

2019 No. 0000

CARIBBEAN AND NORTH ATLANTIC TERRITORIES

The Cayman Islands Constitution (Amendment) Order 2019

Made - - - - - ***

Laid before Parliament ***

Coming into force in accordance with article 1(3)

At the Court at Buckingham Palace, the *** day of ***

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by sections 5 and 7 of the West Indies Act 1962(a) and of all other powers enabling Her to do so, is pleased, by and with the advice of Her Privy Council, to order, and it is ordered, as follows:

Citation, construction and commencement

- 1.—(1) This Order may be cited as the Cayman Islands Constitution (Amendment) Order 2019.
- (2) The Cayman Islands Constitution Order 2009(b) and this Order shall be construed together as one and may be cited together as the Cayman Islands Constitution Orders 2009 to 2019.
- (3) This Order comes into force on such day as the Governor, acting in his or her discretion, may appoint by proclamation published in a Government Notice.

Interpretation

2. In this Order, “the Constitution” means the Constitution set out in Schedule 2 to the Cayman Islands Constitution Order 2009.

Change of name of Legislative Assembly

- 3.—(1) The Constitution is amended by substituting for the words “Legislative Assembly” and “Assembly”, wherever they occur, the word “Parliament”.
- (2) In any law in force in the Cayman Islands, any reference to the Legislative Assembly shall be construed as a reference to the Parliament.

(a) 1962 c. 19.

(b) S.I. 2009/1379, as amended by S.I. 2016/780.

Amendment of section 32 of the Constitution

4.—(1) Section 32(1) of the Constitution is amended by substituting for the words “subsection (2)” the words “subsections (2), (5) and (6)”.

(2) Section 32(2) of the Constitution is amended by omitting paragraph (c).

(3) Section 32 of the Constitution (exercise of the Governor’s functions) is amended by substituting for subsection (5) the following subsection—

“(5) Before exercising any function with respect to any matter mentioned in section 55(1)(a), (b) or (c), the Governor shall consult the Cabinet but may act against any advice given to him or her by the Cabinet; but the Governor shall not be obliged to consult the Cabinet concerning any function with respect to any matter mentioned in section 55(1)(a), (b) or (c) in any case in which the Governor considers, acting in his or her discretion—

- (a) it is in the public interest that he or she should act without consulting the Cabinet;
- (b) the matters to be decided are too trivial to require the advice of the Cabinet; or
- (c) the matters to be decided are too urgent to admit the Governor obtaining the advice of the Cabinet by the time within which it may be necessary for the Governor to act.

(6) The Governor shall not be obliged to consult the Cabinet with respect to any matter mentioned in section 55(1)(d).

(7) When the Governor acts in accordance with subsection 5(c), he or she shall, as soon as reasonably practicable thereafter, inform the Cabinet.”.

Amendment of section 44 of the Constitution

5.—(1) Section 44(1) of the Constitution is amended in paragraph (b) by substituting for the word “six” the word “seven”.

(2) Section 44(2) of the Constitution is amended by inserting the words “plus one” after the word “two-fifths”.

(3) Section 44 of the Constitution (the Cabinet) is amended by adding the following new subsection after subsection (4)—

“(5) For the avoidance of doubt it is declared, subject to this Constitution, that the Cabinet possesses autonomous and exclusive capacity in domestic affairs for any matter that is not one of the following—

- (a) a special responsibility of the Governor under section 55(1);
- (b) a function which the Governor must exercise under this Constitution or any other law in his or her discretion or judgement or in accordance with instructions from Her Majesty through a Secretary of State; or
- (c) a function which the Governor is empowered or directed, either expressly or by necessary implication, to exercise without consulting with the Cabinet or to exercise on the recommendation or advice of, or after consultation with, any person or authority other than the Cabinet.”.

Amendment of section 48 of the Constitution

6. Section 48 of the Constitution (Cabinet Secretary) is amended by the addition of the following new subsection after subsection (4)—

“(5) The functions conferred on the Cabinet Secretary by subsection (4) may be exercised by the Cabinet Secretary in person or by officers subordinate to him or her acting under and in accordance with his or her general or special instructions.”.

Insertion of a new section 54A in the Constitution

7. The following new section is inserted in the Constitution after section 54—

“Parliamentary Secretaries

54A.—(1) The Governor, acting in accordance with the advice of the Premier, may appoint by instrument under the public seal one or more Parliamentary Secretaries from among the elected members of the Parliament, to provide assistance to the Ministers.

(2) A Parliamentary Secretary shall be subject to the directions of the Minister concerned.

