

MISCELLANY

The Channel Islands and the Privy Council

1 As is well known, the Privy Council operates in the main through different Committees. The ultimate court of appeal in judicial matters for the Channel Islands is the Judicial Committee but administrative and legislative matters are dealt with by the Committee for the Affairs of Jersey and Guernsey. Originally, they were all dealt with by the same committee. It was established in the reign of King Charles II by an Order in Council of 12 February 1668¹—

“His Majesty having among other the Important parts of his Affayres, taken into his Princely Consideration the way, and Method of Managing Matters at the Councill Board. And reflecting that his Councillors would have more Reputation if they were putt into a more settled, and Established Course: Hath thought fitt to Appoynt certain Standing Committees of the Councill for severall Businesses, together with Regular days and Places for their Assembling, in such sort as followeth ... 3. A Committee for the Business of Trade, under whose Consideration is to come whatsoever Concernes His Majestys Forraigne Plantations, as also what relates to his Kingdomes of Scotland or Ireland, in such Matters only Relating to eyther of those Kingdomes, as properly belonge to the Cognizance of the Councill Board, the Isles of Jersey and Guernsey, which is to consist of the Lord Privy Seale, Duke of Buckingham [a series of Councillors follow] ... And hereof Three or more of them to be a Quorum. And it is further Ordered That this Committee calling unto them his Majestys Attorney Generall, or else his Majestys Advocate, do from henceforward heare all Causes that by way of Appeale come from the Isles of Jersey and Guernsey, the Orders whereupon being in due forme prepared by the Clerke of the Councill; are before they are signed to be read at the Councill Board and there Approved of, that so they may Receive the Approbation and Authority of the whole Councill, which before used to Passe distinctly from the Committee only, by a derivative power from the Board.”

2 The Order is of interest in showing how at that time the different interests of His Majesty were grouped together. In 1762 in the reign of

¹ Acts of the Privy Council (Colonial) Series 1613/80 No 747; National Archives.

George III the focus was narrowed. The Privy Council made an Order on 17 March²—

“It is this day Ordered by His Majesty in Council that the whole Privy Council or any three of them, Be, and are hereby appointed a Committee for the Affairs of Jersey and Guernsey, Hearing of Appeals from the Plantations, and other Matters that shall be referred to them, And that they proceed to Hear and Examine such Causes as have already been Referred to Committees of the Council and Report the same with their opinion thereupon to His Majesty at this Board.”

3 It was not until 1833 that the Judicial Committee of the Privy Council was separately constituted. Although a quorum was set at three, in practice during the 19th and 20th centuries many more Councillors attended the Committee when dealing with the affairs of Jersey and Guernsey. The Committee seems at the beginning of the 20th century to have been appointed solely to deal with Channel Island matters. In 1912, Sir Almeric Fitzroy, for 14 years Clerk to the Privy Council, in giving evidence to the Royal Commission on the Civil Service, stated in reply to a question from the Chairman, Lord MacDonnell, about the main features of the duties of the Privy Council—

“By virtue of the descent of the Privy Council from the Curia of the Norman and Angevin Kings, the Channel Islands, the last shred of their continental dominion, own no other authority under the Crown. At the outset of every reign a Committee of the Privy Council is appointed for the affairs of Jersey and Guernsey to which all matters fiscal and legislative, are referred.”³

4 Following the accession of King Charles III, Orders in Council have been made reconstituting the Committee for the Affairs of Jersey and Guernsey. The single Channel Islands Order in Council issued on 22 February 1952 at the beginning of the reign of Elizabeth II has been replaced by two Orders, *viz.* the Royal Assent to Legislation and Petitions (Bailiwick of Jersey) Order 2022 and the Royal Assent to Legislation and Petitions (Bailiwick of Guernsey) Order 2022, both made on 9 November 2022. The only substantive change from the 1952 Order in Council is that the Committee “shall not ordinarily postpone its consideration of any ... Laws if a petition is made against them and is received later than 28 days after their final adoption by the States ...”

² *Ibid*, 1745/1761 No 448; National Archives.

³ *Report of Proceedings of the Royal Commission on the Civil Service 1912* HMSO, Cmnd 6535, para 12813.

Petitioners objecting to the enactment of a *Projet de Loi* have therefore only a short time to submit their petition against Royal Assent.

5 Separate Orders in Council⁴ seem to have presaged a potentially different approach to the granting of Royal Assent in the two Bailiwicks. A Policy Letter was submitted to the States of Deliberation in Guernsey by the Policy and Resources Committee on 31 March 2023 seeking approval to a proposal that Royal Assent to any *Projet de Loi* may be granted by the Lieutenant Governor on behalf of the Privy Council unless it is specifically reserved for consideration by the Council. The Policy Letter states that “[t]his alternative process for granting Royal Assent should result in faster processing of legislation, would not be reliant on existing schedules for Privy Council meetings, and would also underline the Bailiwick’s domestic legislative autonomy and international identity.” This approach, and the advantages and disadvantages of conferring this authority upon the Lieutenant Governor, are deserving of more detailed analysis than is possible in this short piece of Miscellany.

6 What is noteworthy at this stage, however, is that the two Bailiwicks appear to be diverging on quite an important constitutional matter.⁵ There is no indication from the Government of Jersey that it will seek to follow the Guernsey lead. Nothing has been placed in the public domain, but it is understood that Jersey is concerned not to politicize the Lieutenant Governor’s role. The Lieutenant Governor in both Bailiwicks is the personal representative of the Sovereign. His duty is to protect the interests of His Majesty’s subjects in the relevant Bailiwick. He is beholden neither to the Government of the United Kingdom nor to the Government (or States) of the Bailiwick. The strength of his position is that he is an impartial interlocutor. The concern is that delegating to the Lieutenant Governor the function of approving legislation on behalf of the Crown would risk placing the Governor in an apparent position of partiality if he were required to withhold consent to a particular *Projet de Loi*.

⁴ <https://privycouncil.independent.gov.uk/wp-content/uploads/2022/11/2022-11-09-List-of-Business.pdf> - accessed 3 May 2023

⁵ It is true, however, that since 1981 in the Isle of Man authority has been delegated to the Lieutenant Governor to confer Royal Assent to draft Acts of Tynwald. https://en.wikipedia.org/wiki/Royal_assent#Isle_of_Man