

An Educational Guide to the Constitution

Prepared by the Constitutional Commission



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Introduction

The Cayman Islands Constitution Order 2009 (“the Constitution”) came into effect on the 6 November, 2009 and consists of nine parts and 125 sections which detail the set of rules defining the limits within which the powers of the Cayman Islands Government may be legitimately exercised.

The Constitutional Commission and the Human Rights Commission are two of the unique bodies established by the Constitution. Amongst other responsibilities these Commissions have a constitutional remit to promote understanding and awareness of the Constitution and its values. This educational guide is intended to fulfill that remit by serving as an overview of the contents of the Constitution. The Commission would like to extend its gratitude to the Human Rights Commission for assisting in the creation of this document by providing the content for Part I.

The goal of this publication is to provide readers with a summary of the key provisions in plain English. In dealing with those areas this guide does no more than put forward the simplest summary on the understanding that the meaning of those provisions may be interpreted as they are developed. This guide is for information purposes only and does not constitute legal advice. It should not be taken as a replacement for referring to the Constitution itself. There are areas of the Constitution which may be subject to interpretation by the Courts.

We trust you will find this guide useful and informative. For more information please visit www.knowyourconstitution.ky or www.humanrightscommission.ky.



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Part I: Bill of Rights, Freedoms, & Responsibilities

What are Human Rights?

Human rights are the essential rights and freedoms that belong to all individuals regardless of their nationality and citizenship. These rights are considered fundamental to maintaining a fair and just society. The preamble to the Constitution details the values of the Cayman Islands upon which this legislation was drafted.

How are human rights applied in the Cayman Islands?

Human rights in the Cayman Islands only apply vertically which means that the rights listed in the Bill of Rights can be enforced against the Government only and not against private individuals. It should be noted however, the Government will have to take account of the human rights set out in the Constitution when passing local laws.

What are the types of rights contained in our Bill of Rights?

There are three types of rights contained in our Bill of Rights, Freedoms and Responsibilities (the BoR). The three types are:

Limited

- Limited rights are rights where the specific circumstances in which this right can be lawfully restricted or interfered with are set out in full in the definition of the right itself.

Qualified

- Qualified rights are rights that can lawfully be restricted or taken away by the government in certain broadly defined circumstances. Usually, the right is set out and followed by a list of criteria which explain the general circumstances when it will be lawful for the state to interfere with or restrict the right, balancing those rights against the rights and interests of others.

Absolute

- Absolute rights cannot be restricted in any way or under any circumstances by the government.

What rights are contained in our Bill of Rights?

Guarantee of Rights, Freedoms, and Responsibilities

The Bill of Rights:

- recognises the distinct history, culture, Christian values and socio-economic frame-work of the Cayman Islands and it affirms the rule of law and the democratic values of human dignity, equality and freedom;
- confirms or creates certain responsibilities of the government and corresponding rights of every person against the government; and

- does not affect, directly or indirectly, rights against anyone other than the government except as expressly stated.

It is unlawful for government to act contrary to the Bill of Rights' principles. If it is alleged that government has acted unlawfully, its actions may be challenged.

Life

Everyone's right to life shall be protected by Law and the government shall not deprive anyone of his or her life, except the circumstances set out in s.2 of the Constitution.

Torture and Inhuman Treatment

Protection against torture means you cannot be subjected to acts that intentionally inflict severe pain or suffering, whether physical or mental.

Protection against inhuman and degrading treatment or punishment means you cannot be subjected to acts that intentionally inflict mental or physical suffering, anguish, humiliation, fear or debasement (falling short of torture).

Government should not torture or subject anyone to inhuman or degrading treatment at any time.

This right is an absolute right.

Slavery or Forced or Compulsory Labour

You have a right to not be held in slavery. Being a slave means someone actually owns you, like a piece of property. This right is an absolute right.

You also have a right to not be required to perform forced labour. However where the labour falls within the circumstances set out in s.4(3) of the Constitution it shall not be considered forced or compulsory labour, making this a limited right.

Personal Liberty

No one shall be deprived by government of his or her liberty except in those circumstances listed in s.5(2) of the Constitution.

Treatment of Prisoners

Persons who are under arrest or detained have the right to be treated with humanity and dignity.

The Bill of Rights requires unconvicted prisoners to be segregated from convicted prisoners and adult prisoners to be segregated from juvenile prisoners.

Fair Trial

Everyone has the right to a fair and public hearing in the determination of his or her legal rights and obligations by an independent and impartial court within a reasonable time.

Everyone charged with a criminal offence has minimum rights set out in s.7(2) of the Constitution.

No Punishment without Law

No one can be found guilty of a crime which was not against the law when it was committed.

It is also against the law for the courts to give you a greater sentence than was prescribed by the law at the time you committed the offence.

Private and Family Life

The government is required to respect every person's private and family life, his or her home and his or her correspondence.

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 is a qualified right.

Conscience and Religion

You are free to hold particular beliefs, and to practice your religion unless your beliefs could harm others or it is reasonably justifiable to limit the practices as set out in s.10(6) of the Constitution.

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

This right is a qualified right.

Expression

You have the right to voice opinions and express your views, subject to the rights of other persons.

This right may be contravened to the extent that it is reasonably justifiable in a democratic society on the grounds set out in s.11(2) of the Constitution.

It includes the freedom to receive and impart information and ideas.

You have the freedom from Government interference with your correspondence or other means of communication subject to the qualifications referred to above.

This right shall not prevent the Government from requiring the licensing of broadcasting, television, or cinema enterprises.

This right is a qualified right.

Assembly and Association

You have the right to assemble with others in a peaceful way. This would include the right to protest in public about something you feel strongly about and the right to form associations, political parties, etc.

This right may be contravened to the extent that it is reasonably justifiable in a democratic society on the grounds set out in s.12(2) of the Constitution.

This right is a qualified right.

Movement

This right allows people who are lawfully in the Cayman Islands to move freely throughout the Islands.

Under this right you are able to choose where to live within the Cayman Islands, and you are able to leave the country as well.

This right may be contravened to the extent that it is reasonably justifiable in a democratic society on the grounds set out in s.13(2) of the Constitution, including a number of restrictions relating to immigration control.

Marriage

A consenting unmarried man, or consenting unmarried woman, has the right to marry a person of the opposite sex. You cannot be forced to marry.

If you choose to get married, you will be entitled to share equal rights and responsibilities in relation to your spouse and your children.

Property

You have a right to enjoy the things that you own.

The Government cannot take away property or place restrictions on your use of your property except in accordance with the law and as set out in s.15(1) of the Constitution.

If the Government plans to take your property there must be laws in place for such action.

This right is a qualified right.

Non-discrimination

Discrimination means treating people differently, without justification, when they are in similar situations.

This right gives you protection from the government discriminating against you on certain specified grounds in relation to any of the Rights that the Bill of Rights guarantees.

