

EXPLANATORY MEMORANDUM TO
THE VIRGIN ISLANDS CONSTITUTION ORDER 2007

2007 No. 1678

1. This explanatory memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.

2. **Description**

2.1 This instrument establishes a new Constitution of the Virgin Islands. The new Constitution sets out, for the first time, a Chapter on fundamental rights and freedoms of the individual, and provisions for their enforcement. It provides for a Governor as Her Majesty's representative in the Islands. It provides for a House of Assembly composed of elected and appointed members, and for a Cabinet and Ministers appointed from among the members of the House. It also provides for the public service, and makes provision for a Public Service Commission, a Teaching Service Commission, a Judicial and Legal Service Commission and a Police Service Commission to provide advice on appointments to offices in these services. It establishes a National Security Council and the office of Director of Public Prosecutions, and makes provision for public finance, a Register of Interests and a Complaints Commissioner for the Islands. It provides for the judiciary and, in particular, that the High Court and Court of Appeal of the Eastern Caribbean Supreme Court shall continue to have jurisdiction in the Virgin Islands.

2.2 This instrument revokes the Virgin Islands (Constitution) Order 1976 (as amended), which contains the current Constitution of the Virgin Islands. It also revokes The Virgin Islands (Emergency Powers) Order 1967.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

4. **Legislative Background**

4.1 The current Constitution of the Virgin Islands is contained in The Virgin Islands (Constitution) Order 1976 (S.I. 1976 No. 2145), as amended by The Virgin Islands (Constitution) (Amendment) Order 1979 (S.I. 1979 No. 1603), The Virgin Islands (Constitution) (Amendment) Order 1982 (S.I. 1982 No. 151), The Virgin Islands (Constitution) (Amendment) Order 1991 (S.I. 1991 No. 2871), The Virgin Islands (Constitution) (Amendment) Order 1994 (S.I. 1994 No.1638) and The Virgin Islands (Constitution) (Amendment) Order 2000 (S.I. 2000 No. 1343). This instrument, which contains a new

Constitution for Virgin Islands, will revoke and replace the 1976 Order and the amending Orders, and The Virgin Islands (Emergency Powers) Order 1967 (S.I. 1967 No. 472), the provisions of which have been replaced by similar provisions in the new Constitution. This instrument, like the 1976 Order, and the amending Orders, is made under sections 5 and 7 of the West Indies Act 1962. The Constitution is being replaced following constitutional negotiations between the UK Government and the Virgin Islands Government, which resulted in agreement to the Constitution contained in this instrument.

4.2 In 2002, the Chairman of the Foreign Affairs Committee and the Foreign Secretary agreed that, where appropriate, draft Orders on Overseas Territories' Constitutions would be shown to the Committee for information, if possible 28 working days, before they were made. This instrument was sent to the Committee on 28 April 2007.

5. Extent

5.1 This instrument applies to the Virgin Islands, the legislature of which has been consulted and supports the instrument.

6. European Convention on Human Rights

6.1 This Order though laid is not subject to any parliamentary procedure. Therefore no statement is required.

7. Policy background

7.1 This instrument has the objective of providing a new, modernised, Constitution for the Virgin Islands.

7.2 In its 1999 White Paper "Partnership for Progress and Prosperity - Britain and the Overseas Territories", the UK Government noted that there was great diversity within the Overseas Territories in terms of their size, population, economic developments and other factors, but that there was "a degree of coherence and similarity in the constitutional and institutional arrangements in place for [the Territories'] government and administration". The UK Government therefore encouraged individual Territories "to review their own structures and arrangements in line with the idea of a new modern partnership" with the United Kingdom. The Virgin Islands Government initiated a review of their Constitution, which subsequently led to negotiations with the UK Government on the terms of a possible new Constitution.

7.3 A new Constitution was agreed between the UK and Virgin Islands Governments in February 2007. Thereafter the draft Constitution Order was put out for public consultation, as the UK Government wanted to be assured that it had the broad support of the people of the Virgin Islands. Following media exposure and public discussion, and a debate in the Virgin Islands Legislative Council on 7 May, the UK Government were satisfied that such

support existed among the people of the Islands, and FCO Ministers agreed that the instrument could be submitted to the Privy Council.

7.4 The changes reflected in the new Constitution are politically important, as they provide for a greater degree of internal self-government of the Virgin Islands, and therefore reflect the more modern relationship which now exists between the UK and the Territory.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

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