

2009 Draft Constitution
EXPLANATORY GUIDE



It's your time
MAKE YOUR MARK

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INTRODUCTION

This booklet contains an explanatory guide. The guide, written by the Constitutional Review Secretariat, will help you understand the differences between the current Constitution and the proposed constitution.

The proposed 2009 Cayman Islands Constitution is the document that electors will be asked to vote upon during the Wednesday, 20 May referendum.

This referendum will be the first to be held in our country, and represents an historic step in the inclusion of the Caymanian people as decision-makers in the country's future.

The referendum question that will be asked of electors is:

“Do you approve the Draft Constitution which was agreed by the Cayman Islands Constitution Delegation and the Government of the United Kingdom on 5th February, 2009 and tabled in the Legislative Assembly of the Cayman Islands on 11th February, 2009?”

“It’s Your Time! Make Your Mark on Wednesday, 20 May 2009”

The Constitution Modernisation Initiative began in February 2007. This proposed constitution is the result of extensive research and public consultation, leading to formal negotiations between the Cayman Islands Constitution Delegation and the UK Government.

PREAMBLE

Currently The Constitution does not contain a preamble.

Proposed The proposed constitution would contain a preamble, proclaiming our distinct historical context, fundamental values and aspirations. It is based on the preamble in the 2003 draft constitution, with few amendments.

PART I

BILL OF RIGHTS, FREEDOMS AND RESPONSIBILITIES

Part 1 of the proposed constitution is the Bill of Rights, Freedoms and Responsibilities (referred to throughout this document as the “Bill of Rights.”) If the proposed constitution is passed, most of the Bill of Rights would come into effect three years after the constitution would come into effect. This would allow government to prepare for the Bill of Rights. However, sections 6(2) and (3), which concern the separation of prisoners, would not come into effect until four years after the constitution is in place. This would give government time to build facilities that are geared towards protecting the right of prisoners to be separated.

PETITIONING THE COURTS ABOUT HUMAN RIGHTS

Currently Since 2006, the European Convention on Human Rights has been applied to the Cayman Islands, through the direct right to petition.

While these rights are not enforceable by Cayman’s courts, individuals can bring petitions concerning their convention rights directly before the European Court of Human Rights in Strasbourg, France. The European court’s judgement would be binding upon Cayman.

However, before the European court can hear the case, you have to demonstrate that Cayman’s courts have not adequately enforced your convention rights. This means that you will have to go through the local courts process first. The process could take many years, and is potentially very expensive.

Proposed The Bill of Rights, would become part of Cayman law through the constitution. This would make standing up for your rights easier. You could now bring a case in a court in the Cayman Islands. If someone takes you to court you could ask the court to take your rights into account.

“Rights” means something you are allowed to do. The government and all your public services must respect your rights. Some rights cannot be taken away, while other rights have to be balanced because of the rights of others.

“European Convention on Human Rights” is an agreement passed by the Council of Europe

in 1956. This is a group of countries which came together after the Second World War to stop terrible acts from happening again. The UK is one of those countries. The Cayman Islands is an overseas territory of the UK.

RIGHTS WITH RESPONSIBILITIES

The Bill of Rights aims to ensure that everyone’s rights, as expressed in the Bill of Rights, are respected. If they are not, a person can apply to the court, asking it to make a judgement about human rights.

Your rights will often have to be balanced against another’s. The wider interests of the community as a whole may also need to be taken into account. This is how the Bill of Rights would achieve this.

- It would be unlawful for government to act contrary to the Bill of Rights’ principles. If it’s alleged that government has acted unlawfully, cases could be brought in a local court.
- All laws, as far as possible, would be in line with the Bill of Rights. If this is not possible, a court may make a declaration that the law is not in line with the Bill of Rights. This would give the Legislative Assembly an opportunity to amend the law, to make sure it complies with the Bill of Rights.
- When making human rights judgements, Cayman’s courts must consider European Court case law. However, local courts would also be required to interpret some rights using the principle of “margin of appreciation,” which means that a government may lawfully infringe human rights if it is justified, and serves a legitimate public purpose.
- When sponsoring a new bill, Ministers would have to ensure that it upholds the Bill of Rights.

SECTION OUTLINE OF THE BILL OF RIGHTS, FREEDOMS AND RESPONSIBILITIES

Section 1 would define “government.” It also would recognise that the Bill of Rights confirms the constitutional rights of every person, and the responsibilities of government and the society.

Sections 2 - 20 would incorporate the European Convention on Human Rights into the constitution. (See the next section of this document for an explanation of rights.)

Section 21 would specify how government should deal with public emergencies, in relation to your rights.

- Section 22** would specify the rights of persons who are detained in cases of public emergencies.
- Section 23** says the courts could declare that a particular law is not in line with the Bill of Rights. This declaration would then put an obligation on government to decide how to make the law comply with the Bill of Rights. This section would not give the court the power to strike down any laws. That responsibility is left to the Legislative Assembly.
- Section 24** says it would be unlawful for a public official to act contrary to the Bill of Rights, unless the law requires the public official to do so. In that case, the law would become unconstitutional and in breach of the Bill of Rights.
- Section 25** would require local laws to be interpreted, as far as possible, in line with the Bill of Rights. This would apply to all laws, whenever enacted.
- Section 26** would give the courts the power to decide questions that would arise in connection with the Bill of Rights.
- Section 27** says that once a court rules that your constitutional rights have been breached, it could make orders to ensure that your rights are protected. When the case warrants, the court could order monetary compensation for any loss.

RIGHTS, AS CONTAINED IN THE BILL OF RIGHTS

LIFE (SECTION 2)

It is universally believed that every person's right to life should be protected by law. The proposed Bill of Rights states that under very limited circumstances, it would be acceptable and lawful to take a life. For example, a life could be taken lawfully when police, or other armed forces, are preserving the Islands' peace by disbanding riots.

TORTURE AND INHUMAN TREATMENT (SECTION 3)

This absolute right would mean that government could not torture or degrade you; or allow anyone else to torture or degrade you, at any time – whether in times of war, or other public emergencies. (Absolute rights cannot be limited in any way. They cannot be reduced or amended.)

- Torture is deliberate, treatment that causes serious and cruel suffering.
- Inhuman treatment or punishment is less severe than torture, but it's still ill treatment.

Whether or not the treatment is degrading depends, among other things, on the nature, seriousness and duration of the treatment; how it affected the victim mentally and/or physically; and on the age, sex, or state of health of the victim. For example, torture, and inhuman or degrading treatment, could include severe police violence and poor detention conditions for arrested persons or prisoners.

SLAVERY, FORCED OR COMPULSORY LABOUR (SECTION 4)

You would have a right to not be treated like a slave, or forced to perform certain kinds of labour.

