and human rights. On the constitutional issue, the White Paper reported that there was a clear wish on the part of the Territories to retain their connection with Britain, and not move towards independence. Other constitutional arrangements were considered, including integration into the UK and Crown Dependency status similar to the Channel Islands, but were rejected in favour of maintaining existing practice. However, it was agreed that a process of constitutional review would be carried out in an attempt to update existing provisions, and that if any Territory wanted independence in the future Britain would not stand in its way.

The White Paper also reaffirmed the British government's commitment to provide assistance for the Territories where needed via DFID's development programme, and that money was available from the FCO's 'Good Government Fund' to support the maintenance of security and stability, and the promotion of transparent, accountable government. The UK also promised to earmark limited resources for environmental protection through the FCO's 'Environmental Fund', and re-asserted its commitment to guarantee the Territories' security and defence. In return, as part of the White Paper's emphasis on a 'modern and effective partnership', the Territories were expected to meet standards set by the UK government and international treaty obligations. These included effective regulation of their offshore financial sectors, observance of human rights (such as, legalising homosexuality among consenting adults), and good governance.

Further, the White Paper documented the changes that had been introduced to improve the administrative links between the UK and the Territories. The Montserrat crisis and the associated parliamentary reports had highlighted the inadequacies of existing mechanisms, and precipitated action on the part of the British government to reconfigure its bureaucratic ties with the Dependent Territories. For example, the UK for the first time appointed a dedicated minister for the Territories and established a new department within the FCO (the Overseas Territories Department) to replace the previously fragmented structure across six separate departments. It was also decided that parallel departments for the Territories in both the FCO and DFID should be created, together with a ministerial joint liaison committee to coordinate their activities.**[lxxxiii]** Further, the FCO/DFID Dependent Territories Regional Secretariat in Barbados was closed in 1998, and its responsibilities transferred to London. This change was instituted

to streamline and simplify the organisational arrangements between the UK and the Territories. While a new political forum, the Overseas Territories Consultative Council was established to bring together British ministers and Territory representatives to discuss matters of concern. This was the first time that a formal body had been established to bring together politicians from both sides. Previously, Ministers and officials in London used the Governors to convey information. The first meeting of the Council took place in October 1999, and gatherings have since been held annually. Finally, a senior British civil servant was appointed in Brussels to liase with the Territories on matters related to the work of the European Union, in order to improve their knowledge of, and representation in, the organisation. A dedicated EU-Overseas Countries and Territories co-ordinator within the FCO supports the work of the official in Brussels.**[lxxxiv]**

The changes made to the organisational structure of the relationship between Britain and its Territories, and the wide-ranging policy commitments laid out in the White Paper were a clear indication that the new UK government was prepared to engage more fully with the Territories and to correct the perceived deficiencies in the application of extended statehood. Most of these reforms were undertaken out of public view, but two gained widespread publicity and perhaps best represented the Labour government's approach to the Territories. One decision related to the Territories change in nomenclature, and the other extended British citizenship to those living in the Territories that met certain conditions. In terms of the former, Foreign Secretary Robin Cook announced the nomenclature change from *UK Dependent Territory* to *UK Overseas Territory***[lxxxv]**. in February 1998 at the Dependent Territory Association conference, and this decision was confirmed in the UK government White Paper.**[lxxxvi]** Although the term *Overseas Territory* was widely used from 1998 it was not until the British Overseas Territories Bill was passed in February 2002 that the amendment was formally made. A number of Territory representatives had asked for the name change believing that it better reflected the nature of a post-colonial partnership at the end of the twentieth century. A majority of the Territories at this point were not receiving any budgetary assistance from the UK and consequently felt that they were not really dependent on the British government.**[lxxxvii]** The House of Commons Foreign Affairs Committee agreed arguing that the term dependency was pejorative.**[lxxxviii]** Further it was suggested that the change to 'Overseas Territory' would bring Britain into line

with France and the Netherlands that used the term to describe their Territories; it would be in keeping with the Labour government's efforts to rebrand Britain with a fresh, informal image; and it highlighted the desire of many in the Territories to retain the maximum possible autonomy from London, at least symbolically, in their management of policy.**[lxxxix]**

The second high profile change to the relationship between Britain and its Overseas Territories came with the announcement that British citizenship, and so the right of abode, would be offered to citizens of the Overseas Territories**[xc]**. UK citizenship rights for Territory residents were gradually restricted under a series of Immigration Acts in the 1960s and early 1970s. The final change came with the British Nationality Act 1981, which created a British Dependent Territories citizenship, a status separate from those with British citizenship. Only the latter group had the right of abode in the UK. However, with the transfer of Hong Kong's sovereignty to China on 30 June 1997, the population of Britain's Dependencies amounted to only 186,000 and therefore posed no conceivable threat to a country of well over 50 million people.**[xci]** In addition, not all of the resident population of the Dependent Territories were citizens, and these were not included in the change.**[xcii]** For example only about 19,000 of the Cayman Islands' resident population of 33,600 was Caymanian.**[xciii]** Further, approximately 70 percent of the total population of the Territories had a higher income per head than Britain, and as was suggested 'residents [of the Territories] might well be more likely to want to stay where they are'.**[xciv]** In the FCO review process of the UK Territories a number of representations were made stressing the problems that a lack of citizenship created and the obligations on the part of the British government to correct the anomaly. Issues raised included the fact that citizens of Dependent Territories were required to obtain leave to enter the UK at ports of entry, which involved queuing with all other non-UK and non-European citizens**[xcv]**; that student tuition fees were charged at the higher *overseas* rate; and there was no right to work in the UK.**[xcvi]** In the White Paper the British government recognised its responsibilities stating 'There is a strong desire for these [entry] controls to be relaxed and rights restored. We sympathise with those in the Overseas Territories who this feel this sense of grievance, and intend to address it'.[xcvii] On announcing the outcome of the review in the House of Commons, Foreign Secretary Robin Cook stated 'The offer of British citizenship that I have made today applies to residents of our territories to whom no other national citizenship is available', and therefore implicitly recognised that

past UK legislation had made a group of British nationals stateless.**[xcviii]**

Although the commitment to return British citizenship to the nationals of Overseas Territories was made, legislation needed to be implemented. The British Overseas Territories Bill was published in June 2001, which set out the provisions required to amend the existing legislation. The subsequent Act received its Royal Assent on 26 February 2002, and the citizenship provisions took effect on 21 May 2002. The Act confers British citizenship on those citizens in the Territories who qualify and who wish to have it, and allows the right of abode in the UK and the right of free movement and residency in EU and European Economic Area member states.**[xcix]** However, the right to health and social security benefits, preferential rates for higher education, and the vote in UK parliamentary elections, as well as the requirement to pay income tax all depend on residence in the UK, not citizenship. For these rights and obligations to be attained individuals in the Overseas Territories have to apply for a British passport to show documentary evidence of their new status and to facilitate travel. The provisions of the Act were also non-reciprocal, which prevented British and other EU citizens from travelling to, and establishing residency in, the Territories. By the end of 2002, some 6,500 citizens from the Overseas Territories had applied for British Citizen passports.**[c]**

The review of the COTs undertaken by the British Labour government was certainly the most wide-ranging since the West Indies Act of 1962. The desire of a new administration to assert its influence over problematic policy areas, as the Overseas Territories were deemed to be, was an important factor underpinning the FCO led examination. In addition, the fact that the Labour Party had been out of power for eighteen years heightened the expectations of new thinking and new approaches. In many ways the outcome of the 'Partnership for Progress and Prosperity'. White Paper did indicate that the Labour government was serious in attempting to overcome longstanding problems in the UK-Overseas Territories relationship. The recommendations of the White Paper focused on issues such as the constitutional settlement, citizenship, financial standards, good governance and human rights, which all had been areas of contention through the late 1980s and into the 1990s. In its general language, the Labour government also made plain its desire for a relationship that secured the interests of both parties based on sound political, economic and social principles. In many ways the White Paper laid down an ideal framework for the successful operation of extended statehood.

