

EXPLANATORY MEMORANDUM TO
THE CAYMAN ISLANDS CONSTITUTION (AMENDMENT) ORDER 2020
2020 No. 1283

1. Introduction

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

2. Purpose of the instrument

- 2.1 This Order makes several amendments to the Constitution of the Cayman Islands, in line with the commitments and strategy of the constitutional framework in the 2012 White Paper on the Overseas Territories available at <https://www.gov.uk/government/publications/the-overseas-territories-security-success-and-sustainability>). It follows proposals from the Cayman Islands Government and agreement reached between the United Kingdom Government and a Cayman Islands delegation in negotiations in December 2018. However, agreement to the removal of the Governor's legislative reserved power was withdrawn following its use at the point the Governor assented to the Civil Partnership Act on 4 September 2020.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is required to be laid before Parliament, but is not subject to any further parliamentary procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the Cayman Islands.
4.2 The territorial application of this instrument is the Cayman Islands.

5. European Convention on Human Rights

- 5.1 As the instrument is not subject to parliamentary procedure, no statement is required.

6. Legislative Context

- 6.1 This instrument is made under the sections 5 and 7 of the West Indies Act 1962 (c. 19) and amends the Cayman Islands Constitution Order 2009 (S.I. 2009/1373, as amended by the Cayman Islands Constitution (Amendment) Order 2016 (S.I. 2016/780).

7. Policy background

What is being done and why?

- 7.1 The United Kingdom Government’s policy on the constitutional arrangements with the Overseas Territory is set out in the 2012 White Paper: “The Overseas Territories: Security, Success and Sustainability”. The current fundamental structure of the constitutional relationships provides that powers are devolved to the elected Governments of the Overseas Territories to the maximum extent possible consistent with the United Kingdom needing to retain those powers necessary to discharge its sovereign responsibilities. The 2012 White Paper made clear the United Kingdom Government’s commitment to ensure the constitutional arrangements with the Overseas Territories work effectively to promote the best interests of the Territories and of the United Kingdom, and to ensure a dialogue is sustained with all those Territories that wish to engage.
- 7.2 In October 2018, the Cayman Islands Government made a number of proposals to the United Kingdom Government on amending the 2009 Cayman Islands Constitution largely based on precedents in other Overseas Territories’ constitutions. Negotiations took place in December 2018 and this instrument reflects the agreement reached between the United Kingdom Government and Cayman Islands delegation during those negotiations. However, agreement to the removal of the Governor’s legislative reserved power was withdrawn following its use at the point the Governor assented to the Civil Partnership Act on 4 September 2020.
- 7.3 The instrument makes several amendments to the Constitution of the Cayman Islands, to update and clarify the processes of Government. In particular, the instrument changes the name of the Legislative Assembly to Parliament. It abolishes Her Majesty’s power of disallowance of locally-enacted legislation, but introduces instead some pre-legislative controls. It makes clearer that the Cayman Islands Cabinet has autonomous capacity with respect to domestic affairs. It removes the Governor’s exemption from a duty to consult the Cabinet, but defines certain exceptions to this. It also provides for Parliamentary Secretaries and a Police Service Commission. It provides an obligation for the Secretary of State for Foreign Affairs to notify the Premier of proposed Acts of the United Kingdom Parliament that would extend directly to the Cayman Islands or Orders in Council extending any provisions of an Act of the United Kingdom Parliament to the Cayman Islands.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This instrument does not involve consolidation.

10. Consultation outcome

- 10.1 This instrument follows negotiations during December 2018 between the United Kingdom Government and a delegation from the Cayman Islands comprising members of the Cayman Islands Government, the Cayman Islands Opposition and officials. A draft of this instrument was subsequently debated in the Cayman Islands

Legislative Assembly on 6 December 2019. The Premier of the Cayman Islands communicated consent to the draft instrument on 10 December 2019 along with details of the public consultation that had taken place. Agreement to the removal of the Governor's legislative reserved power was subsequently withdrawn following its use at the point the Governor assented to the Civil Partnership Act on 4 September 2020.

- 10.2 In accordance with the agreement reached between the Secretary of State for Foreign Affairs and the Chairman of the Foreign Affairs Committee in 2002, a draft of this instrument was shown to the Foreign Affairs Committee for information 28 sitting days before it was due to be made.

11. Guidance

- 11.1 No guidance has been prepared for this instrument.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector in the United Kingdom.
- 12.3 An Impact Assessment has not been prepared for this instrument because no impact on business is foreseen.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses in the United Kingdom.

14. Monitoring & review

- 14.1 The operation of this instrument will be kept under review by the Foreign, Commonwealth and Development Office in consultation with the Cayman Islands Government.

15. Contact

- 15.1 Tina Hamilton at the Foreign, Commonwealth and Development Office Telephone: Telephone: 020 7008 3392 or email: tina.hamilton@fcdo.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Adam Pile, Deputy Director in the Overseas Territories Directorate at the Foreign, Commonwealth and Development Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Baroness Sugg at the Foreign, Commonwealth and Development Office can confirm that this Explanatory Memorandum meets the required standard.