- Being a **slave** means someone actually owns you, like a piece of property. It also refers to cases in which you work for little or no pay. For example, “slaves” can include victims of human trafficking to supply labour or sex trade. This is an absolute right and this would not be permitted, even in times of war or other public emergencies.
- Being in **servitude** means that you may live on the property or work on the premises, but you are not free to leave at your own will. Servitude is different from slavery in that the person does not actually own you. This is an absolute right and this would not be permitted, even in times of war or other public emergencies.
- **Forced or compulsory labour** means that neither government, nor a person, could force you to work. This is not an absolute right, meaning there would be lawful circumstances in which you could be forced to work. For example, you could be forced to work by court order; if you belong to a disciplined force, and therefore are required to carry out specific types of labour; if you are lawfully detained by government, and would be required to carry out specific tasks to ensure where you live is well maintained; or in cases of public emergency where labour is required.

PERSONAL LIBERTY (SECTION 5)

You would have the right to be free, but this right would be limited. For example, this right would not apply when detention is lawful.

This right would also include; -

- a detained person’s right to remain silent;
- to be promptly informed of the reasons for the arrest and any charge against him or her, in a language that he or she understands;
- quick access to judicial proceedings;
- trial within a reasonable time; or
- release from detention pending trial.

TREATMENT OF PRISONERS (SECTION 6)

Persons under arrest or detained would have the right to be treated with humanity and dignity. This means you must be treated properly by custodial staff, must be given regular meals, and must have access to reasonable health care, to name a few.

Also, government, in most circumstances, would be required to separate persons who are not convicted from convicted prisoners. Juvenile prisoners would be separated from adult prisoners; treated appropriate to their age and legal status; and their trials would be pursued as quickly as possible.

FAIR TRIAL (SECTION 7)

Everyone would have the right to a fair trial, and if you were charged, you would be presumed innocent. Other rights would include; -

- adequate time and facilities to prepare a defence;
- access to legal representation;
- the right to examine witnesses; and
- the right to be assisted, at no cost to you, by a foreign-language interpreter.

Under this right, you would not be required to give evidence at trial; and could not be re-tried for an offence after you have been legally pardoned for it.

NO PUNISHMENT WITHOUT LAW (SECTION 8)

This right means that you cannot be found guilty of a crime for something you did which was not against the law when you did it. For example, you could not be charged today for stalking, because stalking is not currently a criminal offence in the Cayman Islands.

This right also means that you cannot be made to stay longer in jail just because the punishment for your crime is made longer when you are in prison.

PRIVATE AND FAMILY LIFE (SECTION 9)

Under this right, the respect of your private and family life, your home; and your correspondence would be protected (“correspondence” could include communication by letter, telephone, fax, and e-mail). The concept of “private life” is broad. In general, it would mean you have the right to live your own life, with reasonable personal privacy in a democratic society, taking into account the rights and freedom of others.

This right would limit the extent to which government could invade your bodily privacy without your permission, such as taking blood samples. This right could also extend to causing government to put in place laws to prevent the media from intruding into your life.

Any interference with your right to private and family life by the government would need to be justified and achieve a legitimate public objective. Grounds for government interference include the interest of defence, public safety, public order, public morality or public health.

CONSCIENCE AND RELIGION (SECTION 10)

You would be free to hold particular beliefs, and to practice your religion. This right is not absolute. Government could only interfere with this right if it is absolutely necessary in the interest of defence, public morality, public order, public health and public safety.

This right would protect you, and your children, from being forced to receive religious instruction that does not follow your, or their, personal beliefs.

It would also allow church schools to continue teaching their religious principles to willing children, regardless of whether or not the schools receive government funding. This right would also allow schools and community educational institutions to impose requirements on employment, admission, or curriculum design, in order to maintain the schools' religious beliefs, subject to the laws in force.

EXPRESSION (SECTION 11)

You would have the right to hold opinions and express your views, either as an individual or with others. "Expression" includes speaking aloud; publishing articles, books or leaflets; making television or radio broadcasts; and producing works of art.

Government interference of this right would have to be justified, in the interest of defence, public safety, public order, public morality or public health. Other grounds would include to protect the rights, reputations, and freedoms of other persons, or the private lives of persons concerned in legal proceedings; or to impose certain restrictions on public officers, in the interest of the proper performance of their functions.

ASSEMBLY AND ASSOCIATION (SECTION 12)

You would have the right to assemble with others in a peaceful way. This would include the right to protest, particularly against government, in a peaceful way.

This right would include the right to form associations, political parties, etc. On the other hand, this right also ensures that you could not be forced to join an association.

In very restricted circumstances, government could interfere with this right. However, it must be necessary; have a clear aim; and be sound in law. Some examples include preventing disorder and crime.

MOVEMENT (SECTION 13)

You would have the right to move freely within the Islands; to reside in any part in the Islands; and to enter or leave the Islands without government restriction. This right, however, is not absolute. Government could impose restrictions in the interests of defence, public safety, public morality, public order or public health;

and to protect the rights and freedoms of others. These restrictions usually relate to immigration controls; the courts' right to restrict your movement, as part of bail conditions or sentence; and extradition cases.

MARRIAGE (SECTION 14)

A consenting unmarried man, or consenting unmarried woman, would have the right to marry a person of the opposite sex. So while government could regulate marriage, it could not prevent it.

Government also could not prevent or limit the right of a married couple to have a family. In cases of adoption, adoption laws would apply.

PROPERTY (SECTION 15)

You have a right to enjoy the things that you own. Government could not interfere with things you own or the way you use them. Under this right, "property" is broadly defined. It includes businesses, and your right to pension; property that you can see and touch, such as land, a car or a boat; and invisible possessions, such as shares in a company, and court-ordered compensation.

There are very restricted circumstances in which government could interfere with the way you use your property. Planning laws are a good example of this. Under this right, government could regulate development for public interest purposes, which would include ensuring that all landowners can peaceably enjoy their property.

Another restriction would be the compulsory purchase scheme, where it's in the public interest for government to purchase property – as in for building roads.

However, before your property could be taken by the government, it must satisfy the public interest test. In other words, this action must be necessary, and the landowner(s) must be compensated, unless government can justify otherwise.

NON-DISCRIMINATION (SECTION 16)

Discrimination means treating people in similar situations differently, without justification. This right would give you protection from discrimination, in relation to all other rights that the Bill of Rights would guarantee.

This means that, based on your sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, age, mental or physical disability, property, birth, or other status, you could not be treated differently in relation to these constitutional rights.

