EXPLANATORY MEMORANDUM TO

THE TURKS AND CAICOS ISLANDS CONSTITUTION (AMENDMENT) ORDER 2024

2024 1128

1. Introduction

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

2. Declaration

2.1 Stephen Doughty, Minister of State at the Foreign, Commonwealth & Development Office, confirms that this Explanatory Memorandum meets the required standard.

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

3. Contact

3.1 Karen Slater of the Foreign, Commonwealth & Development Office, Telephone: 07778 431577 Email: ParliamentaryOffice@fcdo.gov.uk can be contacted with any queries regarding this instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends the Constitution of the Turks and Caicos Islands ("TCI") set out at Schedule 2 to the Turks and Caicos Islands Constitution Order 2011 (S.I. 2011/1681) ("the 2011 Order"), as amended by the Turks and Caicos Constitution (Amendment) Order 2021 (S.I. 2021/878). It follows proposals from the TCI Government and agreement reached between the United Kingdom Government and a TCI delegation in negotiations in 2023 and 2024.

4.2 The proposals brought forward by TCI reflect their aspirations for a more mature relationship whilst maintaining the UK's ability to fulfil its constitutional responsibilities towards TCI.

4.3 The majority of this instrument will come into force on such day or days as the Governor may appoint by proclamation published in the TCI *Gazette*. Certain articles, which make changes to the composition of the Legislature, will come into force upon the next dissolution of the TCI Parliament following the earliest day appointed by the Governor by proclamation.

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is TCI.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is TCI.

5. Policy Context

What is being done and why?

5.1 The United Kingdom Government's policy on the constitutional arrangements with the Overseas Territories 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 United Kingdom Government is committed to ensuring 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.

5.2 In 2023, the TCI Government submitted a number of proposals, drawn up on cross party basis, to the United Kingdom Government to amend the 2011 Constitution which was introduced following a Commission of Inquiry in the TCI. Since 2011 significant progress has been made in the TCI and the UK Government is content that the further amended constitution, which is largely based on precedents in other Overseas Territories' constitutions and particularly the Cayman Islands, retains sufficient safeguards to ensure good governance. In 2021, a further minor amendment was made to the Constitution, at the request of TCI, to increase the number of Ministers by one. Negotiations took place in November 2023 in the TCI with a cross-party delegation followed by virtual negotiations and this instrument reflects the agreement reached between the United Kingdom Government and the TCI delegation during those negotiations.

What was the previous policy, how is this different?

5.3 This instrument makes several amendments to the Constitution of the TCI. In particular, it changes the name of the House of Assembly to Parliament and, with effect from the next dissolution of the Parliament once the instrument has been brought into force by proclamation in the Gazette, changes the maximum Parliamentary term from four to five years, abolishes appointed members of Parliament, and removes the requirement for Standing Orders of the Parliament to be approved by the Governor. It amends the term "Ordinance" throughout to "a law enacted by the Legislature", except for references to specific Ordinances referenced in the Constitution. It clarifies that the TCI Cabinet has autonomous capacity with respect to domestic affairs and sets out matters relating to external affairs that the Governor must delegate. It makes provision for the Governor to appoint a greater number of Ministers than the six normally permitted in addition to the Premier, with the total cap being higher than that brought in by the TCI Constitution (Amendment) Order 2021. It establishes several new bodies: a Cabinet Office and a Cabinet Secretary, a Police and Defence Service Commission, an International Centre for Alternative Dispute Resolution and provides that a Constitutional Commission may be established. It also makes constitutional provision for some roles, entities and items already in existence: the Chief Justice, National Security Council, the TCI Regiment and its Commanding Officer and the national crest. It removes regulation of international financial services from the Governor's special responsibilities and establishes an independent body for the regulation of financial services. It provides a power for a referendum to be held on matters of national importance. It makes amendments to the composition of the Electoral District Boundary Commission and to its functions. This instrument also revokes the Turks and Caicos Islands (Electoral District Boundary Commission) Order 2011.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument, like the 2011 Order (as amended) that it amends, is made under sections 5 and 7 of the West Indies Act 1962 (c. 19), and all other powers enabling His Majesty to do so.

Why was this approach taken to change the law?

6.2 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 A cross-party convention was formed in the Turks and Caicos Islands to first draw up a list of reforms. This was followed by a series of events within the communities across the TCI, and cross-party discussions. The UK delegation negotiating the revisions visited the TCI in October 2023, meeting sitting parliamentarians and youth parliamentarians and others. The Premier and Leader of the Opposition have endorsed the package, which has now been approved by resolution in the House of Assembly following public consultation. The Governor has been consulted, and this instrument is consistent with her advice.

7.2 In 2002, the Chairman of the Foreign Affairs Committee and the Foreign Secretary agreed that, where appropriate, draft Orders concerning Overseas Territories' constitutions would be shown to the Committee for information, if possible 28 days before they are made. In this case this instrument was shared with the Chair of the Foreign Affairs Committee in draft, but as the Committee Members had not yet been appointed, the draft Order and Explanatory Memorandum were also placed in the House Library to allow opportunity for any Member of the House to peruse and comment upon.

7.3 We do not anticipate any significant interest in this instrument in the United Kingdom.

8. Applicable Guidance

8.1 No guidance has been prepared for this instrument as it is not considered necessary.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because this legislation does not apply to activities undertaken by the public sector in the UK.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the legislation does not relate to activities that are undertaken by businesses, charities or voluntary bodies in the United Kingdom.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because this legislation does not apply to activities undertaken by the public sector in the UK.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation will be by way of assessment of its performance and continued necessity by the Foreign, Commonwealth and Development Office, in consultation with the Governor of the Turks and Caicos Islands.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").