The extension of UK citizenship rights to the Overseas Territories, the emphasis placed on meeting international standards of good practice, the importance given to the promotion of transparent, accountable government, and a concern for environmental protection all seemed to indicate that the Overseas Territories were now better placed to play a full and active role in an increasingly globalised world. However, the more proactive attitude of the UK government created new tensions, which highlight the limitations of extended statehood notwithstanding the attempts to improve its operation.

Beyond the White Paper: Extended Statehood in Practice

In theory at least the 'Partnership for Progress and Prosperity' White Paper appeared to address a number of long-standing problems, which had been associated with the UK Overseas Territories relationship for a number of years. However, in order to consider the nature of the relationship since 1999, an analysis of the practical effects of the White Paper must be undertaken. For this to be done a number of specific policy areas are considered, and an evaluation made of the record of extended statehood since the British government's review. Areas highlighted include the human rights legislation needed to bring Overseas Territories more into line with the international obligations to which the UK is subject, the new approach with regard to the crisis in Montserrat, and perhaps most controversially the attempt to tighten regulation in the COTs offshore financial industries.

In regard to the issue of human rights, the UK government made clear in the White Paper that 'high standards of observance' were required on the part of the Overseas Territories in order to 'comply with the same international obligations to which Britain is Subject'.**[ci]** The White Paper indicated three particular issues on which the UK government wanted reform: judicial corporal punishment, legislation outlawing homosexual acts between consenting adults in private, and capital punishment. The British hoped that the Overseas Territories would enact the necessary reforms themselves, but made clear that 'in the absence of local action, legislation could be imposed on the Caribbean territories by Orders in Council'.**[cii]** Progress was made with the British Virgin Islands abolishing judicial corporal punishment, and later the Turks and Caicos Islands became the last Territory to pass legislation for the abolition of the death penalty for piracy and treason. However, the issue of decriminalising consensual private homosexual acts between adults was more problematic. Despite lengthy

consultation with the Caribbean Territories, involving governments, religious and social leaders, the media and the general public, there remained strong resistance to the decriminalisation of homosexual acts. Many in the Territories believed the issue was a local one, and local views and predispositions should take precedence over British demands. However, in early 2001, in spite of widespread controversy the UK government passed an Order in Council to force the change in legislation. The British action highlighted their determination to enforce basic standards of human rights, but it is interesting to observe that although the law was changed the view of many in the Overseas Territories has not.

The issue of homosexuality remains a very contentious issue in the Territories, and is sustained to an extent by the conservative attitudes of the Anglican Church in the region. For example, Anglican Archbishop Drexel Gomez, the most senior priest in the West Indies, stated recently that all the churches over which he presides (including those in the Overseas Territories) stand totally opposed to homosexuality on biblical and historical grounds.**[ciii]** The discrepancy between the law and people's beliefs on the issue of homosexual acts illustrates the limits of extended statehood. Although the UK forced the Territories to change the law, the fact that local views remain unaltered indicates that the application of extended statehood cannot always overcome deeply held local values.

Therefore no matter what improvements are made to the functioning of the extended statehood model, limits and constraints will always be present. Under such circumstances legislation is not enough, and a more sophisticated approach is perhaps required.

Indeed, in 2003 the FCO and DFID began funding a project to raise awareness of human rights in the Overseas Territories, and to encourage a change in public attitudes towards the issue.**[civ]** While the FCO's Good Government Fund, which in part focuses resources on raising awareness of human rights and building local capacity to deal with problems, provides several million pounds of support each year.**[cv]** These monies have assisted the Overseas Territories to ratify several international human rights conventions, including: the Convention on the Rights of the Child, the UN Convention on the Elimination of Racial Discrimination, and the UN Convention on the Elimination of all Form of Discrimination Against Women. It can be argued, therefore, that the 1999 White Paper has accelerated the adoption by the Overseas Territories of internationally recognised human

rights standards. However, the suspicion remains that some of these changes are more symbolic than real.

The volcanic eruptions in Montserrat that began in July 1995, and which continued into the new century, was one of the main reasons for the UK government's review of its Overseas Territories. A number of reforms were instituted early on in the crisis to better co-ordinate the relief effort, but many of these were ad hoc in nature, and therefore one of the objectives of the British government review was to consolidate the changes already made and to plan for the longer-term. In January 1999 a Country Policy Plan was agreed, which set the framework for Montserrat's economic and social recovery and the UK.s role in the process.**[cvi]** Importantly, the UK maintained its commitment that the reasonable assistance needs of Montserrat would be funded from the DFID budget.**[cvii]**

The latest Country Policy Plan for Montserrat was published in December 2004, and covers the period until 2007. The document details the reforms necessary to support Montserrat's own sustainable development plan for 2004 – 2007. Priorities include the completion of a new airport, a three-year tourism development project, a scheme to promote private sector investment, and funds to improve the country's infrastructure and public administration. **[cviii]** One of these priorities is all but fulfilled – the completion of the new airport – which received six million pounds in DFID funds.**[cix]** Britain's Princess Anne opened the new terminal building in February 2005, with the expectation that air services would commence in early summer. Chief Minister John Osborne described the airport as 'ne of the single most important ingredients for reviving Montserrat's stricken economy' and 'marks the rejuvenation and the rebirth of the hospitality and comfort associated with air travel to and from Montserrat'.**[cx]**

It is expected that an operating airport together with the completion of other initiatives referred to in the Country Policy Plan will bring long-term and self-sustaining improvement to Montserrat. However, the underlying conditions in the country remain difficult. In early March 2004 a further major eruption occurred at the Soufriere Hills volcano, and although no injuries or damage were reported, the incident highlighted the fragile nature of any recovery. The uncertainty of the situation was compounded when the Royal Society argued that the DFID was wrong to ignore a long-term research project undertaken by the Natural Environment Research Council to analyse the underlying nature and behaviour of the volcano.**[cxi]** Further, Montserrat still remains highly dependent on external

sources for budgetary assistance and development support. For example, in 2004, 64 percent of government recurrent expenditure was directly financed by DFID, while Montserrat's development programme was entirely funded by external assistance.**[cxii]** Such levels of support are likely to continue for the foreseeable future, and risk perpetuating Montserrat's dependency while crowding out indigenous economic development and revenue raising activity. Overall, however, the UK and Montserrat governments have plainly improved their handling of the crisis, and instituted a more effective collaborative framework. Nevertheless, the ultimate success of the changes will not be known for some time to come.