- Life
- Against torture and inhumane treatment
- Against slavery or forced or compulsory labour

- Personal liberty
- No punishment without law
- Private and family life
- Conscience and religion
- Expression
- Assembly and association
- Movement
- Marriage
- Property
- Nondiscrimination
- Protection as a child
- Protection of the environment
- Lawful administrative action
- Education

How does this right to nondiscrimination compare with the European Convention on Human Rights?

It mirrors the European Convention on Human Rights; in fact, it goes beyond the convention by adding age, as well as mental and physical disability, to the definition of discrimination.

The European Convention on Human Rights Article 14 states:

The enjoyment of the rights and freedoms set forth in this convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Section 16 of the proposed Bill of Rights states:

16(1) Subject to subsection (3), (4), (5) and (6), government shall not treat any person in a discriminatory manner in respect of the rights under this part of the constitution.

16(2) In this section, “discriminatory” means affording different and unjustifiable treatment to different persons on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, **age, mental or physical disability**, birth or other status.

What is the “freestanding right of nondiscrimination,” and what is its effect?

The freestanding right of nondiscrimination is new, and optional for member states of the European Convention on Human Rights. It protects an individual beyond the rights and freedoms set out in the convention’s article 14.

This right is found in the convention’s Protocol 12, article 1, which came into force on 1 April 2005. According to the convention schedule, as of 9 March 2009, 17 member states had signed and ratified the protocol, 20 member states have not ratified but signed the protocol and 10 member states have neither signed nor ratified the protocol.

The convention’s Protocol 12, article 1 & 2 states:

- *The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*
- *No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1”.*

This right is intended to; -

- allow a person to enjoy any right that is specifically granted under national law;
- allow a person to enjoy rights whenever a public authority, under national law, is obligated to behave in a particular manner;
- protect a person from discrimination by a public authority, acting in its discretionary power (for example, granting certain subsidies);
- protect a person from discrimination by any other act, or omission, by a public authority (for example, the behaviour of law enforcement officers when controlling a riot); and
- obligate government to put in place measures that prevent discrimination, including discrimination between private persons (called the “indirect horizontal effect”¹).

If the freestanding right has these benefits, why have some member states not agreed to it?

Compared to article 14 (1950), Protocol 12 is relatively new (2005). Therefore, there isn’t much case law that can help countries to understand how Protocol 12 could affect their national laws.

1 Council of Europe Explanatory Report – Protocol No.12 to the Convention for the Protection of Human Rights and Fundamental Freedoms

Because of this some member states have not agreed to implement Protocol 12. The UK Government, for example, has not. Instead, it has taken a cautious approach because of its belief that there are “unacceptable uncertainties” regarding the interpretation of freestanding nondiscrimination, when weighed against a country’s right to treat some groups differently, such as to provide benefits to nationals, as a special group.

The UK’s formal objections are; -

- the potential application of the protocol is too wide, since it covers any difference in treatment; and applies to all “rights set forth by law,” in both statute and common law. It could therefore lead to an “explosion of litigation.”;
- nondiscrimination “rights set forth by law” could extend not just to national laws, but also to other international human rights instruments, to which the UK is a party;
- it’s unclear whether the protocol would continue to allow a member state to defend its laws or policies which afford different treatment to persons under the existing legal principle of “objective, reasonable justification of difference in treatment. (This as a legal rule which lawfully allows a country to treat people differently to pursue a legitimate aim. This is an important exemption to the equality rule as affects the sovereignty of nations and the rights of their elected representatives to put in place reasonable measures to protect their nationals).

Similarly, the Danish government has expressed general scepticism regarding international human rights instruments. With Protocol 12, its specific concern is the increasing transference of legislative powers from national elected governments to international non-legislative bodies (international courts), which cannot be seen as democratically elected organs².

Although the authors of the protocol have said that the European Court of Human Rights would continue apply the law concerning justifiable discrimination by a country³, many member states continue to take a cautious approach to adopting it.

Are these concerns relevant to the Cayman Islands?

While it is recognised that free standing non discrimination as expressed in Protocol 12 has many obvious benefits, it is still unclear the extent to which the concerns by conservative countries are relevant as the jurisprudence (judgements) of the courts on this issue is still emerging.

2 “The Cartoon Controversy in its Danish Context: Confusing Issues – By Stephanie Lagoutte, Senior Researcher at the Danish Institute for Human Rights

3 Council of Europe Explanatory Report – Protocol 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms point 19.

Before adoption of Protocol 12 can take place in the Cayman Islands the community ought to be fully informed of the following; -

- what are the benefits and risk of Protocol 12?
- how will Protocol 12 either positively or negatively affect Caymanian protection laws, policies and subsidies if the free standing right against discrimination applies to national laws, government policies, government subsidies and government acts or omissions;
- the extent to which free standing non discrimination will create an “indirect horizontal effect” whereby the government will be required to implement local legislation to govern discrimination amongst private individuals.

For all of these reasons, the proposed constitution does not have a free standing right of non-discrimination, but rather ties your right of non discrimination to the specific rights expressed in the proposed constitution.

Can Protocol 12 be adopted now?

It is unlikely. Before Protocol 12 can be included as part of the Cayman Constitution it would have to be agreed by both the UK government and the Cayman Islands.

The referendum to be held on May 20, 2009 is to approve a new constitution for the Cayman Islands. It is not a vote for proposals to be discussed with the United Kingdom at a future date, as the public consultation period on constitution reform has already passed. What is now before us is an agreed draft constitution which either has to be accepted as a package or rejected as a package.

Although Protocol 12 is not in the proposed constitution, can the Cayman Islands still enact some form of the freestanding right to nondiscrimination?

Yes. Countries that have not adopted Protocol 12 have implemented local legislation in their own way to address specific areas of discrimination.

For example, since the UK’s Human Rights Act came into force in 2000, it has assessed and updated many of its antidiscrimination laws, while introducing others. For example, the Special Education Needs and Disability Act were introduced in 2001; the 1995 Disabilities Discrimination Act was revised in 2005; and various employment equality regulations were introduced between 2003 and 2006. It’s important to note that these and similar measures were taken by the UK based upon the society’s viewpoint on these issues.

Cayman may also require an ongoing assessment of antidiscrimination laws that may be introduced here. However, introducing a Bill of Rights, Freedoms and Responsibilities is usually a first step towards enhancing the rights in any country.

CHILDREN (SECTION 17)

This right would endorse Cayman's obligations to the UN's Convention on the Rights of the Child. It would cover conventional obligations such as a child's right to a name, from the time of birth; protection from exploitative labour practices; and protections if the child enters the justice system.

The introduction of the local Children's Law would implement many of the convention obligations placed on Cayman's government.