The specified grounds are 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.

This right may be contravened to the extent that it is objective, reasonably justifiable and proportionate in a democratic society on the grounds set out in 16(3) and the circumstances set out in 16(4) – (7).

Protection of Children

s.17 of the Bill of Rights sets out the specific rights which relate exclusively to children.

A “child” is defined as a young person under the age of eighteen years old.

The Legislature is required to enact laws that provide every child with facilities as to aid in their growth and development, and in doing so law-makers shall proceed on the basis that a child’s best interests are of paramount importance.

Protection of the Environment

The Cayman Islands has unique native animals and plants, and the Islands are bordered by beautiful beaches and surrounded by clear waters. This rich heritage should be protected by means of laws and other actions by government.

Government shall, in all its decisions, have due regard to the need to foster and protect an environment that is not harmful to the health or well-being of present and future generations, while promoting justifiable economic and social development.

This right is a limited right.

Lawful Administrative Action

All decisions and acts of public officials must be lawful, rational, proportionate and procedurally fair.

If your interests are adversely affected by a decision or act of a public official, you have the right to request and be given written reasons for that decision or act.

Education

Subject to available resources the Government shall seek to provide every child with primary and secondary public education for free.

Every parent or guardian of a child has a right to send that child to a private school at his or her expense.

Public Emergencies

The Governor may declare a period of public emergency by proclamation published as indicated in the Constitution, when—

The well-being or security of the Cayman Islands is threatened by war, invasion, general insurrection, public disorder, natural disaster or other public emergency; and

The declaration is considered necessary by the Governor to maintain or restore peace and order.

The initial public emergency declaration by the Governor lasts for 14 days unless revoked sooner. However, the Legislative Assembly may approve a continuation for a further period not exceeding 3 months.

Protection of Persons Detained under Emergency Laws

When a person is detained by virtue of any law in relation to a period of public emergency the following provisions shall apply—

- (a) notification shall, not more than ten days after the commencement of his or her detention, be published in a public place (and thereafter as soon as possible in a Government Notice) stating that he or she has been detained and giving particulars of the provision of law by virtue of which his or her detention is authorised;
- (b) he or she shall (if not sooner released), as soon as reasonably practicable and in any case not more than four days after the commencement of his or her detention, be informed, in a language that he or she understands, of the grounds on which he or she is detained and furnished with a written statement;
- (c) his or her case shall, not more than 30 days after the commencement of his or her detention and thereafter during the detention at intervals of not more than three months,

be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice;

- (d) he or she shall be afforded reasonable opportunity to consult a legal practitioner of his or her own choice and to hold private communication with him or her; and
- (e) he or she shall, at the hearing of his or her case by the tribunal appointed for its review, be permitted to appear in person or by a legal practitioner of his or her own choice.

Declaration of Incompatibility

If in any legal proceedings primary legislation is found to be incompatible with the Bill of Rights, the Court must make a declaration recording the incompatibility of the legislation with the relevant section of the Bill of Rights.

Once the Court makes a declaration of incompatibility, the law will remain in force until the Legislature decides how to remedy the incompatibility.

Duty of Public Officials

It is unlawful for a public official to make a decision or to act in a way that is incompatible with the Bill of Rights unless the public official is required or authorised to do so by primary legislation. If the primary legislation is in itself incompatible with the Bill of Rights the Court may make a declaration to that effect.

Interpretive Obligation

In any case where the compatibility of primary or subordinate legislation with the Bill of Rights is unclear or ambiguous, such legislation must, so far as it is possible to do so, be read and given effect in a way which is compatible with the rights set out in the Bill of Rights.

Enforcement of Rights and Freedoms

Any person may apply to the Grand Court to claim that government has breached or threatened his or her rights and freedoms under the Bill of Rights. The application must be made within one year of the alleged breach occurring or from the date on which such decision or act could reasonably have been known to the complainant. However the Grand Court has discretion to extend the time frame for making an application but shall determine such an application fairly and within a reasonable time.

Remedies

In relation to any decision or act made by a public official that the Court finds is (or would be) unlawful, it may grant such relief or remedy that it considers to be just and appropriate.

Interpretation of the Bill of Rights

This section defines words or terms used in the Bill of Rights such as “Caymanian” and “Public Official”.

Part II: The Governor

Who is the Governor?

In the Cayman Islands, as in each of the other British Overseas Territories, the Governor is the representative of Her Majesty the Queen. Historically, Governors in the Cayman Islands usually hold office for four (4) years.

What are the functions of the Governor?

The Governor has many functions with most of them being of an executive nature and derived from the royal prerogative such as responsibility for the public service and assignment of ministerial responsibilities to Ministers. Other special responsibilities include defence, external affairs and internal security. The Governor administers the government of the territory as the constitutional head of Her Majesty's Government in the Cayman Islands. His or her authority is not the same as that of the Queen, and is limited to that conferred on the post by the Constitution, any other law or by assignment or instructions from Her Majesty.

Does the Governor have to consult with the Cabinet?

The Governor is required to consult with the Cabinet unless the matter is not materially significant.

The Governor is not required to consult with the Cabinet in respect of matters falling within his or her constitutional discretion; or pursuant to Her Majesty's instructions; or in relation to his or her special responsibilities due to his or her being a member of the Executive. Such special responsibilities are extensively set out in s.55 of the Constitution and detailed in Part III.

However, the Governor is still required to keep the Cabinet informed of the general conduct of all matters for which the Governor is responsible, and of any matters that in the Governor's judgment may involve the economic or financial interests of the Cayman Islands or the enactment of laws.

Can the Governor act contrary to what Cabinet advises?

The Governor may act contrary to the advice of the Cabinet if he or she is instructed by Her Majesty to do so. When dealing with matters involving defence, external affairs, internal security and other special responsibilities, the Governor may act contrary to the advice of Cabinet if he or she believes that following that advice would adversely affect any of those special responsibilities.

Does the Governor have reserved powers?

The Governor's reserved powers are set out in s.81 of the Constitution.

What is the role of the Deputy Governor?

The Deputy Governor is the head of the civil service in the Cayman Islands. In addition to being the head of the civil service, the Deputy Governor is responsible for carrying out any functions that may be delegated to him or her by the Governor.

The Deputy Governor is appointed by Her Majesty by instructions given through the Secretary of State and he or she holds office during her Majesty's pleasure.

In order to be appointed as the Deputy Governor a person must be a Caymanian who currently holds or has held a senior position in the public service and is below the retirement age.

Who can act as Governor?

The Constitution designates the Deputy Governor as the first in line to be appointed as Acting Governor. If the Deputy Governor is unavailable, Her Majesty may select any Caymanian public officer to be appointed as Acting Governor. Common practice in the Cayman Islands is to appoint a chief officer.

