EXPLANATORY MEMORANDUM TO

THE TURKS AND CAICOS ISLANDS CONSTITUTION (INTERIM AMENDMENT) (AMENDMENT) ORDER 2009

2009 No. 1755

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

This instrument amends the coming into force provision of the Turks and Caicos Islands Constitution (Interim Amendment) Order 2009 (S.I. 2009/701) ("the 2009 Order"). The 2009 Order, which is not yet in force, and which would suspend and replace certain provisions, in whole or in part, of the Constitution contained in the Turks and Caicos Islands Constitution Order 2006 (S.I. 2009/1913), has a coming into force provision which enables the Governor to bring the Order into force on a single date. The purpose of the current instrument is to amend the coming into force provision of the 2009 Order to enable the Governor to bring different provisions or part of any provision of that Order into force on different days.

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

None

4. Legislative Context

This instrument is being made to deal with a situation where it might not be legally or politically possible to bring all provisions of the 2009 Order into force on a single day.

5. Territorial Extent and Application

This instrument applies to the Turks and Caicos Islands only.

6. European Convention on Human Rights

Although this instrument is laid before Parliament, there is no provision for further parliamentary proceedings and no statement is therefore required.

7. Policy background

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

  The 2009 Order is currently being challenged by way of judicial review in the English courts by the former Premier of the Turks and Caicos Islands, Michael Misick. The challenge is focussed, in particular, on the provisions of the 2009 Order relating to the suspension of the constitutional right to trial by jury in

certain cases and the suspension of the House of Assembly. The purpose of the current instrument is to amend the coming into force provision of the 2009 Order, whereby the Governor would have to bring the Order into force on a single day, to enable him to bring different provisions or part of any provision of the Order into force on different days. This is to address a situation where it might not be possible or desirable for him to bring the whole Order into force on the same day.

- ***Consolidation***

There is not currently any intention to consolidate this instrument with the 2009 Order.

8. Consultation outcome

8.1 There has been consultation on this Order with the Governor of the Turks and Caicos Islands and relevant advisers within the Territory.

8.2 No public consultation was required in the United Kingdom as this Order forms part of the law of the Turks and Caicos Islands. However, 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 28 days before they were made. In this case the draft Order was not shown to the Committee 28 days in advance, as time did not permit, but a draft of the Order has been passed to them.

9. Guidance

No guidance is required in the United Kingdom. Explanations of what is being done will be given by the Governor to persons in the Turks and Caicos Islands as necessary.

10. Impact

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

11. Regulating small business

The legislation does not apply to small business in the United Kingdom.

12. Monitoring & review

The changes which would be made by the 2009 Order as amended by this instrument are very important as they have a significant impact on the political structure of the Territory, albeit that this is not intended to be permanent. Once brought into force, the 2009 Order will expire two years from that date if it has not been continued in force, or revoked sooner. During the time that it is in force steps will be being taken to enable the Territory to recover, and to return to greater internal self-government.

13. Contact

Susan Dickson at the Foreign and Commonwealth Office, Tel: 020 7008 3317 or email: susan.dickson@fco.gov.uk can answer any queries regarding the instrument.