

**EXPLANATORY MEMORANDUM TO  
THE TURKS AND CAICOS ISLANDS CONSTITUTION (INTERIM AMENDMENT)  
ORDER 2009**

**2009 No. 701**

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 makes certain interim amendments to the Turks and Caicos Islands Constitution Order 2006 (S.I. 2006/1913) to which the current Constitution of the Turks and Caicos Islands is scheduled. This instrument suspends and replaces certain provisions, in whole or in part, of the Constitution contained in the 2006 Order. In particular, the provisions relating to the Cabinet and the House of Assembly, which are replaced by an Advisory Council and a Consultative Forum respectively, are being suspended. Any requirement that the Governor must consult or act in accordance with the advice of the Cabinet, Premier, Ministers, Cabinet Secretary, or Leader of the Opposition in the exercise of his functions is suspended, as is the exercise of their own functions, which will now be carried out by the Governor acting in his discretion. References to the Speaker and Deputy Speaker and the House of Assembly under the Constitution or local laws are also suspended.

**3. Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]**

None

**4. Legislative Context**

This instrument, like the 2006 Order, is being made under sections 5 and 7 of the West Indies Act 1962 and all other powers enabling Her Majesty.

**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*

This Order is being made because an accumulation of evidence in relation to the Turks and Caicos Islands over the last year or so has led to a provisional decision by British Ministers that parts of the Constitution of the Turks and Caicos Islands will need to be suspended and replaced by other provisions on an interim basis. This view is supported by recommendations contained in the Interim Report of The Right Honourable Sir Robin Auld, Commissioner of a recent Commission of Inquiry in the Turks and Caicos Islands. Unless the Commissioner's Final Report, which is due at the end of April, changes Ministers' perception, it is intended that the Order will then be brought into force. Notwithstanding this intention, it may prove necessary to bring it into force before the Final Report is received if the circumstances in the Territory so demand. If a decision is taken to bring the Order into force before the Final Report is received, that would be to deal with an occurrence in the Territory which would justify such immediate action.

- ***Consolidation***

In its 1999 White Paper "Partnership for Progress and Prosperity - Britain and the Overseas Territories", the United Kingdom Government noted that there was great diversity within the Overseas Territories in terms of their size, population, economic developments and other factors, but that there was "a degree of coherence and similarity in the constitutional and institutional arrangements in place for [the Territories'] government and administration". The United Kingdom Government therefore encouraged individual Territories "to review their own structures and arrangements in line with the idea of a new modern partnership" with the United Kingdom. Following negotiations between the Turks and Caicos Islands Government and the United Kingdom Government a new Constitution was agreed and put in place by the 2006 Order. This replaced the Turks and Caicos Islands Constitution Order 1988 (S.I. 1988/247), as amended (S.I. 1993/1248 and S.I. 2002/2637).

## **8. Consultation outcome**

8.1 There has been consultation on this Order with the Governor and relevant advisers within the Territory. It is intended that the draft Order will be published in the Territory prior to being submitted to Her Majesty in Council. The Order is being made now to enable any necessary urgent action to be taken on receipt of the Final Report of the Commission of Inquiry (see paragraph 7), which is due to be presented to the Governor of the Territory by the end of April, or before if circumstances in the Territory so demand.

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 has not been shown to the Committee 28 days in advance. But the FAC were briefed by FCO Minister Gillian Merron on 10 March, and a draft of the Order was passed to them then.

## **9. Guidance**

No guidance is required in the United Kingdom. Explanations of what is being done will be given by the Governor to the people of the Turks and Caicos Islands, including to those directly affected by the suspension of provisions of the Constitution, as necessary.

**10. Impact**

No impact on business, charities or voluntary bodies 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.

**12. Monitoring & review**

The changes being made 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 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](mailto:susan.dickson@fco.gov.uk) can answer any queries regarding the instrument.