Who is responsible for the executive authority of the Cayman Islands?

The executive branch of government has sole authority and responsibility for the daily administration of the Cayman Islands. The executive authority is vested in Her Majesty and is exercised on Her Majesty's behalf by the Government, which consists of the Governor and the Cabinet.

What is the Cabinet?

The Cabinet consists of the Honourable Premier, six other Ministers, and two official appointees, the Deputy Governor and the Attorney General. The Deputy Governor and the Attorney General are the only members of the Cabinet that are not allowed to vote when decisions are being made by the Cabinet.

What are the responsibilities of the Cabinet?

The Cabinet shall have responsibility for the formulation of policy, including directing the implementation of such policy, insofar as it relates to every aspect of government except those matters for which the Governor has special responsibility under s.55 of the Constitution, and the Cabinet shall be collectively responsible to the Legislative Assembly for such policies and their implementation.

How often does the Cabinet meet?

The Cabinet shall meet regularly at such times as its rules and procedures may prescribe, and shall also meet whenever the Premier, or the Governor, acting in his or her discretion, so requests.

Who presides at meetings of the Cabinet?

The Governor or Acting Governor is required to attend and preside at all meetings of the Cabinet as far as it is practicable to do so. The Premier presides at any meeting of the Cabinet that the Governor or Acting Governor is unable to attend. If the Governor, the Premier or their acting counterparts are unable to attend a particular meeting the Deputy Premier is to preside.

Who is responsible for setting the agendas for meetings of the Cabinet?

Together the Governor and the Premier set the agenda for every meeting of the Cabinet and they are both entitled to place items on the agenda.

Who is allowed to attend meetings of the Cabinet?

The person presiding over any meeting of the Cabinet may summon any public officer or invite any other person to a meeting of the Cabinet whenever the business before the Cabinet renders the presence of that officer or other person desirable.

Additionally if any electoral district is not represented in the Cabinet, the Member(s) of the Legislative Assembly (“the MLA” or “the MLAs”) from that district are allowed to attend a special meeting of the Cabinet once every three (3) months in order to make representations on matters affecting their district and to make budgetary representations when the Annual Plan and Estimates are being developed.

What is the role of the Cabinet Secretary?

The Cabinet Secretary is a public officer who is responsible for the administration of the Cabinet Office and must be a Caymanian who is appointed by the Governor after he or she has consulted with the Premier. The responsibilities of the Cabinet Secretary are set out in s.48(3) of the Constitution.

How is the Premier appointed?

There are two methods by which the Premier may be appointed. In the first instance the Governor is required to appoint the MLA that is recommended by a majority of the MLAs from the party that has gained the majority of seats in the Legislative Assembly.

Where no political party has gained the majority or a recommendation is not made the Speaker shall cause a vote to be held among the MLAs to determine which MLA commands the support of the majority of the MLAs. After the votes are recorded the Governor shall appoint as Premier the elected member who obtains a majority of the votes.

What are the functions of the Premier?

The Premier is given numerous functions by the Constitution, but in all cases he or she is required to perform those functions in accordance with the Constitution and any other law and always in the best interest of the Cayman Islands. Examples of these functions can be found in:

- s.21(6) Assist during public emergencies
- s.40(1) Requires the Governor to consult with the Premier on the appointment of various members to the Advisory Committee on the Prerogative of Mercy
- s.44 Advise the Governor during the creation of Cabinet
- s.46 Chair meetings of the Cabinet
- s.48 Assist the Governor with appointing the Cabinet Secretary
- s.49(5) Advise the Governor regarding the appointment of Ministers
- s.55(20) Allows the Governor to delegate by an instrument in writing to the Premier or any other Minister after consultation with the Premier responsibility for the conduct on behalf of the Governor of any business in the Legislative Assembly with respect to defence, external affairs, internal security and the appointment, suspension, termination of employment, dismissal or retirement of any public officer or taking of disciplinary action in respect of such an officer.

s.55(4) Requires the Governor to consult with the Premier in order to assign or delegate responsibility for the conduct of external affairs insofar as they relate to those matters specified in s.55(4)(a)-(e) of the Constitution.

s.58(1)(b) A member of the National Security Council

s.58(1)(e) Requires the Governor to consult with the Premier on the appointment of various members to the National Security Council

s.84(1) The Governor, acting after consultation with the Premier, and by proclamation, may prorogue the Legislative Assembly, and shall do so annually.

s.84(2) The Governor, acting after consultation with the Premier, may at any time, by proclamation, dissolve the Legislative Assembly.

s.85 If the Governor makes it necessary for the Assembly to be recalled, the Governor may, acting after consultation with the Premier, summon the Assembly that has been dissolved.

s.88(1) Requires the Governor to consult with the Premier when appointing an Electoral Boundary Commission

s.88(2) Requires the Governor to consult with the Premier on the appointment (and if necessary the revocation of that appointment) of one member to the Electoral Boundary Commission

s.89(3) the Premier shall lay before the Legislative Assembly for its approval the draft of an order by the Governor for giving effect to the report of the Electoral Boundary Commission, whether with or without modifications, to the recommendations contained in the report

s.105, s.116, s.117, s.118 Require the Governor to consult with the Premier on various appointments to the Judicial and Legal Services Commission, the Human Rights Commission, the Commission for Standards in Public Life, and the Constitutional Commission respectively.

s.120 Requires the Governor to consult with the Premier on the appointment of the Complaints Commissioner.

How long is a person appointed to be Premier and how is it vacated?

The Premier may hold office for a maximum of two terms in the Legislative Assembly, each term currently consisting of four years. The appointment of the Premier may be revoked by the Governor if a motion of no confidence in the Government is supported by at least two-thirds of the MLAs.

How are the other Ministers appointed?

After the Premier is appointed he or she advises the Governor as to which other MLAs are to be appointed as Ministers. One of the other Ministers is also appointed as the Deputy Premier and will normally perform the duties of the Premier if he or she is unable to do so.

How long is a person appointed to be a Minister?

A Minister normally holds his or her position through the next scheduled general election in order to allow for the Government to continue conducting its business. However a Minister has to vacate his or her office if –

- (i) he or she is no longer a MLA for any other reason than the dissolution of the Legislative Assembly;
- (ii) he or she is no longer a MLA after a general election;
- (iii) he or she resigns from office;
- (iv) he or she is absent from the Cayman Islands without obtaining the proper permission;
- (v) he or she is absent from three (3) consecutive meetings of the Cabinet without obtaining the proper permission;
- (vi) the Premier leaves his or her office; or
- (vii) his or her appointment is revoked by the Governor, acting in accordance with the advice of the Premier.

What happens if the Premier or a Minister is unable to perform his or her duties?