A further issue that came to the fore with the onset of the Montserrat crisis was that of disaster preparedness. There were criticisms that the procedures in place in 1995 when the first eruptions took place were inadequate both in terms of anticipating and then monitoring the disaster.**[cxiii]** As a consequence a number of reforms were undertaken. In 2000 the FCO took the lead in establishing the Network of Emergency Managers in the Overseas Territories (NEMOT) and the London-based Disaster Coordination Group for the Overseas Territories. NEMOT brings together for the first time disaster managers and coordinators from all the Territories. Its members are responsible for preparing and maintaining national disaster plans, for conducting regular rehearsals, and for monitoring and forecasting, for example seismic activity in Montserrat and tropical storm movements in the British Virgin Islands.**[cxiv]** In 2002, meanwhile, the FCO organised a day of disaster awareness-raising and training in London, and a conference was held in Montserrat of NEMOT.**[cxv]** Since then, other initiatives and discussions have taken place in an attempt to further improve disaster preparedness.**[cxvi]**

As with the procedures and policies now in place to assist Montserrat's recovery, the provisions for disaster preparedness have been enhanced since the mid-1990s, and the Overseas Territories now have at their disposal international best practice to assist them in monitoring and preparing for natural disasters. However, the extent to which improved procedures can mitigate the effect of natural disasters was called into question when Hurricane Ivan hit the Cayman Islands on 12 September 2004. Ivan caused extensive damage to housing and infrastructure, killing two islanders and leaving thousands homeless. Further, there were accusations that the Cayman government was 'covering up' the scale of the disaster in order to protect confidence in the island's offshore financial

industry.**[cxvii]** While the Cayman Islands Leader of Government Business, McKeeva Bush, strongly criticised the British government for not doing enough to help the territory. Mr Bush was particularly frustrated about the controls imposed on his government by the UK in respect of arranging financial assistance to mitigate the effects of the disaster.**[cxviii]** Although not directly related to the issue of disaster preparedness the latter criticism does highlight the expectations placed on the British government to act when the Overseas Territories suffer from natural disasters, and the unhappiness when these are not met. The case of the Cayman Islands and Hurricane Ivan raised question marks over the adequacy of disaster preparedness and the way in which the crisis was subsequently handled by the authorities. This was despite the fact that reforms had been undertaken to improve both disaster preparedness and the functioning of the UKOverseas Territories relationship.

A third issue that was prioritised in the UK government review was to improve the regulation of the offshore financial service industries in the Overseas Territories. The offshore financial sector is extremely important to their economies**[cxix]**, but concerns have been raised about the probity of the industry. For example the 1997 National Audit Office Report on Contingent Liabilities in the Dependent Territories considered the state of play vis-à-vis regulatory oversight in the offshore financial services sector in the COTs. The report concluded that despite some progress improving regulatory oversight, the offshore sector remained vulnerable to abuses by money launders and drug traffickers, and the Territories faced possible financial sector failure as a consequence.**[cxx]** In response to the mixed assessment given by the NAO, the UK government commissioned consultants KPMG in 1999 to undertake a report reviewing COTs. compliance with international standards and best practice in financial regulation. The report recommended a number of proposals that the Overseas Territories agreed subsequently to implement. The key measures were the establishment of independent regulatory authorities, the introduction of investigative powers to assist enquiries by overseas regulators, and the creation of comprehensive anti-money laundering frameworks.**[cxxi]**

It is important to recognise, however, that bi-lateral efforts involving the UK and the COTs to improve regulatory oversight of the offshore financial sector were not carried out in a vacuum. International demands for greater control over offshore finance has also been very important, with organisations such as the Financial

Stability Forum, the International Monetary Fund and the Organisation for Economic Cooperation and Development (OECD) overseeing offshore financial good practice.**[cxxii]** The attempts to tighten regulation of offshore financial jurisdictions by the international community, and via unilateral action on the part of the UK have highlighted the vulnerability of the Territories' position. They have been caught in the crossfire, which has led to growing resentment about being forced to introduce measures that even exceed what the 'core developed' countries are sometimes willing to accept. One such example was the UK's attempts to enforce the EU's 'Directive on the Taxation of Savings' in the Overseas Territories.

The EU had been discussing the possibility of coordinating measures to tackle harmful tax competition by individuals across Member States for over 30 years.**[cxxiii]** EU Economics and Finance Ministers finally reached an agreement on the directive in January 2003.**[cxxiv]** Under the proposal 'each member state would ultimately be expected to provide information to other Member States on interest paid from that Member State to individual savers resident in other Member States'.**[cxxv]** Member States would then have the necessary information to apply the level of taxation that they see fit to their own residents. However, under the agreement Belgium, Luxembourg and Austria were allowed to apply a withholding tax for a transitional period, rather than committing to information exchange. One further proviso was that cooperation of relevant third countries was needed before the directive was enacted, in order to avoid a shift of business to paying agents outside the EU. At the June 2000 Santa Maria de Feira European Council meeting it was agreed that Switzerland, Liechtenstein, Monaco, Andorra and San Marino should adopt measures equivalent to those found in the directive. In addition, the UK and the Netherlands agreed that the directive would be applicable to their COTs.**[cxxvi]** On 19 July 2004, EU Ministers adopted a Decision establishing the application date of 1 July 2005.**[cxxvii]**

The decision on the part of the UK government to get its COTs to adopt the EU directive was highly controversial. The Territories were aggrieved, as neither the Treasury nor the FCO had consulted them before the UK made the commitment to co-opt them into the directive. The Territories were also concerned about the possible impact of the directive upon their financial services sector, in part caused by the UK government's lack of explanation as to the detail and likely coverage of the measure. The Territories were fearful that the directive would

cover not only individual holdings, but also their more important corporate sector. The poor communication on the part of the UK government was unfortunate, as the EU directive made it clear that interest payments made to companies would be excluded. It was not surprising therefore that the Overseas Territories were concerned about the likely impact of the directive and unhappy at the UK government's attitude towards them. It was of course hoped that the reforms associated with the 'Partnership for Progress and Prosperity' White Paper would have eased communication between London and each of its Territories in the Caribbean. However, controversy over the EU directive seemed to indicate that past mistakes were being repeated.