PROTECTION OF THE ENVIRONMENT (SECTION 18)

You and your community would have the right to the protection and preservation of your environment. Government would be obligated to implement legislation and other measures to protect Cayman's heritage, wildlife, and land and sea biodiversity; prevent pollution and ecological degradation; promote biodiversity; secure ecologically sustainable development and use of natural resources.

LAWFUL ADMINISTRATIVE ACTION (SECTION 19)

This right would uphold the rule of law. It means that in your dealings with government, you would have a constitutional right to be treated fairly. This right extends to any decision government makes in relation to you.

If you are not satisfied with a decision that government made, you can ask government to provide a written explanation of its decision.

EDUCATION (SECTION 20)

You would have the right to access the educational system, and a right to effective education. Parents would have the right to make sure that the teaching provided by public authorities respects their religious and philosophical beliefs.

If the subjects are reasonable for the school to teach, parents could not stop the subjects from being taught. However, parents could remove their children from certain classes, such as sex education and religious classes, if these teachings are contrary to the parent's and child's beliefs.

This right would obligate government to make a concerted effort to provide free primary and secondary education in the future, within its future economic means. This right does not automatically guarantee free primary and secondary education once the Bill of Rights comes into force.

HUMAN RIGHTS CONCEPTS

The Difference between Absolute, Limited and Qualified Rights

Not all rights are written in the same way. The Bill of Rights uses these terms in defining them.

- **Absolute rights.** These rights could not be limited in any way. They could not be reduced or amended. Examples would include the right to protection from slavery or torture.
- **Limited Rights.** These rights would come with exceptions. An example would be the right to liberty, which could be lawfully restricted. Lawful arrest would be an example of a limited right.
- **Qualified Rights.** Government interference with these rights would be allowed in special circumstances, and only when necessary in a democratic society. The interference must fulfill a pressing social need; pursue a legitimate aim; and be proportionate to the aims being pursued. An example would be government restrictions on the right to assembly and association, in order to calm a riot.

HELPFUL DEFINITIONS FOR PART I (BILL OF RIGHTS)

Margin of Appreciation

“Margin of appreciation” balances the human rights of individual citizens, against the protection and safety of the public. If this balance did not exist, human rights would inevitably override the protection of the public, and therefore pose great concern to the interest and security of the public. In particular, the media as a public watchdog would be entitled to a high degree of protection.

Margin of appreciation also means that government could be justifiably excused for infringing human rights if it is in the public interest.

Importantly, not all rights – such as the absolute rights against slavery and torture – would be subject to margin of appreciation.

Proportionality

This is a legal test used by the courts, in order to determine whether interference with a right expressed in the Bill of Rights is acceptable. Any interference with a right should meet the specific exception that the right allows – such as to prevent crime. Furthermore, the interference must not be excessive, arbitrary or unfair.

If government’s action is challenged and these legal tests are not met, government would have breached the Bill of Rights.

Positive Obligation

The European Court of Human Rights in Strasbourg interprets the European Convention on Human Rights as creating affirmative actions that states must implement, in order to comply with the convention's obligations. For example, under section 6 (treatment of prisoners), government would be obligated to rebuild detention facilities, in order to ensure that prisoners' rights are upheld.

PART II

THE GOVERNOR

Part II of the Constitution sets out the roles and functions of the Governor of the Cayman Islands. The Governor is officially appointed by Her Majesty the Queen, and acts as Her Majesty's representative in the Cayman Islands. Many of the Governor's responsibilities under this Part are found in different parts of the current, 1972 Constitution. To make the proposed constitution easier to understand, the amendment to "Part II - The Governor" pulls together most of the Governor's responsibilities. This part of the Constitution also includes changes to the Governor's role and function.

GOVERNOR'S RESPONSIBILITIES TO THE CAYMAN ISLANDS (SECTION 31(3))

Currently The Governor administers the Cayman Islands on behalf of Her Majesty the Queen.

Proposed The Governor would continue to administer the Islands on behalf of Her Majesty the Queen. The Governor's role would be expanded to include promoting good governance, and acting in the best interests, of the Cayman Islands, as long as this is consistent with the UK's interests.

OFFICE OF THE DEPUTY GOVERNOR (SECTION 34)

Currently On behalf of the Governor, the Chief Secretary is responsible for all civil service matters.

Proposed The Chief Secretary post would be abolished, and the position of Deputy Governor would be created. Qualifications for Deputy Governor would be that; -

- the postholder must be Caymanian;
- the postholder must either hold, or have held, a senior public service position; and
- the postholder must still be eligible to hold such a public office.

Like the Chief Secretary position, the Deputy Governor could be required to act as Governor in certain circumstances (such as when the Governor is absent from the Islands). Also, the Deputy Governor would be the head of the civil service, through the authority of the Governor.

CREATION OF THE ADVISORY COMMITTEE ON THE PREROGATIVE OF MERCY (SECTIONS 39 AND 40)

Currently The Governor has certain powers concerning the treatment of persons who have been convicted of crimes in the Cayman Islands. These include the power to; -

- fully or conditionally pardon a person who has been convicted of a crime;
- grant a break, of a specified or unspecified period of time, in the convict's sentence;
- substitute a less severe form of punishment; and
- cancel or reduce the debt that the court has ordered a convicted person to pay.

Proposed These decisions would be made by the Governor, upon the recommendation of the Advisory Committee on the Prerogative of Mercy. Committee members would be; -

- the Attorney General;
- the Chief Medical Officer;
- two members recommended by the Premier and appointed by the Governor;
- two members recommended by the Leader of the Opposition and appointed by the Governor.

Although the committee would advise the Governor on how to deal with each convicted person who makes an application for mercy, the Governor is not required to accept the committee's advice.

PART III

THE EXECUTIVE

Part III of the Constitution concerns the executive branch of the Cayman Islands Government. The executive branch consists of the Governor, Cabinet, the Premier, and Government Ministers.

This section also deals with; -

- the appointment and function of the Premier, Ministers, and the Cabinet Secretary;
- the special responsibilities of the Governor;
- the role of the Attorney General;
- the role of the Director of Public Prosecutions; and
- the creation of the National Security Council.

EXECUTIVE AUTHORITY AND THE CAYMAN ISLANDS GOVERNMENT (SECTION 43)

Currently The Governor administers the government of the Cayman Islands, with powers and duties given to him by Her Majesty the Queen.

Proposed Executive authority over the Cayman Islands would rest with Her Majesty the Queen. Executive authority would be exercised on her behalf by government, which consists of the Governor as Her Majesty's representative, and Cabinet.