If the Premier is temporarily unable to perform his or her duties the Governor shall authorise the Deputy Premier to perform those functions. If the Deputy Premier is unable to perform those functions the Governor is required to authorise another Minister to perform the functions acting in accordance with the advice of the Premier. If the Premier is unable to provide such advice, the Governor may appoint another Minister to perform those duties after consulting the Cabinet.

In the case of a Minister being unable to temporarily perform his or her functions, the Governor acting in accordance with the advice of the Premier may appoint a MLA to be a temporary Minister or assign those functions to another Minister or to the Premier.

Who allocates responsibilities to Ministers?

The Governor, acting in accordance with the advice of the Premier shall, by directions in writing, allocate to any Minister responsibility for the conduct of any business of the Government including responsibility for the administration of any department of government.

What are the special responsibilities of the Governor?

As a member of the Executive the Governor has been given special responsibilities for the conduct of any business of the Government in the following areas set out in s.55(1) of the Constitution:

- (a) defence;
- (b) external affairs;
- (c) internal security including the police;
- (d) the appointment (including the appointment on promotion or transfer, appointment on contract and appointment to act in an office) of any person to any public office, the suspension, termination of employment, dismissal or retirement of any public officer or taking of disciplinary action in respect of such an officer, the application to any public

officer of the terms or conditions of employment of the public service (including salary scales, allowances, leave, passages and pensions) for which financial provision has been made, and the organisation of the public service to the extent that it does not involve new financial provision.

These special responsibilities may be subject to other provisions in the Constitution.

What is the function of the Attorney General?

The Attorney General is the principal legal advisor to the Government and the Legislative Assembly and as such is a non-voting ex officio member of the Cabinet and the Legislative Assembly.

The Attorney General is a public officer who is appointed by the Governor, acting in accordance with the advice of the Judicial and Legal Services Commission.

What are the responsibilities of the Director of Public Prosecutions?

The Director of Public Prosecutions is a public officer who is appointed by the Governor, acting in accordance with the advice of the Judicial and Legal Services Commission.

The Director of Public Prosecutions has the power to –

- a. institute and undertake criminal proceedings against any person before any court in connection with any offence against any law in force in the Cayman Islands;
- b. take over and continue any criminal proceedings that have been instituted by any other person or authority; and
- c. to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or herself or any other person or authority.

What is the National Security Council?

The National Security Council is responsible for advising the Governor on matters related to internal security, with the exception of operational and staffing matters.

There are ten (10) members on the National Security, namely –

- a. the Governor (Chairman);
- b. the Premier;
- c. two (2) other Ministers, appointed by the Governor, acting in accordance with the advice of the Premier;
- d. the Leader of the Opposition or his or her designate;
- e. two (2) persons representative of civil society, appointed by the Governor, renewable for a period of up to two years, acting after consultation with the Premier and the Leader of the Opposition;
- f. the Deputy Governor (ex officio);
- g. the Attorney General (ex officio); and

h. the Commissioner of Police (ex officio).

The Commissioner of Police is required to provide regular briefings to the National Security Council on matters of internal security, including the police force but may limit such briefings to avoid prejudicing current operations.

It is the responsibility of the Cabinet Secretary to provide administrative support to the National Security Council.

What is the Legislature of the Cayman Islands?

The Cayman Islands Legislature makes laws for the peace, order and good government of the Cayman Islands. It consists of Her Majesty and the Legislative Assembly. The Queen's assent is required on local legislation enacted by the Legislature. In practice the Governor gives this assent on the Queen's behalf save for the circumstances set out in s.78(1)(b) and (2).

The Legislative Assembly consists of 18 elected members, one of whom may be the Speaker and two non-voting members, the Deputy Governor and the Attorney General

What are the qualifications for elected members?

Subject to the disqualifications listed below, a person shall be qualified to be elected as a member of the Legislative Assembly if, and shall not be qualified to be so elected unless:

- (a) he or she is a Caymanian; and
- (b) he or she has attained the age of 21 years; and
- (c) he or she is, at the date of his or her nomination for election, domiciled and resident in the Cayman Islands; and
- (d) he or she is a qualified citizen; and either
- (e) he or she was born in the Cayman Islands, or was born outside the Cayman Islands in the circumstances mentioned in subsection (2)(b), has resided in the Cayman Islands for a period of not less than seven years immediately preceding the date of his or her nomination for election and, subject to subsection (3), the number of days on which he or she was absent from the Cayman Islands in that period does not exceed 400; or
- (f) if he or she was born outside the Cayman Islands, has resided in the Cayman Islands for a period or periods amounting to not less than fifteen years out of the twenty years immediately preceding the date of his or her nomination for election, and, subject to subsection (3), in the seven years immediately preceding the date of his or her nomination for election the number of days on which he or she was absent from the Cayman Islands does not exceed 400.

For the purpose of subsection (d) above, a qualified citizen is a British overseas territories citizen by virtue of a connection with the Cayman Islands, who either:

- (a) at the date of his or her nomination for election possesses no other citizenship and is pursuing no claim to any other citizenship for which he or she may be eligible; or
- (b) was born outside the Cayman Islands, has or had at least one parent or grandparent who was born in the Cayman Islands and is a Caymanian (or if deceased would if alive have been a Caymanian at the date of nomination for election), and who at the date of his or her nomination for election possesses no other citizenship save for any right he or she may have to some other citizenship by virtue of his or her birth outside the Cayman Islands;

and in this subsection the words “other citizenship” do not include British citizenship acquired by virtue of the British Overseas Territories Act 2002.

Any period of absence by reason of the following shall be disregarded:

- (a) the performance of duty on behalf of the Government;
- (b) attendance as a student at any educational establishment;
- (c) attendance as a patient at any hospital, clinic or other medical institution;
- (d) employment as a seaman aboard an ocean-going vessel; or
- (e) employment as a crew member on any aircraft.

What are the disqualifications for elected membership?

No person shall be qualified to be elected as a member of the Legislative Assembly who -

- (a) is, by virtue of his or her own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;
- (b) holds, or is acting in, any public office;
- (c) has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth or the United States of America and has not been discharged;
- (d) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in the Cayman Islands;
- (e) is serving or has served a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him or her by a court in any country or substituted by competent authority for some other sentence imposed on him or her by such a court, or is under such a sentence of imprisonment the execution of which has been suspended, or has been convicted by any court in any country of an offence involving dishonesty;
- (f) is disqualified for election by any law in force in the Cayman Islands by reason of his or her holding, or acting in, any office the functions of which involve -
 - (i) any responsibility for, or in connection with, the conduct of any election; or
 - (ii) any responsibility for the compilation or revision of any electoral register;
- (g) is a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the Government for or on account of the public service and has not, within the period of one month immediately preceding the date of an election in which he or she is a candidate, caused to be published a Government Notice setting out the nature of such contract and his or her interest, or the interest of any such firm or company, in it; or
- (h) is disqualified for membership of the Assembly by any law in force in the Cayman Islands relating to offences connected with elections.