The Cayman Islands was most vociferous in opposing the directive, primarily because it has the largest retail-banking sector of all the COTs. However, a number of other issues exacerbated the disquiet on the part of the Caymans. The most important being the collapse of a six-month long trial of four defendants accused of laundering US$25 million through the Cayman Islands-based Euro Bank Corporation. The collapse of the trial in January 2003 provoked a serious split between the Cayman and UK governments. It was reported that the trial was stopped after it emerged that British intelligence had ordered the territory's lead investigator to destroy evidence in an unsuccessful attempt to keep secret the security services involvement in the case. The activities of British intelligence had been withheld from the locally elected government ministers.**[cxxviii]**

The collapse of the Eurobank trial, together with disagreements over the EU's saving tax directive, led the Cayman Islands to undertake a legal challenge against the applicability of the directive at the European Court of First Instance in Luxembourg. When the case was heard in March 2003, the Court argued that the EU could not impose an obligation on the territory to implement the proposed directive. In addition, the Court ruled that the UK was not legally required as a full member of the EU to impose the directive on the Cayman Islands. However, the judges said that the question of whether the UK could compel the Cayman Islands to accept the directive was something that depended on the exact arrangements between the UK and the Territory, and was outside of the Court's remit.**[cxxix]** The ruling was important as it left the UK government to decide for itself whether the directive could be imposed on the COTs. So although the European Court of First Instance ruled that the EU directly, or indirectly via the UK, could not force the COTs to implement the savings tax directive, the Court

allowed the UK government to act as it saw fit.

In response to the ruling UK Chancellor Gordon Brown threatened to issue an Order in Council against the Cayman Islands that would force the Territory to adopt the provisions of the directive.**[cxxx]** This threat led McKeeva Bush, the Cayman Islands. Leader of Government Business to accuse the UK government of behaving like the colonial power of old, ruling by dictat and treating the island's citizens like slaves.**[cxxxi]** The UK government, meanwhile, was unhappy about the aggressive tone emanating from the Cayman Islands government. However, it was expected that some form of compromise over the directive would eventually be found because both sides wanted to prevent the disagreement damaging more fundamental aspects of the relationship.

Indeed in February 2004, the Cayman Islands government reached agreement with the UK over the application of the EU directive. Agreement was possible because of the growing realisation on the part of the Cayman Islands that the directive was going to be imposed one way or another. In addition, the four other Caribbean Territories had by this time signed up to the provisions of the directive, and therefore the Cayman Islands was isolated in its opposition to the measure. The Turks and Caicos, for example, had agreed to sign up in January 2004.**[cxxxii]** Another factor was the findings of a UK government commissioned report by Maxwell Stamp, which argued that the actual effect of the directive on the COTs would be small.**[cxxxiii]** Further, the UK government provided the Cayman Islands with a number of compensatory measures to offset any possible negative effects of the directive. The deep unhappiness on the part of the Caribbean Territories over the issue of the EU directive highlighted the problems caused by poor communication and the UK government acknowledged that it need to undertake greater consultation with the Territories in order to avoid the anger and misunderstanding that came with the directive's implementation. The UK authorities recognised that a better balance was needed between the implementation of measures and the process of consultation, although ultimate responsibility for carrying out policy would remain with them.

Although the Overseas Territories have complied with global standards of financial regulation there are still concerns that small jurisdictions such as those in the Caribbean lack the necessary resources for proper supervision. The Cayman Islands and the British Virgin Islands are small countries with large financial sectors in proportion to their size, and this remains problematic in terms

of proper oversight of the industry. The British Virgin Islands for example, has a local population of 20,000 but has more than 350,000 offshore companies – about a quarter the number registered at Companies House in the UK, which has a population 3,000 times as large. In addition, the British Virgin Islands employ only 20 regulators for the entire financial sector.**[cxxxiv]** As is argued, 'Whatever the quality of the BVI.s regulators, the scope of their work is large and arguably too great'.**[cxxxv]**

Therefore, although the majority of total offshore financial activity is located in OECD countries, where concerns have been raised about money laundering and tax evasion, the regulatory imbalance is not so great as in the COTs. As a consequence there is disquiet that while legislation has been improved the lack of capacity on the part of Caribbean Territories to properly oversee the financial sector compromises its probity. For example, the collapse of the US energy company Enron in 2002 was linked to a number of questionable business practices in the COTs. One such practice that is legal but which raised public concern was the use of offshore subsidiaries to move money in and out of the United States. Enron used 692 companies in the Cayman Islands and 54 in the Turks and Caicos to save itself hundreds of millions of dollars in taxes.**[cxxxvi]** The collapse of the Parmalat food group in 2003 highlighted again the Cayman Islands' role in helping to conceal the true state of a company's losses. Although the financial authorities in the COTs have subsequently offered their assistance to US and European agencies investigating the collapse of the two companies, there is unease that such examples of blatant creative accounting and tax avoidance have damaged the reputation of the Territories'offshore holdings.

The case of financial services in the Overseas Territories highlights a number of points in relation to the operation of extended statehood after the UK government's 1999 White Paper reforms. It is clear that the UK government is now much more engaged in improving the COTs financial service industries than in the past. A number of bilateral and multilateral initiatives have been undertaken, which have tightened oversight of the sector. An indication of the importance that the UK government places on this issue can be seen with its threat to impose the EU savings tax directive by Order in Council. Conversely, however, the issue illustrated the still uncertain lines of communication between the UK and Overseas Territories authorities. Despite the White Paper and the associated reforms, much of the controversy over the EU directive was caused by

misunderstanding and confusion. UK government departments, in particular, must be more aware of their responsibilities to inform and to discuss. Finally, the nature of the offshore financial sector highlights the continued deficiencies of the present model of extended statehood. It is true that many Overseas Territories have dynamic and now better regulated offshore financial industries, but questions remain over the adequacy of resources provided for proper supervision. This issue is largely out of the UK's hands as budget decisions are in large measure the responsibility of the local governments and legislatures. Therefore there can be a gap between UK preferences and actual policy outcomes because the British government does not always have at their disposal the necessary decision-making tools.

Indeed, there remains a problem with issues that are in the middle of the spectrum of UK-Overseas Territories relations. Of course, the British government can use the nuclear-type option of an Order in Council, but this is done reluctantly because of thecontroversy it causes.**[cxxxvii]** As a consequence issues that are serious, but not so serious as to provoke an Order in Council can be difficult to address. As Taylor argues 'the Governor (…) has a difficult task, relying on the authority of his office and his power of persuasion in Executive Council and its margins to carry out the burden laid on him. Nor is there always a clear division between matters, which are his responsibility, and those, which are Ministers'.**[cxxxviii]** Two examples are highlighted: the recent cases of corruption in the British Virgin Islands and the problem of Haitian immigration to the Turks and Caicos Islands.

In regard to the former case, an official enquiry led to three senior officials, and a local businessman being convicted of attempting to defraud the government in connection with telecommunications contracts for a new airport. Each received jail sentences.**[cxxxix]** A report by the UK Centre for Management and Policy Studies commissioned by the Governor's office and published in July 2002 described an 'almost total breakdown' in the relationship between ministers and permanent secretaries.**[cxl]** Despite the emphasis on good government in the Overseas Territories, the aspirations of the 1999 White Paper floundered on an issue that was not serious enough to allow the UK government to act.**[cxli]** Rather the UK government was forced to respond after the corruption had come to light.

