EXPLANATORY MEMORANDUM TO

THE TURKS AND CAICOS ISLANDS CONSTITUTION (AMENDMENT) ORDER 2021

2021 No. 878

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 The Turks and Caicos Islands Constitution (Amendment) Order 2021 ("the Order") amends the Constitution of the Turks and Caicos Islands ("the Constitution"), as set out in Schedule 2 to the Turks and Caicos Islands Constitution Order 2011 (S.I. 2011/1681) ("the 2011 Order"). The Order makes provision, at the request of the Government of the Turks and Caicos Islands, for the Governor to appoint a greater number of Ministers than the six normally permitted in addition to the Premier. This power, which will be exercisable after consultation with the Premier and Leader of the Opposition, is subject to the total number of Ministers appointed in addition to the Premier not exceeding two-fifths of the combined number of appointed and elected members of the House of Assembly.

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 not subject to 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 Turks and Caicos Islands.

4.2 The territorial application of this instrument is the Turks and Caicos 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 The Order, like the 2011 Order that it amends, is made under sections 5 and 7 of the West Indies Act 1962 (1962 c. 19), and all other powers enabling Her Majesty to do so.

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" (available at https://www.gov.uk/government/publications/the-overseas-territories-security-success-and-sustainability). 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 The minor change that the Order makes to the Constitution is at the request of the new Premier, following his party's success at a General Election in February 2021, and has the support of both the Leader of the Opposition and the Governor. The substance of the change is to allow the Governor to appoint a greater number of Ministers than the six normally permitted in addition to the Premier. This power, which will be exercisable after consultation with the Premier and Leader of the Opposition, is subject to the total number of Ministers appointed in addition to the Premier not exceeding two-fifths of the combined number of appointed and elected members of the House of Assembly permitted in paragraphs (b) and (c) of section 43(1) respectively of the Constitution. On the basis of the numbers of such members currently permitted by the Constitution, the change will allow the Governor to appoint one additional Minister.

7.3 An additional Minister will reduce the number of programmes for which each Minister is responsible, thereby improving the Executive's ability effectively to cover the complexity of Government business. It will also remove the necessity for the Premier to take on an additional Ministerial portfolio, typically Finance, which his predecessors have often needed to do. This will allow the Premier to focus instead on strategic leadership and oversight across all Ministerial portfolios.

7.4 The Governor's role in agreeing to the appointment of the additional Minister would allow the number of Ministers to be limited to previously agreed levels, should that prove desirable in the interests of good governance. This ensures that the United Kingdom can fulfil its responsibilities for good governance of the Turks and Caicos Islands.

7.5 We do not anticipate any significant interest in this amendment in the United Kingdom. Public consultation was not undertaken in the Turks and Caicos Islands; however, the proposed change was included in the Government's manifesto ahead of the February 2021 election and has been agreed with the Leader of the Opposition.

8. Consolidation

8.1 The Order contains the first amendment to the Constitution. There are currently no plans for consolidation.

9. Consultation outcome

9.1 The amendment to the Constitution is being made at the request of the Territory's Government, with the support of the Governor and the Leader of the Opposition in the

Territory's House of Assembly. A draft of the Order was shared and agreed with the Territory's Governor, Premier and Attorney General.

10. Guidance

10.1 No guidance has been prepared for the Order as it is not considered necessary.

11. Impact

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

11.2 There is no, or no significant, impact on the United Kingdom public sector.

11.3 An Impact Assessment has not been prepared for this instrument because it has no impact on business, charities or voluntary bodies, or on the United Kingdom public sector.

12. Regulating small business

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

13. Monitoring & review

13.1 The operation of the Order will be monitored and kept under review by the Foreign, Commonwealth and Development Office, in consultation with the Turks and Caicos Islands Governor.

14. Contact

14.1 Zoe Kemp at the Foreign, Commonwealth and Development Office, telephone: 07384 248844 or email: zoe.kemp@fcdo.gov.uk, can be contacted with any queries regarding the instrument.

14.2 Adam Pile, Deputy Director, Head of Caribbean and Southern Oceans Department, Overseas Territories Directorate, at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.

14.3 Lord Ahmad, Minister of State at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.