For the purposes of subsection (e) above and (g) below -

- (a) where a person is serving two or more sentences of imprisonment that are required to be served consecutively he or she shall, throughout the whole time during which he or she so serves, be regarded as serving a sentence exceeding twelve months if (but not unless) any one of those sentences exceeds that term; and

- (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

How long does an MLA stay in office?

An MLA is required to leave his or her office if:

- (a) the LA is dissolved;
- (b) he or she is absent from the sittings of the Assembly for such a period and in such circumstances as may be prescribed in the Standing Orders;
- (c) he or she is no longer a Caymanian;
- (d) he or she is no longer resident in the Cayman Islands;
- (e) he or she resigns his or her seat;
- (f) he or she becomes party to any contract with the Government, and does not disclose the nature of the contract or interest to the LA; or
- (g) any circumstances arise that, if he or she were not a MLA, would cause them to be disqualified for election.

However if a MLA is adjudged or declared bankrupt, is certified insane or adjudged of unsound mind, is under sentence of imprisonment, is convicted of an offence involving dishonesty or is convicted of an offence relating to elections, and it is open to the MLA to appeal against the decision, he or she shall cease to perform his or her functions as a member of the Legislative Assembly, but is not required to immediately vacate his or her seat. The MLA does not have to vacate his or her seat under these circumstances for thirty (30) days, the Governor may extend that period to enable the member to pursue any appeal against the decision, but the Governor cannot give an extension of over 150 days without the approval of the Assembly.

If, on the determination of any appeal, the original circumstances continue to exist and no further appeal is open to the MLA he or she is required to immediately vacate his or her seat. If the circumstances do not continue to exist before the MLA vacates his or her seat the MLA may resume the performance of his or her functions as a member of the Legislative Assembly.

Who is qualified to vote?

Subject to the disqualifications listed below, a person shall be entitled to be registered as an elector in one electoral district only, but he or she shall not be entitled to be registered as an elector for elections to the Legislative Assembly unless –

- (a) he or she was, on the day immediately preceding the appointed day, entitled to be registered as an elector; or
- (b) he or she –
 - (i) is a Caymanian; and
 - (ii) has attained the age of eighteen years; and
 - (iii) is resident in the Cayman Islands at the date of registration; and

- (iv) has been resident in the Cayman Islands for a period or periods amounting to not less than two years out of the four years immediately preceding the date of registration; or
 - (c) on the day of the issue of a writ ordering an election, he or she is otherwise qualified under paragraph (b) but has not attained the age of eighteen years, but he or she will attain that age on or before the polling day at the election.
- (2) Any period of absence for any of the purposes specified in section 61(3) shall be disregarded in determining whether a person is or has been resident in the Cayman Islands for the purposes of this section.

Who is disqualified from voting?

A person shall not be entitled to be registered as an elector in any electoral district who –

- (a) subject to subsection (2), is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him or her by a court in any country or substituted by competent authority for some other sentence imposed on him or her by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;
- (b) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in the Cayman Islands; or
- (c) is disqualified for registration as an elector by any law in force in the Cayman Islands relating to offences connected with elections.

For the purpose of subsection (a) above –

- (a) where a person is serving two or more sentences of imprisonment that are required to be served consecutively he or she shall, throughout the whole time during which he or she so serves, be regarded as serving a sentence exceeding twelve months if (but not unless) any one of those sentences exceeds that term;
- (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine; and
- (c) no account shall be taken of a sentence of imprisonment imposed by a court outside the Cayman Islands other than a sentence on conviction for an offence constituted by conduct which, if it occurred within the Cayman Islands, would constitute an offence punishable under the law of the Cayman Islands by imprisonment of twelve months or any greater punishment.

What right to vote does an elector have?

Any person who is registered as an elector in an electoral district shall, while so registered, be entitled to vote at any election in that district for an elected member of the Legislative Assembly, unless he or she is prohibited from so voting by any law in force in the Cayman Islands –

- (a) because he or she is a returning officer; or
- (b) because he or she has been concerned in any offence connected with elections.

No person shall vote at any election in any electoral district who –

- (a) is not registered as an elector in that district;
- (b) has voted in another electoral district at the same election; or
- (c) is for any reason unable to attend to vote in person (except so far as it may be provided by law that such persons may vote).

Does a law govern elections?

A law enacted by the Legislature may provide for the election of MLAs, including (without prejudice to the generality of the foregoing power) the following matters:

- (a) the registration of electors;
- (b) the ascertainment of the qualifications of electors and of candidates for election;
- (c) the division of the Cayman Islands into electoral districts for the purpose of elections;
- (d) the holding of elections;
- (e) the determination of any question whether any person has been validly elected a member of the Assembly or whether the seat of any elected member in the Assembly has become vacant;
- (f) the definition and trial of offences connected with elections and the imposition of penalties for them, including the disqualification for membership of the Assembly, or for registration as an elector, or for voting at elections, of any person concerned in any such offence; and
- (g) the disqualification for election as members of the Assembly of persons holding or acting in any office the functions of which involve any responsibility for, or in connection with, the conduct of any election or the compilation or revision of any electoral register.

How are the Speaker and Deputy Speaker elected?

The Speaker and Deputy Speaker are elected at the first meeting of the Legislative Assembly or as soon as possible after a vacancy in the office, by a majority of the elected MLAs. The Speaker may be a MLA or a person who is qualified to be elected as a MLA while the Deputy Speaker must be elected from amongst the MLAs. The Speaker presides at sittings of the Legislative Assembly and in his/her absence the Deputy Speaker.

Who has the authority to determine questions of membership to the Legislative Assembly?

The Grand Court determines all questions of whether a person has been validly elected as a member of the Legislative Assembly. An application to determine this can be submitted by:

- (a) a person who voted or had the right to vote at the election to which the application relates;
- (b) a person claiming to have had the right to be returned at such election;
- (c) a person alleging himself or herself to have been a candidate at such election; or
- (d) the Attorney General.

The Grand Court also determines all questions of whether a MLA has vacated his or her seat. The Grand Court's decisions on these questions are final and are not subject to appeal.

An application to determine these types of questions can be submitted by:

- a. any MLA; or
- b. the Attorney General.

A law enacted by the Legislature may make provisions for the time within which, the circumstances and matter in which and the imposition of conditions under which, any application may be made to the Grand Court for the determination of any of these questions.

How is the Leader of the Opposition appointed?

The Governor shall appoint, as Leader of the Opposition, the MLA recommended by a majority of the MLAs who constitute an opposition political party.

If there is no such opposition party the Governor shall appoint the MLA who would be acceptable as Leader of the Opposition to the majority of MLAs in opposition to the Government. However if there is no such MLA the Governor shall appoint the MLA who in his or her opinion would be acceptable to the greatest number of MLAs in opposition to the Government as the Leader of the Opposition.