THE MAKEUP OF THE CABINET & PROCEEDINGS OF CABINET (SECTIONS 44 AND 46)

Currently Not including the Governor, who sits as the head of Cabinet, there are eight members of Cabinet. Of the eight, five are Elected Members, and three are Official Members. At present, the Governor has the sole responsibility for setting the agenda of Cabinet. If the Governor is unable to preside over Cabinet, the Governor may select any member of Cabinet to preside (current practice is that the Chief Secretary is usually selected to preside over Cabinet in the absence of the Governor).

The five Elected Members of Cabinet are elected by their peers in the Legislative Assembly. The three Official Members are the Chief Secretary, Attorney General, and Financial Secretary.

Proposed The Governor would continue to sit as head of Cabinet. There would be nine Members of Cabinet, namely, the Premier; six other Elected Members; two Official Members namely, the Deputy Governor and Attorney General.

Under the proposed Cabinet; -

- one of the six Elected Members would be designated as Deputy Premier;
- the two Official Members would be non-voting;
- the Premier would sit as the head of Cabinet during the Governor's absence;
- the Deputy Premier would sit as the head of Cabinet in the absence of the Governor and the Premier; and
- the Governor and the Premier would jointly set Cabinet's agenda.

ATTENDANCE OF MEMBERS OF THE LEGISLATIVE ASSEMBLY (MLAS) AT QUARTERLY CABINET MEETINGS (SECTION 47)

Currently There is no constitutional provision that requires periodic meetings between MLAs and Cabinet.

Proposed If an electoral district has no representation among Cabinet Members, the representatives of that electoral district would meet with Cabinet once every three months.

This is a first for the Cayman Islands. The meetings would allow these representatives to inform Cabinet of their districts' needs on a regular basis, including during the government's budget process. Districts that are not represented in Cabinet would therefore have an avenue for their issues and concerns to be deliberated at the Cabinet level.

THE CABINET SECRETARY (SECTION 48)

Currently The Office of the Cabinet Secretary is not a constitutional position.

Proposed The office of Cabinet Secretary would be constitutionally recognised. The Cabinet Secretary would have to be Caymanian, appointed by the Governor after consultation with the Premier.

The Cabinet Secretary would; -

- provide frank and politically neutral advice to the Governor, Cabinet, and the Premier on matters of policy;
- coordinate the development and implementation of policy among departments and ministerial portfolios, and across the wider government sector, in order to ensure that government policy is developed coherently;
- provide administrative and secretarial support for Cabinet and the Premier, in order to allow high-quality and effective government; and
- arrange the business, and keep the minutes, of Cabinet and any Cabinet committee meetings, and convey the conclusions reached at the meetings to the appropriate person or authority.

ELECTION, APPOINTMENT AND FUNCTIONS OF THE PREMIER AND MINISTERS (SECTIONS 49 AND 50)

Currently The Governor is responsible for appointing the Leader of Government Business and appoints the person that he or she is of the opinion commands the support of the majority party in the LA. If there is no party, the Governor will appoint the person who he or she believes has the support of the majority of the Legislative Assembly.

Proposed The process of appointing the Premier will still be the responsibility of the Governor. However, before the Premier is appointed the Governor must receive a recommendation by the Legislature. If there is no agreement as to who should be appointed as Premier, the Speaker shall cause a ballot to be cast.

GOVERNOR AND PREMIER TO CONFER ON A REGULAR BASIS (SECTION 49(10))

Currently There is no provision that requires the Governor and the Leader of Government Business to confer regularly. The Governor is however, required to consult with Cabinet regarding the exercise of his special responsibilities. If, because of the urgency of a matter, the Governor does not consult Cabinet in the exercise of his special responsibilities, the Governor is required to communicate the measures adopted, and the reasons for those measures, as soon as possible.

Proposed In addition to consulting with Cabinet, the Governor and Premier must confer on a regular basis. The Premier must fully brief the Governor about government policies and public affairs.

PREMIER TO ACT IN THE ISLANDS' BEST INTERESTS (SECTION 50)

Currently There is no provision that requires the Leader of Government Business to carry out his or her functions in accordance with the Constitution or any other law, and in the best interests of the Cayman Islands.

Proposed The Premier would be required to carry out his or her functions in accordance with the constitution and any other law, and in the best interests of the Cayman Islands.

TERM LIMITS OF THE PREMIER (SECTION 49(4))

Currently There are no term limits on the appointment of the Leader of Government Business.

Proposed The Premier would be appointed to the post by his or her peers in the Legislature, and could be appointed for no more than two consecutive terms at a time (8 years).

That person could then sit as a Cabinet Minister or an MLA for four (4) more years, before being able to be reconsidered for the Premier position.

MINISTER OF FINANCE (SECTION 54(1) (b))

Currently The Financial Secretary, a public official hired by the Governor, is responsible for the Islands' finances and sits as an Official Member of the Legislative Assembly and Cabinet.

Proposed The Minister of Finance post would be created. As part of its public policy, the UK Government recommends that finance responsibilities be handled by locally elected representatives.

The position of Financial Secretary would remain as a public office. The Financial Secretary would become the principal advisor to the Minister of Finance – see Part VII Finance.

CAYMAN BRAC & LITTLE CAYMAN (SECTION 54(2))

Currently There is no provision that sets out the relationship between the District Commissioner and the MLA's for the District of Cayman Brac and Little Cayman.

Proposed Communication channels would be formalised among the Minister with responsibility for District Administration; the District Commissioner; and the Elected Members who represent Cayman Brac and Little Cayman. The Minister would be responsible for ensuring that the District Commissioner liaises with Cayman Brac and Little Cayman MLAs in carrying out his or her functions.

SPECIAL RESPONSIBILITIES OF THE GOVERNOR, INCLUDING EXTERNAL AFFAIRS (SECTION 55)

Currently The Governor is vested with special responsibilities that cannot be delegated to Ministers or other public officials.

Proposed The Governor would continue to have absolute and sole responsibility for matters of defence and the public service.

Expressed Areas of External Affairs that Could Be Delegated to a Minister under the Proposed Constitution

The Governor would continue to have responsibility for external affairs, however, the Governor could assign areas within this special responsibility to a Minister. General oversight would be provided by the UK Secretary of State.

Some of the areas upon which Cayman's elected representatives may represent the Cayman Islands include; -

- tourism-related matters;
- taxation and the regulation of finance and financial services;
- European Union matters that directly affect the Cayman Islands; and
- the Caribbean Community, the Association of Caribbean States, the UN Economic Commission for Latin America and the Caribbean, or any other Caribbean regional organisation or institution.

This section would also require the Governor, unless instructed otherwise by the UK Secretary of State, to obtain Cabinet's agreement before entering, agreeing, or giving final approval to any international agreement, treaty, or instrument that would affect internal policy or require implementation by legislation in the Cayman Islands.