(3) A Parliamentary Secretary shall vacate his or her office if—

- (a) he or she resigns it by writing under his or her hand addressed to and received by the Governor;
- (b) he or she ceases to be a member of the Parliament for any reason other than its dissolution;
- (c) he or she is required by section 64(1) to cease to perform his or her functions as a member of the Parliament;
- (d) he or she is not an elected member of the Parliament when it first meets after a general election;
- (e) the Premier vacates his or her office; or
- (f) his or her appointment is revoked by the Governor, acting in accordance with the advice of the Premier, by instrument under the public seal.”.

Amendment of section 58 of the Constitution

8. Section 58 of the Constitution (National Security Council) is amended in subsection (4) by substituting for the words “he or she considers” the words “the Governor is instructed by a Secretary of State”.

Insertion of new sections 58A and 58B in the Constitution

9. The following new sections are inserted in the Constitution after section 58—

“Police Service Commission

58A.—(1) There shall be in and for the Cayman Islands a Police Service Commission, which shall consist of—

- (a) the Governor as Chair;
- (b) three members, experienced in matters of the police, law enforcement, the criminal law or other matters related to national security, two of whom shall be appointed in writing by the Governor acting in accordance with the advice of the Premier and the other in accordance with the advice of the Leader of the Opposition; and
- (c) two members with qualifications described in paragraph (b), appointed in writing by the Governor acting after consultation with the Premier and the Leader of the Opposition.

(2) No person shall be qualified to be appointed as a member of the Police Service Commission if he or she is a member of, or a candidate for election to, the Parliament.

(3) The office of a member of the Police Service Commission (other than the Governor) shall become vacant—

- (a) at the expiration of five years from the date of his or her appointment or such earlier time as may be specified in the instrument by which he or she was appointed;
- (b) if he or she resigns office by writing under his or her hand addressed to and received by the Governor;
- (c) if he or she becomes a member of, or a candidate for election to, the Parliament; or

(d) if the Governor, acting in his or her discretion, directs that he or she shall be removed from office for inability to discharge the functions of that office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(4) If the office of a member of the Police Service Commission (other than the Governor) is vacant or a member is for any reason unable to perform the functions of his or her office, the Governor, acting in the manner prescribed by subsection (1) for the appointment of that member, may appoint a person who is qualified for appointment as a member of the Commission to act as a member of the Commission, and any person so appointed shall, subject to subsection (3), continue so to act until he or she is notified by the Governor, acting in his or her discretion, that the circumstances giving rise to the appointment have ceased to exist.

(5) No business shall be transacted at any meeting of the Police Service Commission if there are less than four members of the Commission (apart from the Governor) present.

(6) Any question proposed for decision at any meeting of the Police Service Commission shall be determined by a majority of the votes of the members present and voting; and if on any question the votes are equally divided the Chair shall have and exercise a casting vote.

(7) The Police Service Commission shall be served by a secretariat, the members of which shall be public officers.

(8) Subject to this Constitution, in the exercise of its functions the Police Service Commission shall not be subject to the direction or control of any other person or authority.

Power to appoint, etc, to offices in the Police Force

58B.—(1) Power to make appointments to offices in the Police Force and to remove and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Governor, acting in accordance with the advice of the Police Service Commission; but the Governor, acting in his or her discretion, may act otherwise than in accordance with that advice if he or she determines that compliance with that advice would prejudice Her Majesty's service.

(2) Where the Police Service Commission advises that any person should be appointed to an office in the Police Force of a rank superior to Chief Inspector, that advice shall require the approval of the National Security Council before being submitted to the Governor; but the Governor, acting in his or her discretion, may act without the approval of the National Security Council if he or she determines that to do otherwise would prejudice Her Majesty's service.

(3) Before exercising the powers vested in the Governor by subsection (1), the Governor may, acting in his or her discretion, refer the advice of the Police Service Commission back to the Commission for reconsideration by it.

(4) The Governor may make the referral described in subsection (3) only once.

(5) If the Police Service Commission, having reconsidered its original advice under subsection (3), substitutes for it different advice, subsection (3) shall apply to that different advice as it applies to the original advice.

(6) The Governor, acting after consultation with the Police Service Commission, may, by regulations published in a Government Notice, delegate to any member of the Commission or any public officer or class of public officer, to such extent and subject to such conditions as may be prescribed in the regulations, any of the powers vested in the Governor to make appointments to offices in the Police Force and to remove or exercise disciplinary control over persons holding or acting in such offices; and except in so far as regulations made under this subsection otherwise provide, any power delegated by such regulations may be exercised by any person to whom it is delegated without reference to the Police Service Commission.