Once appointed the Leader of the Opposition advises the Governor on the appointment of a Deputy Leader of the Opposition who is chosen from among the MLAs in opposition to the Government.

What are the functions of the Leader of the Opposition?

The Leader of the Opposition is given numerous functions by the Constitution, but in all cases he or she is required to perform those functions in accordance with the Constitution and any other law and always in the best interest of the Cayman Islands. Examples of these functions can be found in:

s.40(1) Requires the Governor to consult with the Leader of the Opposition on the appointment of various members to the Advisory Committee on the Prerogative of Mercy

s.58(1)(d) A member of the National Security Council

s.58(1)(e) Requires the Governor to consult with the Leader of the Opposition on the appointment of various members to the National Security Council

s.88(1) Requires the Governor to consult with the Leader of the Opposition when appointing an Electoral Boundary Commission

s.88(2) Requires the Governor to consult with the Leader of the Opposition on the appointment (and if necessary the revocation of that appointment) of one member to the Electoral Boundary Commission

s.105, s.116, s.117, s.118 Require the Governor to consult with the Leader of the Opposition on various appointments to the Judicial and Legal Services Commission, the Human Rights Commission, the Commission for Standards in Public Life, and the Constitutional Commission respectively.

s.120 Requires the Governor to consult with the Leader of the Opposition on the appointment of the Complaints Commissioner.

What law provides for a referendum?

A law enacted by the Legislature may make provision to hold a referendum amongst persons registered as electors, on a matter or matters of national importance, when so resolved by the majority of the elected members of the Assembly; but the question of whether the Cayman Islands should seek any amendment to this Constitution that may result in their independence shall be deemed to be a matter of national importance.

What are people-initiated referendums?

A law enacted by the Legislature shall make provision to hold a referendum amongst persons registered as electors in accordance with the Constitution on a matter or matters of national importance that do not contravene any part of the Bill of Rights or any other part of the Constitution.

Before a referendum under this section may be held –

- a. there shall be presented to the Cabinet a petition signed by not less than 25 per cent of persons registered as electors;
- b. the Cabinet shall settle the wording of a referendum question or questions within a reasonable time period as prescribed by law; and
- c. the Cabinet shall make a determination on the date the referendum shall be held in a manner prescribed by law.

Subject to the Constitution, a referendum under this section shall be binding on the Government and the Legislature if assented to by more than 50 per cent of persons registered as electors in accordance with section 90 of the Constitution.

What are the Standing Orders?

Subject to the Constitution, the Legislative Assembly may from time to time make, amend and revoke Standing Orders for the regulation and orderly conduct of its own proceedings and the dispatch of business, and for the passing, intituling and numbering of Bills and for their presentation to the Governor for assent; but no such Standing Orders or amendment or revocation of them shall have effect unless they have been approved by the Governor.

What happens if an issue that arises is not covered by the Standing Orders?

If any issue arises that is not covered by the Standing Orders the LA is required to resort to the usage and practice of the House of Commons of the United Kingdom. These practices are to be followed as far as may be practicable to the LA and not inconsistent with the Standing Orders or with the practice of the Assembly.

What is the Finance Committee of the Legislative Assembly?

The Finance Committee is a standing committee of the Legislative Assembly. It consists of all the MLAs and is chaired by the Minister responsible for finance. The Finance Committee considers in detail the estimates of revenue and expenditure of the Cayman Islands and examines all financial bills. The Finance Committee is also responsible for examining any other matters related to the finances of the Cayman Islands which are referred to it by the Legislative Assembly and reporting on those matters to the Legislative Assembly.

Are there any other standing committees of the Legislative Assembly?

The Standing Orders allow for the establishment of more standing committees. Each standing committee may be given the responsibility of monitoring the conduct of business of the Government which falls under the responsibility of a Minister.

Each standing committee shall, as far possible, reflect proportionately the numerical strength of all political parties or groups making up the elected membership of the Legislative Assembly.

Any standing committee has the power to summon any Minister, the Deputy Governor, the Attorney General or any public officer of a department of Government which falls under the responsibility of a Minister to appear before it and answer questions and provide information. Any standing committee reports on its activities to the Legislative Assembly.

What is the quorum and what happens if the quorum is not present at a sitting of the LA?

The quorum for a sitting of the Legislative Assembly is the majority of the elected Members in addition to the person presiding. If a quorum is not present at any sitting of the Legislative Assembly and any member who is present objects to the transaction of business and after such interval as may be prescribed in the Standing Orders the quorum is still not present the person presiding shall adjourn the Legislative Assembly.

How are votes decided in the Legislative Assembly?

All questions proposed for decision in the Legislative Assembly are determined by a majority of votes of the Members present and voting. The Deputy Governor and the Attorney General are not allowed to vote on any question proposed for decision.

The Speaker or other presiding member is prohibited from voting on any question unless the votes are equally divided, in which case the presiding member has a casting (deciding) vote.

How are bills introduced in the Legislative Assembly?

Any Member of the Legislative Assembly may introduce any bill, motion or petition to the Legislative Assembly and it will be debated and handled in accordance with the Standing Orders.

Except in a case of emergency every Government bill shall be published for at least twenty-one (21) days before the commencement of the meeting at which it is scheduled to be introduced.

Can a law be returned or disallowed (revoked)?

Any law that has been assented to by the Governor may be disallowed (revoked) by Her Majesty through a Secretary of State. The Governor has 60 days within which to decide whether to send the Bill back to the Legislative Assembly with any amendments which he or she may recommend and the reasons for them. The Assembly shall consider such recommendations.

However a law cannot be disallowed until the expiration of a reasonable time period, which is determined by the Secretary of State. An explanation of the difficulties perceived by the Secretary of State must also be sent to the Governor, who is required to inform the Speaker of the time period and the explanation given by the Secretary of State. The time period before the law is disallowed is granted by the Secretary of State in order to give the Legislative Assembly an opportunity to reconsider the law in question.

What are the Governor's reserved powers?

If the Governor considers that the enactment of legislation is necessary or desirable with respect to or in the interests of any matter for which he or she is responsible (under s.55 of the Constitution) but after consultation with the Premier, it appears to the Governor that the Cabinet is unwilling to support the introduction into the Legislative Assembly of a Bill for the purpose or that the Assembly is unlikely to pass a Bill introduced into it for the purpose, the Governor may, with the prior approval of a Secretary of State, cause a Bill for the purpose to be published in a Government Notice and may (notwithstanding that the Bill has not been passed by the Assembly) assent to it on behalf of Her Majesty; but the Bill shall be so published for at least 21 days prior to assent unless the Governor certifies by writing under his or her hand that the matter is too urgent to permit such delay in the giving of assent and so informs a Secretary of State.

What are Her Majesty's reserved powers?

