

## CONSTITUTIONAL CHANGES EXPLAINED

### **Renaming the Legislative Assembly to Parliament.**

This is important because often the term Legislative Assembly is considered a lower legislative body to a parliament. The term Parliament better recognises what the Legislative Assembly is and avoids confusion when our Elected Representatives travel overseas. A Member of Parliament for the Cayman Islands is clearly understood by more people as it is used by the majority of Commonwealth Countries that have the Westminster system of government, such as Bermuda, Canada, Australia, Jamaica, and New Zealand.

### **Section 32 - Exercise of the Governor's Functions**

This section is amended to provide for a requirement to generally consult with the Cabinet on matters dealing with **defence, external affairs, and internal security**.

There are caveats but it is good to have an expectation spelled out in the Constitution that the Governor would consult on these three key areas of his/her responsibility. In addition, there is for the first time a change that allows the actions of the Governor to be subject to judicial review, however the question of whether the Governor has complied with instructions from Her Majesty cannot be questioned in any court. No one should be above the law, and that includes the person serving as our Governor.

### **Section 44 – The Cabinet**

The first amendment to section 44 provides for the increase in the number of Ministers in Cabinet from seven (7) to eight (8), therefore after the next general election the Cabinet would consist of the Premier and 7 other Ministers. The change was sought because as the country matures the work done by Ministers has become more complex. With the addition of another Minister there would be the

ability to share ever increasing responsibility for portfolios and ministries.

Section 44 is further amended to change the ability to make any potential further increases in the number of Ministers. This change requires that the number of Ministers cannot be more than 40% plus one of the total number of Elected Representatives.

The final change to section 44 confirms that, subject to the Constitution, the Cabinet possesses autonomous and exclusive capacity in domestic affairs for any matter that is not –

- i. one of the Governor's special responsibilities under Section 55;
- ii. a function that falls within the purview of the Governor acting within his/her authority or by instruction by a Secretary of State; or
- iii. a function which the Governor carries out after consulting any other authority other than the Cabinet (ex. the Judicial and Legal Services Commission).

### **Section 48 – Cabinet Secretary**

This amendment is intended to clarify that some of the functions of the Cabinet Secretary may be delegated to other people acting under and in accordance with his/her general instructions.

### **Section 54 – Allocation of responsibilities to Ministers**

This new section is inserted into the Constitution to give Ministers the ability to receive assistance from Parliamentary Secretaries. The Parliamentary Secretaries must be Elected Representatives and would be appointed by the Governor, acting on the advice of the Premier. Currently a similar system exists where Ministers are assisted by Councillors who may or may not be elected representatives.

### **Section 58 – National Security Council**

This amendment would remove the ability for the Governor to use his/her discretion to not follow the advice of the National Security Council on matters of internal security. Instead a Secretary of State would have to instruct the Governor that following the advice would adversely affect Her Majesty's interest and therefore he/she can go against the advice received from the National Security Council.

### **Sections 58A and 58B – Police Service Commission and Power to appoint, etc, to offices in the Police Force**

The addition of these two new sections to the Constitution would create a Police Service Commission that would consist of –

- i. the Governor as Chair;
- ii. three members experienced in matters of the police, law enforcement, criminal law or matters related to national security. Two of these members would be appointed by the Governor on the advice of the Premier and the other appointed on the advice of the Leader of the Opposition.
- iii. two other members with qualifications in matters of the police, law enforcement, criminal law or matters related to national security. These members would be appointed by the Governor after consulting with the Premier and the Leader of the Opposition.

Subject to the Constitution, the Police Service Commission would not be subject to the direction of any other person or authority. The Police Service Commission would have the power to make appointments to offices in the Police Force in addition to having the power to remove and discipline persons in those offices.

### **Section 71 – Standing Orders and committees**

This change removes the requirement for the Governor to approve Standing Orders made by the Parliament. The current requirement is

a holdover from when the Governor was the President of the Legislative Assembly, and its removal is also appropriate to strengthen the separation of powers between the executive and legislative arms of government.

### **Section 77 – Introduction of Bills**

The first change to this section increases the notice period of Bills from 21 days to 28 days and clarifies the circumstances when the notice period can be waived. Currently the Constitution says that the notice period can be waived “in a case of emergency”; whereas the proposed change would require the Premier to signify that the Bill is too urgent to permit the 28 day notice period.

The final change to this section would require the Governor to signify his/her consent for the Parliament to introduce any Bill that concerns one of the Governor’s special responsibilities, that is matters of defence, external affairs, internal security and the public service. If there is a dispute between the Governor and the Parliament over whether a matter falls within the scope of one of those special responsibilities the Premier may refer the question to a Secretary of State, whose decision on the matter would be final.

### **Section 80 – Disallowance of laws**

The Constitution would be amended to delete this entire section that currently allows Her Majesty to disallowance any law passed by the Elected Representatives and assented to by the Governor. This change would further enhance local autonomy over domestic affairs.

### **Section 81 – Governor’s reserved power**

Currently this section allows the Governor to directly make laws or amendments to laws which are related to any of the Governor’s

special responsibilities, but where the Cabinet or the Parliament is unwilling to support such a Bill.

This amendment would revoke the current reserved power and replace it with a section that would give the Governor the ability to make the case directly to the Parliament and to the country as to why such a law is needed. This is a compromise that includes the Governor having to obtain the approval of the Secretary of State before being entitled to address Parliament. This is an important protection for the ability of the Parliament to determine what laws it enacts. The UK would always have the ability to make a law by Order in Council but that is a less direct route and the UK has also agreed that the Government would be consulted before any such order is carried out.

### **Section 124 – Interpretation**

This change to the Constitution is proposed in order to capture all the offices that are excluded from the definition of public offices. The amendment includes some offices that are proposed, such as members of the Police Service Commission, and some that were inadvertently omitted in the original Constitution, such as members of an Advisory District Council.

### **Section 126 – Notification of proposed Acts of Parliament extending to the Cayman Islands or Orders in Council extending such Acts of Parliament to the Cayman Islands**

This proposed new section states that where it is proposed that any provision of a draft act of the UK Parliament should apply directly to the Cayman Islands, or where an Order In Council should be extended to the Cayman Islands, that such proposals should normally be brought by the Secretary of State to the attention of the Premier so that the Cabinet may signify its view on it.

This provides meaningful protection that is enshrined in the Constitution. It would not prevent the UK Parliament or Her Majesty's Government from directly making laws for the Cayman Islands, but it recognises for the first time that the views of the Government and the people of the Cayman Islands must be heard.

<https://www.explore.gov.ky/constitutionalreform>