EXPLANATORY MEMORANDUM TO THE

CAYMAN ISLANDS (CONSTITUTION) (AMENDMENT No. 2) ORDER 2004

2004 No. 2673

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 clarifies which category of British citizens is not disqualified for election to the Legislative Assembly of the Cayman Islands, and extends the life of the current Assembly following the recent hurricane in the Islands.

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

3.1 None.

4. Legislative Background

4.1 The Constitution of the Cayman Islands is set out in Schedule 2 to the Cayman Islands (Constitution) Order 1972 (S.I. 1972/1101) as amended. Section 18 of the Constitution disqualifies as a candidate for election to the Legislative Assembly a British overseas territories citizen who has any other citizenship. This was amended by the Cayman Islands (Constitution) (Amendment) Order 2004 (S.I. 2004/2029) to exclude from the disqualification any British citizen. That Order inadvertently omitted to limit that exception to any British citizen who acquired that status by virtue of the British Overseas Territories Act 2002. The present Order corrects that omission.

4.2 Section 47(2) of the Constitution requires the Governor to dissolve the Legislative Assembly no later than four years after the date on which it first met after a general election. That date was 15th November 2000. The present Order modifies section 47(2) by requiring the Governor to dissolve the present Assembly no later than 17th March 2005, thus extending the life of the Assembly by just over four months. Section 48 of the Constitution requires a general election to be held within two months of every dissolution of the Assembly.

5. Extent

5.1 This instrument applies to the Cayman Islands.

6. European Convention on Human Rights

Not applicable.

7. Policy background

7.1 The British Overseas Territories Act 2002 conferred British citizenship on all British overseas territories citizens connected with the Cayman Islands. The inadvertent effect of this would have been to disqualify all such persons from election to the Legislative Assembly (including all its current members). It is therefore necessary to avoid this result by exempting such persons from the disqualification prescribed by the Constitution of the territory.

7.2 The recent hurricane Ivan caused such extensive damage to the Cayman Islands that it is impracticable to hold the next general election by 15 January 2005, as the Constitution requires. Extending the life of the current Assembly to, at the latest, 17th March 2005 means that the elections can be postponed up to 17th May 2005. This should allow time for the necessary conditions to be restored for free and fair elections to take place.

7.3 The Governor and the political parties in the Cayman Islands were consulted about the changes made by this instrument.

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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