Her Majesty has full power to make laws for the peace, order and good government of the Cayman Islands.

Are the Members of the Legislative Assembly (MLAs) given any privileges?

A law may determine and regulate the privileges, immunities and powers of the Legislative Assembly and its member, but these privileges, immunities and powers cannot exceed those of the House of Commons of the UK or of its members.

How often does the Legislative Assembly meet?

The sessions of the LA are held at such places and begin at such times as the Governor may by proclamation appoint. The LA is required to have at least one session in every calendar year.

Can the Legislative Assembly be prorogued and dissolved?

The Governor, acting after consultation with the Premier and by proclamation, may prorogue the LA and the Governor shall do so annually. To prorogue means to discontinue the meetings of the Legislative Assembly without dissolving it.

The Governor, acting after consultation with the Premier, may dissolve the LA at any time. However the Governor is required to dissolve the Legislative Assembly four years after it first meets following a General Election. To dissolve the Legislative Assembly means to terminate or bring to an end the parliamentary term of that specific Assembly.

When are General and Bye-Elections

The Constitution requires that the Elections Law provide for administrative procedures, registration and ascertainment of qualifications for candidates and voters. A general election must be held within two months after the dissolution of the Assembly.

Bye-elections are held when a MLA vacates his or her seat in the LA for any reason other than its dissolution. A bye-election must be held within two (2) months after the occurrence of the vacancy, unless the LA is due to be dissolved in less than four (4) months.

What is the Public Accounts Committee?

The Public Accounts Committee of the Legislative Assembly has the power and responsibility to examine the public accounts of the Cayman Islands and the accounts and financial dealings of all authorities, offices and departments of Government, of all courts, and of all Government owned companies.

What is the Electoral Boundary Commission?

The Electoral Boundary Commission is a three person body established under section 88 of the Constitution, and consists of a Chairman who shall be appointed by the Governor, acting in his or her discretion; one member appointed by the Governor, acting in accordance with the advice of the Premier; and one member appointed by the Governor, acting in accordance with the advice of the Leader of the Opposition. Each Electoral Boundary Commission must be appointed within eight years preceding the previous commission's report.

MLAs and public officers are not eligible to be appointed to the Electoral Boundary Commission. The Commission may, however, with the consent of the Governor, confer powers and impose duties on any public officer or on any authority of the Government for the purposes of the discharge of its functions.

What is the role of the Electoral Boundary Commission?

Electoral Boundary Commission shall, as soon as practicable after its appointment, review the boundaries of the electoral districts into which the Cayman Islands are divided and, taking into account the changes or proposed changes, if any, in the number of electoral districts or of elected MLAs, shall submit a report to the Governor and the Legislative Assembly containing its recommendations for any changes in the number and boundaries of the electoral districts.

Part V: The Judicature

What courts are provided for by the Constitution?

The Constitution provides for a continuation of the Grand Court and the Court of Appeal for the Cayman Islands. The Grand Court is a superior Court of Record and the Court of Appeal has the power to hear and determine appeals from the Grand Court. The Constitution also provides for lower courts, such as the Summary Court, to be established by legislation.

What is the composition of the Grand Court?

The Grand Court consists of a Chief Justice and such number of other judges as may be prescribed by law.

Judges, including the Chief Justice, are appointed by the Governor acting on the advice of the Judicial and Legal Services Commission. The tenure of a judge of the Grand Court ends when he or she reaches 65 years old but the Governor may permit a judge who attains the age of 65 years to continue in office until he or she has attained such later age, not exceeding the age of 70 years, as may have been agreed between that judge and the Governor following the recommendation of the Judicial and Legal Services Commission.

A judge can be removed only for inability to discharge the functions of his or her office or for misbehavior following a referral by the Governor to the Judicial and Legal Services Commission and onward to the Privy Council in accordance with s.96(3) – (7) inclusive.

What are the responsibilities of the Chief Justice?

The Chief Justice has responsibility for and management of all matters arising in judicature, including responsibility –

- a. for representing the views of the judiciary to the Government and the Legislative Assembly, including, where appropriate, through the Attorney General;
- b. for the maintenance of appropriate arrangements for the welfare, training and guidance of the judiciary within available resources;
- c. for the maintenance of appropriate arrangement for the deployment of the judiciary and the allocation of work within courts (not including the Court of Appeal);
- d. after consultation with the President of the Court of Appeal who shall be responsible for the allocation of work within the Court of Appeal, for the maintenance of appropriate arrangements for the work of that court.

What is the composition of the Court of Appeal?

The Court of Appeal consists of a President and any number of other Justices although an appeal sitting is fully constituted with a President and not less than two Justices of Appeal. Justices, including the President, are appointed by the Governor acting on the advice of the Judicial and Legal Services Commission. The Constitution does not provide for the length of tenure.

What is the role of the Judicial and Legal Services Commission?

The Judicial and Legal Services Commission is an independent eight-member body which consists of:

- (a) a Chairman and one other member, neither of whom shall be a lawyer, appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition;
- (b) the President of the Court of Appeal who is non-voting;
- (c) a person appointed by the Governor, acting in his or her discretion, who holds or has held high judicial office in the Cayman Islands and has recent personal knowledge of the courts in the Cayman Islands;
- (d) two persons appointed by the Governor, acting in his or her discretion, who hold or have held high judicial office in a Commonwealth country or Ireland, but do not currently hold such office in the Cayman Islands; and
- (e) two attorneys-at-law qualified to practise in the Cayman Islands, one with experience in Government service and one with experience in private practice, appointed by the Governor, acting after consultation with representatives of legal professional organisations in the Cayman Islands and, where appropriate, the Attorney General.

It is responsible for advising the Governor on the appointment, removal and exercise of disciplinary control over persons holding or acting in the offices of –

- a. Chief Justice and other judge of the Grand Court;
- b. President of the Court of Appeal and other judge of the Court of Appeal;
- c. Attorney General;
- d. Director of Public Prosecutions;
- e. Magistrate; and
- f. such other public office, for appointment to which persons are required to possess legal qualifications, as may be prescribed by law.

The Judicial and Legal Services Commission is also responsible for creating a code of conduct for the judiciary and a procedure for dealing with complaints.

What is the fundamental duty of all public officers?

All public officers are required to act in accordance with the best interests of the Cayman Islands and not in their own private interests. They are also required to implement Government policy to the best of their ability and in accordance with the directions given to them by the Cabinet or other responsible person or authority.

How are public officers appointed?

The power to appoint, and to transfer, remove or exercise disciplinary control over persons holding or acting in public offices, is, subject to the Constitution vested in the Governor.

The Governor has the authority to delegate this power to public officers and the Legislature has the authority to enact legislation which would allow public officers to exercise the Governor's power. However, no regulations can allow anyone other than the Governor to exercise this power over the offices of the Financial Secretary, Commissioner of Police, Auditor General, Information Commissioner, Complaints Commissioner, and any office which falls under the remit of the Judicial and Legal Services Commission.