THE ATTORNEY GENERAL AND THE DIRECTOR OF PUBLIC PROSECUTIONS (SECTIONS 56 AND 57)

Currently The Attorney General is the principal legal advisor to government, and has responsibility for launching prosecutions on behalf of the Queen.

Proposed The Attorney General would continue to be the principal legal advisor to government and the Legislative Assembly. The Director of Public Prosecutions would be responsible for criminal prosecutions.

THE NATIONAL SECURITY COUNCIL (SECTION 58)

Currently National security is the sole special responsibility of the Governor.

Proposed A National Security Council would be created, and would be responsible for making policy decisions about national security.

The Governor would head the council. Other members would be the Premier; two Ministers; the Leader of the Opposition; two members of the public; the Deputy Governor; the Attorney General; and the Commissioner of Police.

The Commissioner of Police would continue to fall under the Governor, and would be exclusively in charge of the operation and staffing of the police service. The Commissioner of Police would also continue to regularly update the Governor on police matters.

The Commissioner of Police would provide regular briefings to the National Security Council on internal security matters, including the police (except in cases where there are ongoing operations); and inform the Premier of any significant security developments in the Islands, including the occurrence of any significant criminal activity.

PART IV

THE LEGISLATURE

Part IV of the Constitution establishes the legislature and sets out its functions. Some of the areas covered are the composition of the legislature; MLAs' responsibilities; the procedure for how laws are passed and disallowed; the establishment of the Legislative Assembly's standing orders; qualifications and disqualifications of Elected Members; qualifications of electors; and the regulation of the electoral districts.

COMPOSITION OF THE LEGISLATURE (SECTION 60)

Currently There are 15 Elected Members in the Legislative Assembly, who are vested with the power to make laws. The Attorney General, the Financial Secretary and the Chief Secretary, are also appointed MLAs (in other words, they are not elected and are voting members of the Legislative Assembly).

Proposed The number of elected MLAs would increase to 18 Members. The Attorney General and Deputy Governor (the former Chief Secretary post) would continue to sit as Members. However, they would no longer vote. (See Section 75)

FUTURE INCREASE OF THE LEGISLATURE (SECTION 60(2))

Currently Legislative Assembly membership cannot be increased beyond 15 Elected Members and three Official Members without an amendment to the present Constitution.

Proposed Legislation could be passed that would allow an increase in membership.

QUALIFICATION OF ELECTORS (SECTION 90(1) (a) AND (c))

Currently You cannot register and vote if you become qualified as an elector between the close of the voter registration period, and polling day.

Proposed Persons who qualify as an elector by polling day could register before the date upon which they become qualified. This means that if a person turns 18 years on May 20, 2009, that person could register to vote before he or she turns 18 and while Elections Office is registering voters before elections. (Note: Although this section is featured in the proposed constitution, it is now a new section to the current constitution which was changed in December 2008 to facilitate the 2009 referendum and elections.)

POWER TO PROVIDE FOR REFERENDUMS AND INDEPENDENCE DEEMED A MATTER OF NATIONAL IMPORTANCE (SECTION 69)

Currently The Legislative Assembly can, on questions of national importance, enact a referendum law – similar to what is happening now with the Referendum (Constitutional Modernisation) Bill.

Proposed The current position would continue. However, the proposed constitution would require the LA to automatically enact a referendum law, if a bill for a referendum on independence was tabled.

PEOPLE-INITIATED REFERENDUMS (SECTION 70)

Currently There are no provisions that allow for people-initiated referendums.

Proposed A referendum could be triggered by the electorate if a petition, signed by 25% of the electorate, is presented to Cabinet. Once Cabinet receives a valid petition, it would be responsible for wording the referendum question and deciding the referendum date. A people-initiated referendum would only be legally binding if more than 50% of the electorate voted in favour of the question.

STANDING ORDERS (SECTION 71(2))

Currently The Constitution creates standing orders to regulate the business of the Legislative Assembly, the conduct of its own proceedings and the dispatch of business.

Proposed Additional provisions have been proposed to ensure standing orders must provide for fair procedures; adequate notice of bills and motions; and sufficient opportunity for Members of the Legislative Assembly including opposition members to speak and participate in the proceedings in the Legislative Assembly.

GOVERNOR'S RESERVED POWERS (SECTION 81)

Currently The Constitution now leaves the impression that Governor can move a bill through the LA as if the Members had assented to it, even if they had refused to assent to it.

Proposed Using his reserved powers, the Governor could bypass Cabinet or the LA and cause a bill to be enacted as a law, with the approval of the UK Secretary of State. Instances could include when Cabinet is unwilling to support the introduction of a bill into the Legislative Assembly, or when the Legislative Assembly is unlikely to pass a bill.

PROROGATION & DISSOLUTION OF THE LEGISLATIVE ASSEMBLY (SECTION 84)

- Currently** The Governor has sole responsibility for proroguing (suspending) and dissolving the Legislative Assembly. The Legislative Assembly must be prorogued (suspended) annually. The Legislative Assembly must be dissolved at the expiration of four years from the date the LA first meets after a general election or sooner.
- Proposed** Before the Governor prorogues (suspends) or dissolves the LA, he or she must first consult the Premier.

GOVERNOR TO RECALL DISSOLVED LEGISLATIVE ASSEMBLY AFTER CONSULTATION WITH THE PREMIER (SECTION 85)

- Currently** If the Governor believes that an urgent matter requires the LA to be recalled, the Governor may do so in his or her discretion.
- Proposed** If the Governor believes that an urgent matter requires the LA to be recalled, the Governor must first consult with the Premier before making his or her decision.

PART V

THE JUDICATURE

Part V of the Constitution deals with the creation, role, and function of various arms of Cayman's judicial system. This section creates courts, namely the Court of Appeal, Grand Court and Subordinate Courts; and sets the procedure for appointing, disciplining, and removing judges. Proposed changes include establishing the role of the Chief Justice as the head of the judiciary; and establishing the role and function of a Judicial and Legal Services Commission.

THE ROLE AND RESPONSIBILITIES OF THE CHIEF JUSTICE (SECTION 95(7))

Currently The Chief Justice is the highest ranking judge in Grand Court. However, the postholder's roles and responsibilities are not listed in the Constitution.

Proposed The Chief Justice would be responsible for all matters concerning the judiciary. These responsibilities would include; -

- representing the judiciary's views to Cabinet and the LA;
- maintaining appropriate arrangements for the judiciary's welfare, training and management;
- ensuring that the judiciary appropriately covers the various courts, and that the courts' work is appropriately allocated; and
- consulting the President of the Court of Appeal in all matters that relate to the Court of Appeal.