In the Turks and Caicos Islands, the issue of illegal Haitian immigration is a

sensitive domestic political issue. In 2004 there was an estimated 5,000 Haitians living in the Turks and Caicos Islands, making up 25 percent of the entire population.**[cxlii]** Many are attracted by the opportunities in tourism and construction. However, there are concerns on the part of many locals over the number entering the Territory, and the resultant effects on society. However, the issue of immigration is one that touches both the responsibilities of the Governor and the local government, with the result being sometimes unsatisfactory policy-making. The Turks and Caicos government oversees immigration policy, while the Governor has authority over external affairs and internal security. Because there is doubt over whether the issue of Haitian arrivals is an immigration issue, an external affairs issue or an internal security issue there is uncertainty over who should have final authority. The picture is confused further by the fact the Governor does not have a budget, and therefore depends on the local government for resources. The issue of Haitian immigration to the Turks and Caicos Islands, and the recent cases of corruption in the British Virgin Islands illustrate the inadequacy of certain aspects of the relationship between the UK and its Overseas Territories. There remains a grey area in policy-making between the Governor and Island governments, in particular, which highlights a number of still outstanding deficiencies in the UK's application of extended statehood in the Territories.

Constitutional Review and the Centrality of Extended Statehood

At the time of the 'Partnership for Progress and Prosperity' White Paper the UK government maintained that reform should be evolutionary, and set in motion during 2001 a constitutional review process for the Overseas Territories. For the first time the process was supposedly 'locally owned rather than directed from London'.**[cxliii]** As a consequence, the Territories hoped that quite fundamental reform would be undertaken. This impression was reinforced when the FCO failed to make its own position clear, including the extent to which it would accept changes to the existing constitutions. Until late 2003 the Territories were given no guidance by the FCO as to what limits would be placed on the review, and therefore the expectations for change on the part of the Territories were high.

The COTs have all but completed their reviews and various constitutional amendments have been suggested. For example, recommendations have been made to reduce the power of the Governor and to increase the role of the elected government, to make the Attorney General a political appointee, and to redefine

the various forms of residency status. Other proposals include greater autonomy for the Territories over the public service and judicial appointments, the introduction of local consultation before the UK appoints a governor, and changes to Territories' electoral systems. In addition, because of the deep unhappiness on the part of the COTs, and particularly the Cayman Islands, over the issue of financial regulation the reviews have also considered the possibility of increasing local control over offshore finance.**[cxliv]** Despite long-standing differences in the levels of autonomy between the Territories the requests for change have been along similar lines, and the even the Cayman Islands, with its relatively underdeveloped political system, has called for a reduction in the powers of the Governor and the Attorney General.**[cxlv]**

A reason for this uniformity of opinion can be placed at the door of the UN Committee of Decolonisation (the C24 Committee), which sponsored a seminar in Anguilla in May 2003 that focused on progress towards de-colonising (granting independence to) the COTs.**[cxlvi]** For many years the C24 Committee was excluded from discussions over the future of the Territories. The British government felt that the views of the Committee were unrepresentative of the UN General Assembly as a whole, whilst the COTs wanted to retain their link with the UK and did not welcome the Committee's advances. However, in recent years the UN Committee has tempered its decolonisation zeal becoming more prepared to suggest alternatives to full independence. In particular, the Committee now suggest free association as an option, which would allow the Territories to determine the nature of their constitutional relationship with the UK without reference to UK interests or responsibilities.**[cxlvii]** The idea of greater constitutional self-determination was subsequently taken up by a number of politicians in the COTs.**[cxlviii]** With the UK government faced with growing expectation on the part of the Overseas Territories for significant reform, it finally set out its 'red lines' beyond which change was not possible. In a memorandum submitted on 27 October 2003 by the FCO Minister Bill Rammell to the House of Commons Foreign Affairs Committee strict limits were placed on Territories' constitutional room for manoeuvre. The Minister argued that the idea of free association 'does not sit easily with our over-riding responsibility to ensure the good governance of the territories and compliance with applicable international obligations'. He went onto suggest:

The complexity of Government business, particularly following the terrorist

*attacks of 11 September, is in fact tending increasingly to blur the distinction between domestic and foreign policy, requiring greater UK involvement in some areas which hitherto Territory governments may have considered to be their own preserve. Moreover, whilst standards in governance in some Territories are high, in others there is room for improvement – and some of the smaller Territories lack the institutional capacity and experience to cope well with the increasing demands on Government. Equally, the lack of a developed civil society, strong legislature, and vibrant media in some Territories also means that many of the usual checks on the Executive can be weaker than normal.***[cxlix]**

The memorandum suggested therefore that .Governors may need to play a more proactive role (…). in areas such as contingency planning, aviation and maritime safety/security, financial regulation, management of the economy, the environment and human rights.**[cl]** Also it described the British 'as acting as the transmission mechanism by which an ever-growing corpus of global regulation is applied to the Territories'.**[cli]** The memorandum claimed that such extensive UK involvement was not a change in policy and that Governors would not be given more powers, but it was clear that the British government was sending a strong and clear message in regard to the limits of any constitutional reform. The final sentence of the Memorandum emphasised again the attitude of the UK government: 'COT governments should not expect that in the Constitutional Reviews (…) the UK will agree to changes in the UK Government's reserved powers, or which would have implications for the independence of the judiciary and the impartiality of the civil service'.**[clii]** The importance the UK gives to the Overseas Territories was illustrated in December 2003, when the FCO published a comprehensive strategy setting out the UK's international priorities over the next ten years and the ways in which it intended to deliver its objectives. The eighth priority was 'Security and good governance of the UK's Overseas Territories'.**[cliii]** This commitment was important because it clearly prioritised the Territories in UK foreign policy, committed the Government as a whole to safeguarding them, and re-stated for all to see the specific aims of the FCO in regards the Territories, focusing on such issues as good governance, law and order, and observing international commitments. Overall therefore, the constitutional reviews will most likely bring about only the most modest of changes, and reaffirm the UK government's privileged and necessary role in overseeing its Overseas Territories. The clear message from the UK is that it will not grant further autonomy unless the Territories embark upon a process of

independence. All indications are that the COTs will not follow the independence path despite the expected lack of progress towards greater constitutional autonomy. The leaders and populations of all five Territories prefer the status quo believing that despite its problems, in particular the overly intrusive role of London, the form of extended statehood now in operation is the best option of governance presently available.

The constitutional review process dramatically underlines the importance that the UK government attaches to the model of extended statehood now operating in its COTs. Even though the review process was meant to be 'locally owned rather than directed from London', the reality was somewhat different. Towards the end of 2003 the UK government set out its stall very clearly arguing that while remaining under the authority of the Crown, Overseas Territories must comply with certain political, economic and social standards of behaviour. Indeed, in many ways the review process provided the UK with an opportunity to demand even more from the Territories, while at the same time highlighting the continued deficiencies in the relationship. The COTs were perhaps given a false impression of what would be possible in the constitutional review, because of the British government's delay in laying out its case. This certainly caused some confusion and anger but the reality is that no Territory desires independence. As the UK does not countenance a 'third way' between extended statehood and independence, the government in London has the authority and legitimacy to maintain and if necessary reinforce the present system of supervision.