What is the Legislature’s role in relation to the revenue and expenditure of the Cayman Islands Government?

All Government expenses, assets and the incurrence of liabilities shall require authorisation by the Legislature unless otherwise authorized by law. The Legislature has the authority to levy or change the rates of revenue in the Cayman Islands.

How often is the Legislative Assembly informed about the financial performance and fiscal position of the Government?

The Legislative Assembly receives at least one report annually on the Government’s financial performance and fiscal position. The content, timing and process for financial reporting and the agencies that are to report to the Legislative Assembly are prescribed by law.

Is there a limit to the amount of public debt the Government can incur?

Total Government borrowing for a financial year cannot exceed a specified percentage of Government revenue, which is set out in law and agreed with a Secretary of State. A law enacted by the Legislature may provide for a higher percentage to be used for a limited period where the Cabinet considers the matter sufficiently urgent.

What is the role of the Auditor General?

The Auditor General is a public officer appointed by the Governor. He or she is only removed from office for inability to discharge the functions of his or her office or for misbehavior. The Auditor General has the power and responsibility to audit the public accounts of the Cayman Islands and the accounts and financial dealings of all authorities, offices and departments of Government and of all courts. He or she is also responsible for conducting “value for money investigations” in relation to the activities of these authorities, offices and departments.

Is the Auditor General answerable to any other authority?

The Auditor General is not subject to the direction or control of any other person or authority, but the Auditor general is answerable to the Public Accounts Committee of the Legislative Assembly and must meet with the Committee upon its request. Additionally the Auditor General is required to submit reports on his or her activities to the Public Accounts Committee at least twice every year and as requested by the Committee.

What is the role of the Financial Secretary?

The Financial Secretary is the principal adviser to the Minister Responsible for finance. The Financial Secretary is still a public officer, but is no longer an ex officio member of the Cabinet or the Legislative Assembly.

Part VIII: Institutions Supporting Democracy

What is the composition and role of the Human Rights Commission?

The Human Rights Commission is a five-member body which consists of a Chairman and four other members appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition, at least two of whom are experienced lawyers.

The Human Rights Commission is primarily responsible for promoting understanding and observance of human rights in the Cayman Islands. It is also responsible for –

- a. receiving and investigating complaints of breaches or infringements of any right or freedom contained in the Bill of Rights of international human rights treaties that have been extended to the Cayman Islands, and investigate such possible breaches or infringements on its own initiative;
- b. providing advice to persons who consider that their rights or freedoms have been infringed;
- c. providing a forum for dealing with complaints by mediation or conciliation or by making recommendations;
- d. issuing guidance on procedures for dealing with any complaints of breaches or infringements of rights and freedoms;
- e. contributing to public education about human rights;
- f. issuing reports relating to human rights issues on its own initiative;
- g. undertaking such other functions, for the purpose of fulfilling its primary responsibility.

However the Human Rights Commission has no power to –

- a. represent or provide representation to parties to litigation;
- b. act in a judicial capacity or make binding determinations as to whether any right or freedom contained in the Bill of Rights or any international human rights treaty or instrument has been breached;
- c. compel any person to do anything against his or her will.

In the exercise of their functions, the Commission and its members shall not be subject to the direction or control of any other person or authority.

What is the composition and role of the Commission for Standards in Public Life?

The Commission for Standards in Public Life consists of a Chairman and not less than two or more than four other members, who shall be appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition. At least one member of the Commission shall be a chartered or certified accountant of at least ten years' experience and at least one member of the Commission shall be a legal practitioner who has practised in the Commonwealth for at least ten years. The appointed members are people of the highest integrity with knowledge of practice in the private or public sector.

The Commission for Standards in Public Life is responsible for –

- a. assisting in the setting of the highest standards of integrity and competence in public life in order to ensure the prevention of corruption or conflicts of interest;
- b. monitoring standards of ethical behavior in the Legislative Assembly, the Cabinet and on the part of public authorities and public officers;
- c. supervising the operation of registers of interest and to investigate breaches of established standards;
- d. reviewing and establishing procedures for awarding public contracts;
- e. reviewing and establishing procedures for appointing members to public authorities, and the terms of their appointments;
- f. recommending codes of conduct to prevent any Minister, public authority or public officer employing their power for any personal benefit or advantage, and to recommend legislation to provide appropriate sanctions;
- g. reporting to the Legislative Assembly at regular intervals and at least every six months; and
- h. exercising any other functions that may be prescribed by a law.

In the exercise of their functions, the Commission and its members shall not be subject to the direction or control of any other person or authority.

What is the Register of Interests?

The Commission for Standards in Public Life is responsible for the Register of Interests. The Constitution requires that a law be made to provide for entry in the Register of Interests, such interests, assets, income and liabilities of persons, or of any other person connected with him or her, as may be prescribed by the required law. This section applies to all MLAs and the holders of such other offices (except that of the Governor) as may be prescribed by law.

What is the composition and the role of the Constitutional Commission?

The Constitutional Commission consists of a Chairman and two other members appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition, at least one member must be an experienced lawyer.

The Constitutional Commission is responsible for –

- a. advising the Government on questions concerning constitutional status and development in the Cayman Islands;
- b. publishing reports, discussion papers, information papers, and other documents on constitutional matters affecting the Cayman Islands;
- c. promoting understanding and awareness of the Constitution and its values; and
- d. exercising any other functions that may be prescribed by a law.

In the exercise of their functions, the Constitutional Commission and its members shall not be subject to the direction or control of any other person or authority.

What are the Advisory District Councils?

A law enacted by the Legislature shall provide for the establishment, functions and jurisdiction of the Advisory District Councils. These district councils operate as advisory bodies to the elected MLAs.

How is the Complaints Commissioner appointed?

The Complaints Commissioner is appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition but no person should be appointed if he or she is or has been within the preceding three years an elected member of the Legislative Assembly or the holder of any office in any political party.

A law enacted by the Legislature makes provision for the office, functions and jurisdiction of the Complaints Commissioner. In the exercise of his or her functions, the Complaints Commissioner shall not be subject to the direction or control of any other person or authority.

What is Freedom of Information?

The Constitution mandates that the Legislature is required to pass legislation that provides for a right of access to information held by public authorities. This law also has to provide for the conditions for the exercise of that right, and for restrictions and exceptions to that right in the interests of the security of the Cayman Islands or the United Kingdom, public safety, public order, public morality or the rights or interests of individuals.

Disclaimer

These materials are for informational purposes only and do not constitute legal advice. These materials are intended, but not promised or guaranteed to be current, complete, or up-to-date and should in no way be taken as a replacement for referring to the Constitution itself.