**EXPLANATORY MEMORANDUM TO**

**THE CAYMAN ISLANDS CONSTITUTION (AMENDMENT) ORDER 2016**

**2016 No. 780**

## 1. Introduction

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

## 2. Purpose of the instrument

2.1 The instrument amends the Constitution of the Cayman Islands, as contained in the Cayman Islands Constitution Order 2009 (S.I. 2009/1379), by extending the tenure of certain members of the judiciary in that territory from the age of 65 to 70 years of age and by removing the Governor's power to exercise disciplinary control (short of removal from office) over the judiciary and transferring that power in respect of some judicial officers to the Chief Justice and the President of the Court of Appeal.

## 3. Matters of special interest to Parliament

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

3.1 None.

***Other matters of interest to the House of Commons***

3.2 As this instrument is only required to be laid before Parliament after being made and is not subject to any Parliamentary procedure, consideration as to whether there are other matters of interest to the House of Commons does not arise.

## 4. Legislative Context

4.1 This instrument will amend the Cayman Islands Constitution and is made, like that Order, under the West Indies Act 1962. This amendment is being made at the request of the Government of the Cayman Islands, with the agreement of the judiciary.

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, at least 28 sitting days before they were made. The draft Order was considered by the Committee at a meeting on 5 July 2016 and they have confirmed that they have no objections to the making of this Order.

## 5. Extent and Territorial Application

5.1 The instrument extends to the Cayman Islands.

5.2 The instrument applies to the Cayman Islands.

## 6. European Convention on Human Rights

6.1 As the instrument is only required to be laid before Parliament after being made and is not subject to any Parliamentary procedure and does not amend primary legislation, no statement is required.

## 7. Policy background

***What is being done and why***

7.1 The instrument amends the Constitution of the Cayman Islands in three ways. First, it extends the tenure of the judges of the Grand Court from 65 to 70 years of age. Second, it removes the Governor's power to exercise disciplinary control over the Chief Justice and the President of the Court of Appeal. Third, it transfers the Governor's power to exercise disciplinary control over judges of the Grand Court and magistrates and judges of the Court of Appeal to the Chief Justice and the President of the Court of Appeal respectively.

7.2 Before these amendments a Grand Court judge could only serve between the ages of 65 and 70 with the permission of the Governor, advised by the Judicial and Legal Services Commission of the territory. Similarly, disciplinary control of Grand Court judges, Court of Appeal judges and magistrates was a power conferred on the Governor, advised by the Judicial and Legal Services Commission. Experience showed that these arrangements interfered with the independence of the judiciary, and reform was considered desirable.

7.3 The Governor's constitutional power to remove the Chief Justice, the President of the Court of Appeal, judges of the Grand Court, magistrates and judges of the Court of Appeal from office will be unaffected by this amending instrument.

***Consolidation***

7.4 This instrument does not involve consolidation.

## 8. Consultation outcome

8.1 This amending Order was requested by the Government of the Cayman Islands and is supported by both the opposition members of the Legislative Assembly and the judiciary of the Cayman Islands.

## 9. Guidance

9.1 No guidance has been prepared.

## 10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector in the United Kingdom.

10.3 An Impact Assessment has not been prepared for this instrument.

## 11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

## 12. Monitoring & review

12.1 The operation of the Cayman Islands Constitution Order will be kept under constant review by the Foreign and Commonwealth Office, in consultation with Cayman Islands Government and in line with the United Kingdom Government's commitments as set out in the White Paper, 'The Overseas Territories; Security, Success and Sustainability' (2012) .

## 13. Contact

13.1 Sarah Turnock, Assistant Legal Adviser at the Foreign and Commonwealth Office can answer any queries regarding the instrument. Telephone: 0207 0087400 or email: Sarah.Turnock@fco.gov.uk