Conclusion

The UK's relationship with its COTs has been defined by a concern over the nature of governance and the balance between their respective interests. On many occasions their interests have been similar, while on others clear differences have emerged. The period since the West Indies Act of 1962, which established constitutions for the Territories, has witnessed an evolutionary process of constitutional and administrative reform. The process has not always run smoothly, and on occasion the British government has followed a policy of benign neglect towards the Territories. However, the rather laissez faire and complacent attitude on the part of the British during the 1970s and early 1980s was placed into sharp relief when a number of crises damaged the reputation of the COTs. Cases such as the widespread corruption in the Turks and Caicos Islands highlighted the problems of a light supervisory touch. From this point on

the British Conservative government began to play a more hands on role. However, question marks remained over how all-embracing UK policy was. Principally, interventions were still reactive and piecemeal in nature.

However, the approach of the British government began to change from the mid-1990s onwards, provoked in large measure by the Montserrat volcano eruptions and the National Audit Office Report on the UK's contingent liabilities. The crisis in Montserrat highlighted a number of weaknesses in the administrative framework connecting London, the Governors and the local governments, while the Report drew attention to the UK's 'extensive responsibilities but limited power' and the resultant exposure of UK taxpayers if the British government failed to act judiciously. The consequence was the publication, by the new Labour government in 1999, of a White Paper entitled 'Partnership for Progress and Prosperity', which provided a comprehensive plan of action to improve the governing arrangements between the UK and its Territories. The White Paper set out a number of recommendations on issues, such as the constitutional link, citizenship, the environment, financial standards, good governance and human rights.

The document emphasised that the reforms were to encourage a 'modern and effective partnership', which included an expectation that the Territories would agree to meet a range of international treaty obligations. These included effective regulation of offshore financial sectors, observance of human rights and good governance. The Labour government has since reaffirmed its commitment to the provisions contained in the White Paper, and has even suggested that the level of oversight should be increased in certain areas. The discussions over reforming the Territories. constitutions illustrate well the UK government's position. The UK has made clear that it will retain and even strengthen the existing model of extended statehood, and will certainly not grant further autonomy unless the Territories commit themselves to full independence. Despite strains in the relationship the Caribbean Territories wish to remain constitutionally linked to Britain at the present time, because the benefits still outweigh the negative aspects of the association.

The gradual application of a more pro-active and coherent level of oversight on the part of both Conservative and Labour governments in relation to the Overseas Territories highlights how the principle of extended statehood has taken hold, and how attempts have been made to address past deficiencies in the system. The

Territories are now much more heavily integrated into the international system, having adopted either willingly or unwillingly a number of changes to their political, economic and social structures. In addition, citizens of the Overseas Territories are now able, for the first time since the 1960s, to live and travel freely in the UK and other EU and European Economic Area member countries. The effect has been a convergence of policy and approach across the COTs, even though they retain distinctive constitutional arrangements. These changes have been undertaken by the British authorities in order to improve the UK's oversight and control of the Territories. Weaknesses remain, but the UK is now in a much stronger position than ever before to defend its interests and minimise its liabilities. The Overseas Territories might not always appreciate the measure of control exacted by the UK government, but as they wish to remain under the authority of the Crown for the foreseeable future, they have no choice but to accept the system of extended statehood now in operation.

NOTES

i. E. Davies 1995: p. 118. Unlike the other Territories, the BVI did not become a member of the West Indies Federation. As a consequence the Governor of the Leeward Islands continued to run BVI until 1960 when an appointed Administrator (later a Governor) assumed direct responsibility.

ii. Anguilla was administered as a single federation with St Kitts and Nevis from the early nineteenth century.

iii. See for example, Turks and Caicos Islands Constitution, Article 13, point 1, p. 14. Consolidation date: 15 May 1998.

iv. D. Taylor 2000: p. 339.

v. G. Drower 1992: p. 78.

vi. Davies.

vii. Ibid: p. 119.

viii. Ibid: p. 158.

ix. Ibid: pp. 156-57.

x. Ibid: p. 157.

xi. Ibid: p. 342.

xii. Taylor: p. 339.

xiii. Davies: p. 182.

xiv. H. Fergus 1990.

xv. T. Skelton 2000.

xvi. Davies: p. 228.

xvii. T. Thorndike 1987.
xviii. Davies: p. 338.
xix. Taylor: p: 338.
xx. S. Roberts, in *R. Aldrich and J. Connell* 1998: p. 88.
xxi. After P. Sutton, Two Steps Forward, One Step Back: Britain and the Commonwealth Caribbean, Itinerario, 25, 2, 2001, pp. 42-58.
xxii. A. Payne 1984: p. 90.
xxiii. The committee was established in November 1961 with the intention of encouraging the completion of the decolonisation process.
xxiv. Foreign Affairs Committee, .Caribbean and Central America., Fifth Report, House of Commons, 1982.
xxv. T. Thorndike 1989: p. 118.
xxvi. Drower 1992: p. 75.
xxvii. Ibid: p. 76.
xxviii. Thorndike 1989; Sutton 2001.
xxix. Observations by the Secretary of State for Foreign and Commonwealth Affairs on the Second Report: Grenada. (1984) cited in Anthony Payne, Britain and the Caribbean. In: Sutton, Europe and the Caribbean, 1991: p. 23.
xxx. Thorndike 1989: p. 121.
xxxi. Thorndike 1987.
xxxii. Ibid: p. 261.
xxxiii. Turks and Caicos Islands, Commission of Inquiry, report of the Commissioner, Mr. Louis Blom-Cooper QC, into allegations of arson, Cm 21, December 1986, London: HMSO.
xxxiv. Caribbean Insight, An editorially independent publication of the Caribbean Council, October 1986.
xxxv. Turks and Caicos Islands, Report of the Constitutional Commissioner 1986, Sir Roy Marshall, April 1987, Cm 111.
xxxvi. Sutton 2001.
xxxvii. Hansard: Statement by Tim Eggar in the House of Commons, 16 December 1987, Column 574.
xxxviii. In 1980 the Turks and Caicos government with encouragement from the British sought an electoral mandate to introduce independence but was soundly defeated at the polls.
xxxix. Drower 1992; National Audit Office, Foreign and Commonwealth Office: Contingent Liabilities in the Dependent Territories, Report by the Comptroller and Auditor General, HC 13 1997/98, 30 May 1997, London: HMSO.