(7) No member of the Police Service Commission shall participate in any proceedings of the Commission which affect him or her personally.”

Amendment of section 71 of the Constitution

10. Section 71 of the Constitution (Standing Orders and committees) is amended in subsection (1) by omitting the punctuation and words “; but no such Standing Orders or amendment or revocation of them shall have effect unless they have been approved by the Governor”.

Amendment of section 77 of the Constitution

11.—(1) Section 77 of the Constitution (introduction of Bills) is amended by substituting for subsection (2) the following subsection—

“(2) Every Bill shall be published in a Government Notice, and the Parliament shall not proceed upon any Bill until the expiration of 28 days after the date on which the Bill was so published, unless the Premier certifies by writing under his or her hand that consideration of the Bill is too urgent to permit such a delay.”.

(2) Section 77 of the Constitution is amended by the addition of the following new subsection after subsection (3)—

“(4) Except with the consent of the Governor, acting in his or her discretion, signified by the Premier, the Parliament shall not proceed upon any Bill (including any amendment to a Bill) that, in the opinion of the Governor, acting in his or her discretion, signified as aforesaid, concerns a matter for which the Governor is responsible under section 55(1) or a matter that by law is the responsibility of the Governor. In the event of a dispute concerning whether a matter falls within the scope of section 55(1), the Premier may refer the question to a Secretary of State, whose decision on the matter shall be final.”.

Revocation of section 80 of the Constitution

12. Section 80 of the Constitution (disallowance of laws) is revoked.

Amendment of section 81 of the Constitution

13. Section 81 of the Constitution (Governor’s reserved power) is revoked and replaced by the following section—

“Governor’s right to address the Parliament

81. 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 section 55(1), but after consultation with the Premier it appears to the Governor that the Cabinet is unwilling to support the introduction into the Parliament of a Bill for that purpose or that the Parliament is unlikely to pass a Bill introduced into it for that purpose, the Governor shall be entitled, with the prior approval of a Secretary of State, to address the Parliament.”.

Amendment of section 124 of the Constitution

14. Section 124 of the Constitution (interpretation) is amended—

(a) in subsection (1) by omitting the words ““Assembly” means the Legislative Assembly”;

(b) by substituting for subsection (2)(a) the following—

“(a) references to the office of Speaker, Deputy Speaker or elected member of the Parliament, Premier, Deputy Premier or other Minister, Parliamentary Secretary, Leader of the Opposition or Deputy Leader of the Opposition;”;

(c) by substituting for subsection (2)(c) the following—

“(c) references to a member of the Judicial and Legal Services Commission, the Human Rights Commission, the Commission for Standards in Public Life, the Constitutional Commission, the Police Service Commission, the National Security

Council, an Advisory District Council, an Electoral Boundary Commission, or the Advisory Committee on the Prerogative of Mercy, or to the Complaints Commissioner;”.

Insertion of new section 126 in the Constitution

15. The following new section is inserted in the Constitution after section 125—

“Notification of proposed Acts of Parliament extending to the Cayman Islands or Orders in Council extending such Acts of Parliament to the Cayman Islands

126.—(1) Where it is proposed that—

- (a) any provision of a draft Act of the Parliament of the United Kingdom should apply directly to the Cayman Islands, or
- (b) an Order in Council should be made extending to the Cayman Islands any provision of an Act of Parliament of the United Kingdom,

the proposal shall normally be brought by a Secretary of State to the attention of the Premier so that the Cayman Islands Cabinet may signify its view on it.

(2) This section does not affect the power of the Parliament of the United Kingdom to make laws for the Cayman Islands or the power of Her Majesty to make an Order in Council extending to the Cayman Islands any provision of an Act of Parliament of the United Kingdom.”.

Richard Tilbrook
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes several amendments to the Constitution of the Cayman Islands. In particular, it changes the name of the Legislative Assembly to the Parliament, it abolishes the power of disallowance and introduces instead some pre-legislative controls, it replaces the Governor’s reserved legislative power with a right for the Governor to address the Parliament of the Cayman Islands in defined circumstances, and it makes clearer that the Cayman Islands Cabinet has autonomous capacity with respect to domestic affairs. It also changes the circumstances in which the Governor must consult the Cabinet, and provides for Parliamentary Secretaries and a Police Service Commission. It provides an obligation for the Secretary of State to notify the Premier of proposed Acts of the United Kingdom Parliament that would extend directly to the Cayman Islands or Orders in Council extending any provisions of an Act of the United Kingdom Parliament to the Cayman Islands.