THE FUNCTIONS OF THE JUDICIAL AND LEGAL SERVICES COMMISSION (SECTION 106)

Currently In his discretion, the Governor solely appoints, removes, and disciplines judges, as well as other senior legal and judicial officers.

Proposed The Governor would share responsibility for appointments with the Judicial and Legal Services Commission. The commission would be an independent body, meaning it would not be directed or controlled by any other person or authority.

Its primary function would be providing recommendations to the Governor about appointing, removing, and disciplining certain legal officers (listed below). The Governor would be required to follow the

commission's recommendations, unless he determines that following the advice would negatively affect Her Majesty's service. The Governor could then ask the commission to reconsider its advice.

The commission would also be responsible for creating a code of conduct for the judiciary; and a procedure for dealing with complaints. Additionally, the LA could pass a law giving the commission additional functions.

The commission would provide advice on these offices:

- (a) Chief Justice and Grand Court judges;
- (b) President of the Court of Appeal, and Court of Appeal judges;
- (c) Attorney General;
- (d) Director of Public Prosecutions;
- (e) Magistrates; and
- (f) any other postholder in the public service, where the person is required to be legally qualified in order to be eligible for appointment.

Commission membership would consist of:

- (a) A chairman and one other member, both of whom cannot be lawyers. These persons would be appointed by the Governor, who must consult the Premier and the Leader of the Opposition on the appointments.
- (b) The President of the Court of Appeal, by virtue of office.
- (c) A person appointed at the Governor's discretion, who holds or has held high judicial office in the Cayman Islands and has recent knowledge of Cayman's courts.
- (d) Two persons appointed at the Governor's discretion, who hold or have held high judicial office in a Commonwealth country or Ireland, but who would not hold such office in the Cayman Islands at the time of appointment.
- (e) Two attorneys-at-law qualified to practise in the Cayman Islands, one with experience in government service and the other with experience in private practice. These persons would be appointed by the Governor, who must consult representatives of Cayman's legal professional organisations and, where appropriate, the Attorney General.

Commission members would not be MLAs or candidates for election. With the exception of attorneys-at-law who are appointed by the Governor, they also cannot hold or act in public office.

PART VI

THE PUBLIC SERVICE

Part VI outlines arrangements for public officers, including pensions, and establishes the relationship between the Public Service, the Governor, and Cabinet. Under the proposed constitution, the public service's independence from politics would be preserved by keeping the responsibility for hiring and other related matters with the Governor or his designate. Furthermore, any new law that would govern public officers would not be allowed to restrict the Governor's full responsibility over particular independent public offices.

DUTY OF PUBLIC OFFICERS & APPOINTMENT ETC. OF PUBLIC OFFICERS (SECTION 108 AND 109)

Currently There is no constitutional requirement for public officers to act in the best interests of the Cayman Islands.

Proposed All public officers would be required to act in Cayman's best interests, and to implement government policy as directed by Cabinet.

The proposed constitution would also preserve the Governor's responsibility for employment decisions, including hiring, firing, transfers, and discipline of public officers. This would prevent political interference in the public service.

The proposed constitution would also give constitutional backing for the Public Service Management Law that governs the administration of public officers. It would also confirm that no law could transfer, reduce, or delegate the Governor's responsibility as it relates to the following offices; -

- Financial Secretary;
- Commissioner of Police;
- Auditor General;
- Information Commissioner;
- Complaints Commissioner.

These offices are constitutionally appointed by the Governor, as they serve crucial roles in maintaining Cayman's democracy. Their independence is fundamental in order to ensure proper separation, and checks and balances, among the three arms of government.

PART VII

FINANCE

Part VII of the Constitution covers how government would be able to create revenue streams to earn money, and how it would be allowed to spend its revenue. It also would regulate government borrowing; list the duties and responsibilities of the Auditor General and establish the new functions of the office of the Financial Secretary. Part VII is intended to ensure stability in government’s financial operations, through constitutionally protected checks and balances.

Currently The annual report on government’s finances is not constitutionally required, although it is presented to, and debated by, the LA every year.

Proposed Reports on the state of government’s financial performance and fiscal position would be made to the LA at least once every year. Enshrining this requirement in the constitution would add to Cayman’s financial stability.

LIMITS ON PUBLIC DEBT (SECTION 113)

Currently There is no constitutional limit on the amount of money that government can borrow, although there are rules directing government spending in the Public Management and Finance Law. Similarly, there are no rules saying how money must be borrowed or repaid.

Proposed Government borrowing would be limited to a certain percentage of government revenue. That percentage would be agreed upon by government and the UK Secretary of State. The constitution would give government the flexibility to borrow a higher percentage for a limited period, if an urgent or extremely important matter arises.

AUDITOR GENERAL (SECTION 114)

Currently The Auditor General post is an established, independent public office. The Constitution, however does not set out the postholder’s responsibilities.

Proposed The Auditor General would have the power and responsibility to audit the accounts and financial transactions of all government authorities, departments, and the courts. The postholder also would have the power to undertake “value for money” investigations regarding the operations and projects of all government entities.

Although it is an independent public office, the proposed constitution would require the Auditor General to report his activities to the LA's Public Accounts Committee, and to attend committee meetings at its request.

FINANCIAL SECRETARY (SECTION 115)

Currently The Financial Secretary is an Official Member of Cabinet and the LA.

Proposed While the constitution would provide for a Finance Minister, who would be the person in Cabinet responsible for the financial operations of the country, it will also enshrine the office of the Financial Secretary as the principal advisor to the Minister so that the expertise of the Financial Secretary will always be available.

PART VIII

INSTITUTIONS SUPPORTING DEMOCRACY

Part VIII of the Constitution deals with the creation of bodies that improve democracy, openness and transparency in the Cayman Islands. While some of these bodies can be found in the constitutions of other overseas territories, this section – and some of the bodies established in it – are unique to the Cayman Islands.

HUMAN RIGHTS COMMISSION (SECTION 116)

Currently The Constitution does not establish a Human Rights Commission, although Cabinet has created the Human Rights Committee to promote human rights, and educate the public about human rights.

Proposed A Human Rights Commission would replace the role and function of the present the Human Rights Committee.

The commission primarily would be responsible for promoting understanding and observance of human rights, especially since a Bill of Rights is part of the proposed constitution.

The commission would consist of a chairman and four members, with at least two members being experienced lawyers. All of the members would be appointed by the Governor, after consultation with the Premier and the Leader of the Opposition.

To facilitate the observance of human rights, the commission would:

- (a) Receive and investigate complaints of breaches of any right or freedom contained in the Bill of Rights, or contained in international human rights treaties that have been extended to Cayman.
- (b) Advise individuals who believe their rights or freedoms have been breached.
- (c) Provide a forum for dealing with complaints by mediation or conciliation, or by making recommendations.
- (d) Issue guidance on procedures for dealing with any complaints of breaches of rights and freedoms.
- (e) Contribute to public education about human rights.
- (f) On its own initiative, issue reports relating to human rights issues.