xl. NAO.
xli. Fergus 1990: p. 57.
xlii. Montserrat Constitution Order (1989) S.I. 1989 No. 2401.
xliii. Fergus 1990: p. 58.
xliv. The British blamed the need for constitutional change on Osborne's maladministration of the offshore banking sector (Fergus 1990).
xlv. Fergus 1990: pp. 66 and 67.
xlvi. Hansard: House of Commons Debate, in reply to a parliamentary question, 28 March 1991, Column 502.
xlvii. Davies.
xlviii. Ibid: p. 331.
xlix. Cayman Island Hansard, 20 June 1991: p. 24.
l. Drower 1992: p. 80.
li. H. Hintjens 1995.
lii. Sutton 2001; NAO 1997.
liii. NAO.
liv. P. Sutton and A. Payne 1994: p. 94.
lv. G. Drower 1998.
lvi. The impetus for change came with the collapse of the Bank of Credit and Commerce International (BCCI) in 1991 after a complex money laundering fraud was exposed. Billions of dollars were stolen by BCCI management, which was in part facilitated by a number of dummy companies based in the Cayman Islands. After the collapse of the bank and the prosecution of a number of high-ranking officials, the UK government decided to improve the regulatory framework of the financial sector in the COTs. One of the UK government's first actions was to link up with US drug enforcement and tax authorities and conduct a sting operation in 1993 dubbed *Operation Dinero*. The undertaking involved the creation of a fake Anguillan bank and the routing of all its mail and email to the Atlanta base of the UK/US operation. The sting yielded nine tonnes of South American cocaine, a shipment of arms bound for Croatia, and US$50 million in assets, US$382,000 of which went to the Anguillan authorities for their cooperation (T. Klak, 'How Much Does the Caribbean Gain from Offshore Services?' in Blacklock, M. (ed.) The Association of Caribbean States (ACS) Yearbook 2002 (5th Edition), London: ACS and International Systems and Communications Limited.
lvii. Department for International Development (1999) .An Evaluation of HMG's Response to the Montserrat Volcanic Emergency., Volume 1, EV635, December 1999: p. 1.

lviii. Ibid.
lix. Skelton.
lx. See for example International Development Committee, Montserrat, First Report, House of Commons, 18 November 1997; International Development Committee, Montserrat – Further Developments, Sixth Report, House of Commons, 28 July 1998; DFID, An Evaluation of HMG's Response to the Montserrat Volcanic Emergency.
lxi. International Development Committee 1997: p. 185.
lxii. DFID 1999: p. 6; see also International Development Committee 1997.
lxiii. The Overseas Development Agency was part of the FCO, albeit with a degree of autonomy. In May 1997 it was detached to form a new ministry – DFID.
lxiv. DFID 1999.
lxv. International Development Committee 1997: p. 15.
lxvi. Taylor; International Development Committee 1997.
lxvii. Taylor: p. 340.
lxviii. DFID, 1999: p. 4.
lxix. DFID 1999.
lxx. Skelton: p. 109.
lxxi. NAO: p. 1.
lxxii. Ibid: p. 7.
lxxiii. Ibid: p. 17.
lxxiv. Committee of Public Accounts, 'Foreign and Commonwealth Office: Contingent Liabilities in the Dependent Territories', Thirty-Seventh Report, House of Commons, 11 May 1998: p. v.
lxxv. DFID 1999.
lxxvi. International Development Committee 1997: p. 162.
lxxvii. Foreign and Commonwealth Office, Partnership for Progress and Prosperity: Britain and the Overseas Territories, Cm 4264, March 1999: p. 8.
lxxviii. Ibid.
lxxix. Ibid: p. 7.
lxxx. Foreign Affairs Committee, Interim Report on the Dependent Territories, House of Commons, February 1998: p. 8.
lxxxi. House of Lords debate on the Dependent Territories, 11 June 1997.
lxxxii. FCO, Partnership for Progress and Prosperity: Britain and the Overseas Territories.
lxxxiii. The House of Commons International Development in its report on Montserrat suggested that the responsibility and resources for the Dependent

Territories should be in the same department (1997: p. xxx). However, the British government declined to take the Committee's advice See International Development Committee Report (1998).

lxxxiv. Overseas Countries and Territories. (OCTs) is an official term to describe countries that have a special relationship with one of the Member States of the EU. The UK Overseas Territories have been associated with the EU since 1973 and receive development and programme assistance from Brussels. Under the 8th European Development Fund (1995-2000) the Territories were given 13.1 million euros in aid.

lxxxv. Interestingly the Cabinet rejected the term *Overseas Territories* in 1946 as 'cumbrous and colourless' (Drower 1992: p. xvii).

lxxxvi. FCO, *Partnership for Progress and Prosperity: Britain and the Overseas Territories*.

lxxxvii. At the time of the FCO review only Montserrat was receiving budgetary aid from Britain. However, Anguilla and the Turks and Caicos Islands (as well as Montserrat) were benefiting from UK bi-lateral project aid. Today only Montserrat receives bilateral aid from the UK government. However, the other COTs do have access to regional funds, such as for economic diversification (£295,000) and good government (£2 million). (Figures for the total amount spent on COTs and Bermuda in the 2004/05 financial year.)

lxxxviii. Foreign Affairs Committee 1998.

lxxxix. Drower, 1998; H. Hintjens and D. Hodges 2004.

xc. FCO, Partnership for Progress and Prosperity: Britain and the Overseas Territories.

xci. In 1997 Hong Kong had a population of 3.5 million.

xcii. Newcomers to the Overseas Territories were (and are still) subject in the first instance to regulations on rights of residence in the Overseas Territory in which they wish to live. These regulations differ from Territory to Territory.

xciii. Foreign Affairs Committee 1998.

xciv. FCO, Partnership for Progress and Prosperity: Britain and the Overseas Territories: p. 18.

xcv. See for example, Letter to the Clerk of the Committee from the Rt Hon The Lord Waddington, former Governor of Bermuda. (Foreign Affairs Committee 1998: p. 49).

xcvi. Foreign Affairs Committee 1998.

xcvii. FCO, Partnership for Progress and Prosperity: Britain and the Overseas Territories: p. 17.

xcviii. Hansard: House of Commons Debate, 17 March 1999 (part 21), Column 1131.
xcix. European Economic Area members are Norway, Iceland and Liechtenstein. These countries are able to participate in the European Internal Market while not assuming full responsibilities of EU membership.
c. House of Lords, The British Overseas Territories Bill, Bill 40 of 2001-2002, 30 October 2001; FCO Annual Report 2003, available at www.fco.gov.uk.
ci. FCO, Partnership for Progress and Prosperity: Britain and the Overseas Territories: p. 20.
cii. Ibid.
ciii. Turks and Caicos Free Press: 16-30 July 2004.
civ. FCO Annual Report 2003, available at www.fco.gov.uk.
cv. FCO Annual Report, 2002, available at www.fco.gov.uk.
cvi. Anguilla and the Turks and Caicos Islands also have such plans, tailored to their particular policy requirements.
cvii. This commitment was made to all of the Overseas Territories in the 1997 White Paper
on International Development entitled *Eliminating World Poverty: A Challenge for the 21st Century.*
cviii. DFID, Montserrat: Country Policy Plan 2004/05 – 2006/07, December 2004.
cvix. Ibid.
cx. Caribbean Media Corporation News Agency, Britain's Princess Anne opens new airport terminal building, 23 February 2005.
cxi. Caribbean Insight, 23 January 2004.
cxii. DFID, Montserrat: Country Policy Plan 2004/05 – 2006/07, December 2004. Since the crisis began Montserrat has received a total of £206 million from DFID.
cxiii. International Development Committee 1997; International Development Committee 1998; DFID 1999).
cxiv. FCO Annual Report 2001, available at www.fco.gov.uk.
cxv. FCO Annual Report 2003, available at www.fco.gov.uk.
cxvi. See for example the Sixth Overseas Territories Consultative Council, 21-22 September 2004.
cxvii. Caribbean Insight, 17 September 2004.
cxviii. BBC Caribbean News, Cayman must have a say, 28 April 2005. In the aftermath of the 1999 White Paper, the UK government negotiated agreements with the Overseas Territories to regulate their levels of borrowing.
cxix. In terms of average GDP per capita levels, it seems that the development of

