

EXPLANATORY MEMORANDUM TO
THE ST HELENA, ASCENSION AND TRISTAN DA CUNHA CONSTITUTION
(AMENDMENT) ORDER 2021

2021 No. 895

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 St Helena, Ascension and Tristan da Cunha Constitution (Amendment) Order 2021 (“the Order”) amends the Constitution of St Helena set out in Chapter 1 of the St Helena, Ascension and Tristan da Cunha Constitution Order 2009 (S.I. 2009/1751)(“the 2009 Order”). The Order makes provision, at the request of the St Helena Government, for a ministerial system of government to be introduced on St Helena to replace the current committee system.

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 St Helena which forms part of the British Overseas Territory of St Helena, Ascension and Tristan da Cunha.
- 4.2 The territorial application of this instrument is St Helena.

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 2009 Order that it amends, is made under section 112 of the Saint Helena Act 1833, the British Settlements Acts 1887 and 1945 and all other powers enabling Her Majesty to make the Order.

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 that 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 that a dialogue is sustained with all those Territories that wish to engage.

7.2 The changes that the Order makes to the 2009 Order are at the request of the St Helena Government and were agreed by the St Helena Legislative Council on 4 June 2021. The amendments also have the support of the Governor. The St Helena Government would like to move from a committee system of government to a ministerial model as it believes it will improve the governance of the Island.

7.3 The main substance of the constitutional changes are:

- (a) **Introduction of a Chief Minister and four Ministers** to replace the current committee system made up of five committees (health, economy, social affairs, environment and education) chaired by five Councillors. Most inhabited Overseas Territories already have a ministerial system.
- (b) **Removal of shipping from the Governor’s special responsibilities** (section 2(14) of the Draft Order). No other Governors in the Overseas Territories have this responsibility. It is no longer required in St Helena as the UK Government is no longer funding the transportation of supplies via ship following the opening of the airport.
- (c) **To permit the Governor, with the prior approval of the Secretary of State, to delegate matters relating to internal security, finance and justice to the Chief Minister or another Minister** (section 2(14) of the Draft Order). The constitutions of other Overseas Territories (e.g. Bermuda, Turks and Caicos Islands, Montserrat, Cayman Islands, Anguilla and the Virgin Islands) already permit the Governor to delegate specific responsibilities relating to internal security and external affairs with the prior approval of a Secretary of State.
- (d) **Removal of the Oath of Confidentiality sworn by Elected Members of Legislative Council** (sections 2(19) and (38) of the Draft Order). This reflects current practice in other Overseas Territories. The St Helena Government is amending its standing orders and rules and procedures to ensure sensitive information and documents are protected. The 2009 Order is being amended to include reference to a Ministerial Code that sets out the behaviour expected of the Chief Minister and other Ministers, and sanctions for failing to comply, and a Conduct of Conduct for behaviour expected of members of the Legislative Council and regulating their relationship with officers of the St Helena Public Service (section 2(24) of the Draft Order).
- (e) **Provision for the Chief Minister or his or her Deputy, to chair Executive Council in the rare instance the Governor and the appointed Governor’s Deputy are absent** (section 2(9) of the Draft Order). Currently the Chief Secretary (Head of St Helena’s Public Service) would chair in their absence.
- (f) **Creation of at least two Select Committees to scrutinise selected government activity** (section 2(23) of the Draft Order) composed of Elected Members of Legislative Council not holding Ministerial positions.
- (g) **Composition of Legislative Council amended to remove the Chief Secretary and Financial Secretary as *ex-officio* members of this legislative body**

(section 2(17) of the Draft Order). Both may still be invited to attend to provide advice as public officials.

(h) **Creation of a Secretary to Executive Council** (section 2(12) of the Draft Order) to perform the current role of the Clerk to Councils.

7.4 We do not anticipate any significant interest in these amendments in the United Kingdom.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The Order contains the first amendment to the 2009 Order. There are currently no plans for consolidation.

10. Consultation outcome

10.1 Over the last year and a half there have been extensive public consultations on St Helena concerning the Island's governance structure. A UK-funded governance specialist was invited by the St Helena Government to visit the Island in September 2019 and again in January 2020 to review current governance processes. He met with a wide range of stakeholders, including members of the public, and concluded there was much dissatisfaction with the current committee system of government. He recommended a move to a ministerial model or a revised committee system that would allow for better and quicker decision-making and more accountability. A Governance Commission with representatives from across St Helena's community was subsequently set up and held further public engagement events.

10.2 A consultative poll took place on St Helena on 17 March 2021 on whether the public wanted a change to the current system of governance, and if so, whether a revised committee system or a ministerial system would be preferred. 79.2% of those who voted wanted a change to the current system of governance with 55.1% supporting the introduction of a ministerial system and 44.9% supporting a revised committee system. The turnout was 17.3%, which was lower than hoped for, but in line with the usual turnout in by-elections (voter turnout is generally low in St Helena). We are satisfied that when this result is considered in conjunction with extensive public consultations over the last year and a half, and the endorsement of the Legislative Council, that there is a sufficient mandate for the proposed change on St Helena.

10.3 The amendment to the Constitution is being made at the request of the Territory's Government, with the support of the Governor. A draft of the Order was shared and agreed with the Territory's Governor and Attorney-General, and approved by St Helena's Legislative Council on 4 June 2021 with a few minor amendments.

11. Guidance

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

12. Impact

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

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

12.3 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.

13. Regulating small business

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

14. Monitoring & review

14.1 The operation of the Order will be monitored and kept under review by the Foreign, Commonwealth and Development Office, in consultation with the Governor of St Helena.

15. Contact

15.1 Lisa Jennians at the Foreign, Commonwealth and Development Office, telephone: 0207 008 2748 or email: lisa.jennians@fcdo.gov.uk, can be contacted with any queries regarding the instrument.

15.2 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.

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