- (g) Carry out any other functions in order to fulfill its responsibility, including those that may be given to it by a law passed by the LA.

The commission would not be a court. It would not have judicial functions, and it could not function as a lawyer. Therefore it could not represent complainants in court; make binding determinations as to whether any rights have been breached; or compel any person to do anything against his or her will.

COMMISSION FOR STANDARDS IN PUBLIC LIFE (SECTION 117)

Currently There is no governmental organisation that monitors the actions of politicians and high-ranking public officers, in order to ensure that they are adhering to ethical standards.

Proposed The Commission for Standards in Public Life would be established.

The commission would comprise a chairman and at least two other members who are people of the highest integrity, with experience in the private or public sector. At least one commission member would be required to be an accountant, and at least one member would be required to be an attorney. Commission members are appointed by the Governor, after consultation with the Premier and the Leader of the Opposition.

The commission would:

- (a) Assist in setting the highest standards of integrity and competence in public life, in order to prevent corruption or conflicts of interests.
- (b) Monitor standards of ethical conduct in the LA, Cabinet, and on the part of public authorities and public officers.
- (c) Supervise the operation of registers of interest.
- (d) Investigate breaches of established standards.
- (e) Review and establish procedures for awarding public contracts.
- (f) Review and establish procedures for appointing members to public authorities, and the terms of their appointment.
- (g) Recommend codes of conduct to prevent any Minister, public authority, or public officer from using their powers for personal benefit or advantage, and recommending legislation to provide appropriate sanctions.
- (h) Regularly report to the LA.
- (i) Carry out any other function that may be set out by a law passed by the Legislature.

CONSTITUTIONAL COMMISSION (SECTION 118)

Currently This body does not exist in the Constitution, although Cabinet has created the Constitutional Review Secretariat to facilitate the constitutional modernisation process.

Proposed Because it is envisioned that the Cayman Islands will continue to develop constitutionally, the proposed constitution would establish a Constitutional Commission.

The commission would be independent. Membership would consist of a chairman and two other members, with at least one member being an experienced lawyer. Commission members are appointed by the Governor, after consultation with the Premier and the Leader of the Opposition.

The commission would:

- (a) Advise government on questions concerning constitutional status and development in Cayman.
- (b) Publish reports, discussion papers, information papers, and other documents on constitutional matters affecting Cayman.
- (c) Promote understanding and awareness of the constitution and its values.
- (d) Carry out any other function that may be set out by a law passed by the Legislature.

ADVISORY DISTRICT COUNCILS (SECTION 119)

Currently There are no formal committees established for citizens to address issues in their districts or neighborhoods.

Proposed In response to public comments, the proposed constitution would require the LA to pass a law establishing Advisory District Councils, so that the public may liaise with their elected representatives.

Approving the constitution is the first step to establishing the councils. Before a law is passed, much public discussion would be needed in order to determine how these Advisory District Councils would operate.

COMPLAINTS COMMISSIONER (SECTION 120)

Currently This is already an established post in the Constitution. The Complaints Commissioner is appointed by the Governor alone.

Proposed The Governor would be required to consult with the Premier and the Leader of the Opposition before appointing a Complaints Commissioner. A person would be ineligible

for this post if he or she has held any office, in any political party, within the preceding three years.

REGISTER OF INTERESTS (SECTION 121)

The Register of Interests enhances democracy and improves transparency among elected representatives by requiring them to declare certain interests, including personal wealth, liabilities, and any potential conflict of interest.

Currently The register is maintained by a registrar. With the exception of the Governor, all MLAs and holders of any other offices set out in law are legally required to declare their interests, assets, income, and liabilities, so that they can be entered in the Register of Interests.

Proposed The register would be maintained by the Commission for Standards in Public Life.

FREEDOM OF INFORMATION (SECTION 122)

Freedom of information is another way in which a country improves democracy through transparency in government. Cayman's Freedom of Information Law came into effect in January 2009. It outlines the right to access information held by public authorities; conditions governing the exercise of that right; and any restrictions and expectations to that right.

Currently There is no constitutional backing for Cayman's Freedom of Information Law.

Proposed The law would have a constitutional basis.

PART IX

MISCELLANEOUS

Part IX of the Constitution deals with sections of the Constitution that cannot be placed in any other part. This Part also serves as a definition section for specific words in the constitution.

CAYMAN'S OFFICIAL LANGUAGE (SECTION 123)

Currently While the majority of people living in Cayman speak English, the Constitution does not provide for an official language.

Proposed Cayman's official language would be English.

LETTERS OF ENTRUSTMENT

These three proposed Letters of Entrustment are from the UK Government to the Cayman Islands Government.

Their purpose is to outline the political promise of the UK to the Cayman Islands, as it relates to very specific issues of concern raised by the Cayman Islands Constitution Delegation, which negotiated the proposed constitution.

These political assurances **are not** part of the proposed constitution, because the UK 1965 West Indies Act does not limit the powers of Her Majesty, and does not allow for Orders-in-Council (orders of the Privy Council that become laws in the territories) to limit the powers of Her Majesty. Negotiations, therefore, to revise the Cayman Islands Constitution through an Order-in-Council cannot legally limit the powers of Her Majesty.

1. External Affairs

This letter deals with delegating the responsibility for Cayman's external affairs, which is the sole responsibility of Her Majesty, exercised through the Governor. The letter relates to section 55 of the proposed constitution, which allows the Governor to delegate external affairs matters to an elected Minister, on very specific terms and with general oversight by the UK Secretary of State.

2. Orders-in-Council

This letter addresses the UK's absolute right to make Orders-in-Council for the Cayman Islands. Unless it is impracticable or prejudicial to the UK's interests, the UK, through its Secretary of State,

would undertake to consult the Premier or Cabinet before Her Majesty exercises her power to legislate directly for the Islands.

3. **Future Constitutional Change**

This letter outlines Her Majesty's absolute right to amend the Cayman Islands Constitution, as well as the Cayman Islands Government's desire that the Cayman Islands Constitution should not be amended after this modernisation process, unless it is endorsed by the people of the Cayman Islands in a referendum.

Although this position could not be reflected constitutionally because of the wording of the 1965 West Indies Act, the UK has given political approval to the idea that future amendments to the Cayman Islands Constitution should be supported by the people through a referendum.

However, the UK continues to reserve the right to amend the Cayman Islands Constitution in exceptional circumstances, where it is not possible or appropriate to honour this local referendum requirement.



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