

## EXPLANATORY MEMORANDUM TO

### THE VIRGIN ISLANDS CONSTITUTION (INTERIM AMENDMENT) ORDER 2022

2022 No. 627

#### 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 This instrument makes certain interim amendments to the Virgin Islands Constitution Order 2007 (S.I. 2007/1678), which, as amended by the Virgin Islands Constitution (Amendment) Order 2015 (S.I. 2015/1767), contains the current Constitution of the Virgin Islands (“the Constitution”). The instrument provides for specified offices to become vacant, for the Cabinet to cease to exist, and for the House of Assembly to be dissolved.
- 2.2 This Order is designed to allow action to be taken to address concerns about poor governance in the Virgin Islands by providing for certain provisions of the Constitution to be suspended in whole or in part on an interim basis, and certain other provisions to be given effect in their place. In particular, the provisions relating to the Cabinet and the House of Assembly are suspended and replaced by an Advisory Council with an option for a Consultative Forum, with the power to make laws for the peace, order and good government vested in the Governor. Requirements for the Governor to consult, or to act on the advice of, the Cabinet, Premier, or Leader of the Opposition are suspended, as is the exercise of their functions, and those of Ministers and certain other offices and authorities. With the suspension of Ministerial government, executive authority will be exercised by the Governor, albeit that certain government bodies, including the National Security Council and certain Commissions established under the Constitution, remain in existence. In the exercise of his or her functions, including those transferred to him or her under the Order, and those in respect of which he or she was formally required to consult, or act on the advice of, offices and authorities that will no longer exist, the Governor will generally be required to consult the Advisory Council, but will not be required to follow its advice.
- 2.3 The Order will come into force on such day as the Governor may appoint by proclamation published in the Virgin Islands *Gazette*. The instrument will remain in force for two years from the day on which it is commenced, and will then expire unless it is continued in force or sooner revoked by Order in Council.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

#### 4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the Virgin Islands.
- 4.2 The territorial application of this instrument is the Virgin Islands.

## **5. European Convention on Human Rights**

- 5.1 As the instrument is not subject to parliamentary procedure, no statement is required.
- 5.2 In light of the temporary changes that the Order makes to the Constitution, the United Kingdom government intends to make a declaration temporarily terminating the application to the Virgin Islands of article 3 of the first protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms. This will only happen if the Order is brought into force.

## **6. Legislative Context**

- 6.1 The Order, like the 2007 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 Her Majesty to do so.

## **7. Policy background**

### *What is being done and why?*

- 7.1 This Order is being made in order to fulfil the United Kingdom government's broad responsibility to support the Overseas Territories and to ensure their security and good governance for the people in each Territory. Specifically, an accumulation of evidence has led to the decision that fulfilling this responsibility with respect to the Virgin Islands may require the temporary suspension and replacement of certain parts of the Constitution. In particular, this was the recommendation of Sir Gary Hickinbottom PC, who was appointed in 2021 by the former Governor of the Virgin Islands under a Commission of Inquiry to inquire into whether there was information that corruption, abuse of office or other serious dishonesty in relation to officials, whether statutory, elected or public, may have taken place in recent years.
- 7.2 Amongst its detailed findings, the final report of the Commission of Inquiry identified numerous, serious, failures of governance and concluded that serious dishonesty in relation to public officials is highly likely to have taken place. Amongst numerous recommendations, the report concluded that the only way in which the relevant issues can be addressed is for there to be a temporary suspension of those parts of the Constitution by which areas of government are assigned to elected representatives. The report recommended that the suspension should be as short as possible to enable principled elected government to be restored.
- 7.3 Having considered the report, as well as the wider circumstances relevant to the governance of the Virgin Islands, and having consulted relevant parties as set out below, the Foreign Secretary has accepted this recommendation, as a last resort. In the first instance, the Foreign Secretary has concluded that the newly formed Government of National Unity should have an opportunity to implement all recommendations, aside from the partial suspension of the Constitution. However, if the situation changes or deteriorates, the Foreign Secretary would want to be able to move quickly to instruct the Governor to bring this Order into force.
- 7.4 Although the Order will be made, it will not immediately come into force. The Order would come into force on such day as the Governor may appoint by proclamation published in the Virgin Islands Gazette.
- 7.5 This Order implements the recommendation to temporarily suspend certain parts of the Constitution, and inserts in their place provisions for the continued government of

the Virgin Islands. These are intended to facilitate the implementation of the report's other recommendations and set the conditions for a resumption of elected government.

## **8. European Union Withdrawal and Future Relationship**

8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

9.1 The Order makes temporary changes to the Constitution. There are currently no plans for consolidation.

## **10. Consultation outcome**

10.1 The Commission of Inquiry held extensive public evidence sessions with input from a wide range of people from across society in the Virgin Islands. The Governor has been consulted, and the Order is consistent with his advice. The Minister for the Overseas Territories also conducted a series of in-person consultations with elected officials and other interested parties in the Virgin Islands, including members of the public. The feedback was clear that changes were essential to tackle the various examples of poor governance in the Territory, but there were mixed feelings on how much UK Government intervention was necessary. Ministers have considered the outcome of this consultation in reaching their decision.

10.2 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 the draft Order has been shared with the Foreign Affairs Committee, but there was no time for comments to be received. The Minister for the Overseas Territories and Overseas Territories Directorate Officials were in touch to explain the urgency of completing the Order.

## **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 United Kingdom 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, or no significant, impact on United Kingdom 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 in the United Kingdom.

## **14. Monitoring & review**

14.1 The performance and continued necessity for this legislation will be monitored by the Foreign, Commonwealth and Development Office, in consultation with the Governor of the Virgin Islands.

14.2 The Order will continue in force for the period of two years from the date on which it is made, and will then expire unless it is continued in force or sooner revoked by Order in Council.

**15. Contact**

15.1 Tina Hamilton at the Foreign, Commonwealth and Development Office, telephone: 07394 576032 or email: Tina.Hamilton@fcdo.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Ben Ladd, Deputy Director and Head of the British Virgin Islands Unit at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rt Hon Amanda Milling, Minister for Asia and the Middle East, at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.