OFCs has proved to be a successful economic development strategy for the COTs. In the British Virgin Islands and the Cayman Islands, for example, GDP per capita is close to US$30,000 although this does hide quite significant disparities of income within their societies. Nevertheless, GDP per capita levels in the COTs compare favourably with that of the independent Commonwealth Caribbean, where the offshore sector is of marginal importance. The most substantial offshore sector is in the Cayman Islands, which is the base for 600 banks and trust companies, including 47 of the world's largest 50 banks. In addition, there are 45,000 registered companies, while the banking sector has liabilities denominated in foreign currency worth approximately one trillion US dollars. A further US$150 billion are invested in hedge funds. The majority of offshore business comes from US corporations and the rich elite who have deposits worth some US$800 billion. The sector contributes around one third of the Cayman Islands. GDP (Financial Times, Global crackdown on tax evasion begins to stall, 30 November 2003). The British Virgin Islands, meanwhile, has become one of the world.s leading offshore financial centres, specialising in the registration of international business companies, and the captive insurance market. The income raised from financial services contributes close to 50 percent of government revenue (Economist Intelligence Unit, Country Profile: Barbados, British Virgin Islands, Cayman Islands, Netherlands Antilles and Aruba, 2004: p. 45). In Turks and Caicos offshore finance is the country.s largest source of external revenue after tourism. While Anguilla.s offshore sector is small but growing, assisted by a recently developed computerised online registration network, and now worth approximately US$4 million in revenue annually (FCO, Partnership for Progress and Prosperity, Appendix
One).

cxx. NAO.

cxxi. KPMG, Review of the financial regulation in the COTs and Bermuda, Cm 4855, 2000. London: Foreign and Commonwealth Office.

cxxii. See for example OECD's Harmful Tax Competition Initiative, which attempts to bring countries together to encourage them to eliminate harmful tax practices. Four of the UK's COTs were identified as tax havens in an OECD report in 2000 – Anguilla, British Virgin Islands, Montserrat and Turks and Caicos. The Territories then set about meeting the commitments necessary for compliance, and when the revised List of Uncooperative Tax Havens was issued on 18 April 2002, the four Territories had been removed. See OECD, Towards global tax co-operation: report to the 2000 ministerial council meeting and recommendations

by the committee on fiscal affairs. Progress in identifying and eliminating harmful tax practices, 2000, Paris; OECD, The OECD Issues the List of Un-cooperative Tax Havens, 18 April 2002, available at http://www.oecd.org.

cxxiii. K. Holzinger 2003.

cxxiv. Economic and Financial Affairs Council, Results of Council of Economics and Finance Ministers, Luxembourg, 2 June 2004 – Taxation, MEMO/04/134, Brussels, 3 June 2004.

cxxv. European Commission, Commission adopts new proposal on taxation of cross-border savings income, IP/01/1026, Brussels, 18 July 2001.

cxxvi. European Commission, Savings tax proposal: frequently asked questions, Memo 01/266, Brussels, 18 July 2001.

cxxvii. 2004/587/EC: Council Decision of 19 July 2004 on the date of application of Directive 2003/48/EC on taxation of savings income in the form of interest payments, Official Journal L 25, 4 August 2004.

cxxviii. The Guardian, Bungled MI6 plot led to Cayman trial collapse, 18 January 2003; Offshore Alert, Collapse and aftermath of Eurobank trial, 31 January 2003.

cxxix. European Court of First Instance, Order of the President of the Court of First Instance, Government of the Cayman Islands vs. Commission of the European Communities, Case T-85/03 R, 26 March 2003.

cxxx. Caribbean Insight, 19 September 2003.

cxxxi. Financial Times, Global crackdown on tax evasion begins to stall, 30 November 2003.

cxxxii. Economist Intelligence Unit, Country Report: Puerto Rico, Bahamas, Bermuda, and Turks and Caicos Islands, March 2004: p. 42.

cxxxiii. Hansard, House of Commons, Oral Answers to Questions (British Virgin Islands), The Parliamentary Under-Secretary for Foreign and Commonwealth Affairs (Mr. Bill Rammell), Tuesday 13 July 2004, Column 1237.

cxxxiv. Financial Times, Sunset in the tax haven, 28 February 2002; E. Pantojas-García and T. Klak 2004: p. 184.

cxxxv. Financial Times, 28 February 2002.

cxxxvi. Financial Times, Caribbean tax haven offers assistance, 13 February 2002.

cxxxvii. See for example, the decriminalisation of homosexual acts in 2001.

cxxxviii. International Development Committee 1997: pp. 186-87.

cxxxix. Separate trials took place: one in June 2003, and the other in December.

cxl. Economist Intelligence Unit, Country Profile: Barbados, British Virgin Islands, Cayman Islands, Netherlands Antilles and Aruba, 2004: p. 42.

cxli. The corruption in the Turks and Caicos Islands during the mid-1980s was so serious
that the UK government felt it was necessary to take action.
cxlii. Turks and Caicos Free Press, 5-12 March 2004.
cxliii. Foreign Affairs Committee, Overseas Territories: Written Evidence, HC 114, House of Commons, 9 March 2004.
cxliv. The UK government has recognised that where possible, and within constitutional limits, the COTs should have fuller participation in international fora that directly impinge upon their welfare, for example the EU, the OECD and the Caribbean Community (CARICOM). In regard to CARICOM, Montserrat is a full member, while the other COTs are associate members. The UK government increasingly realises that it is good for the Territories to represent their own interests in such circumstances, where their particular knowledge and expertise can be utilised.
cxlv. Fergus 2004. A strong voice for change within the Cayman Islands came from Leader of Government Business, McKeeva Bush and his United Democratic Party (UDP). However, the UDP lost power to the People.s Progressive Movement (PPM) in the May 2005 elections. The PPM and its leader Kurt Tibbets have been more circumspect about constitutional change.
cxlvi. FCO Department Report 2004, available at www.fco.gov.uk.
cxlvii. Foreign Affairs Committee 2004.
cxlviii. For example the Chief Minister of the Turks and Caicos Islands, Michael Misick, has talked about the Territory gaining full internal self-government.
cxlix. Foreign Affairs Committee 2004: p. 7.
cl. Foreign Affairs Committee 2004.
cli. Ibid: p. 9.
clii. Ibid.
cliii. Foreign and Commonwealth Office, UK International Priorities: A Strategy for the FCO, Cm 6052, December 2003: pp. 42-43.

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