

## Constitutional changes: UK withdraws Section 81 removal

*Premier: 'I'm very disappointed'*

By **Reshma Ragoonath** - September 18, 2020

The UK will not be removing Section 81 of the Constitution, but has approved a mandatory provision to consult local leaders before making legislative decisions that may directly affect the Cayman Islands.

Section 81 gives the governor of the Cayman Islands the power to enact legislation with the approval of a UK Secretary of State.

Premier Alden McLaughlin **made the announcement** Friday as he addressed a COVID-19 briefing.

The retention of the provision follows the rejection by legislators in a July vote of the Domestic Partnership Bill, which aimed to provide a legal status for same-sex unions in Cayman.

McLaughlin said at the briefing, “I am a pragmatist and so I have come to accept that Section 81 will now remain in the Constitution, but I will always regret the opportunity that we as legislators and as a country have lost. Hopefully, some future government will be able to achieve what we came so close to doing.”

While McLaughlin said he was “very disappointed” with the change in position by the UK, McLaughlin said his relationship with the UK government and Overseas Territories Minister Baroness Sugg remains “as good as it has ever been”.

It was through Section 81 that Governor Martyn Roper was able to enact the Domestic Partnership Law, which was renamed the Civil Partnership Law, and amend 11 accompanying pieces of legislation to bring it in line with legal framework formalising same-sex relationships.

The bill failed in the Legislative Assembly when Ministers Dwayne Seymour and Juliana O’Connor-Connolly voted with the Opposition to shoot down the proposed bill. Government backbencher Captain Eugene Ebanks also voted against the bill.

McLaughlin said that Sugg issued a copy of the draft Order in Council and in her letter she noted that the decision not to remove the section “was because the governor has had to use Section 81 recently to uphold the rule of law following the failure of the Legislative Assembly to approve the Domestic Partnership Bill”.

Roper said at the briefing that the legislators’ rejection of the civil partnership legislation “unfortunately demonstrated the need for the UK government to retain this element of the constitution at the present time”.

The premier said he had no regrets in allowing a conscience vote on the bill which freed members of his government to vote against the proposed law, even though, as a consequence, Section 81 will remain.

“It was quite proper to allow a conscience vote on the matter such as that but, in practical terms, had I not done that, I probably wouldn’t be sitting here as premier this afternoon... it would’ve probably brought the government down,” he said in response to questions from the media.

Seymour also maintained his position on the bill, saying he did not regret his vote. He added that the premier was aware of his ministers’ positions and the conscience vote was “the right thing to do”.

Both McLaughlin and Seymour maintained the government remains a cohesive unit, despite Section 81 not being removed and the different stances on same-sex relationships.

“There is no doubt that the whole issue has created major strain... The same strain you see reflected in and played out in the broader community is the same strain within the caucus and the Cabinet,” McLaughlin said, but added, “There is no danger of the Cabinet or the government collapsing as a result of this.”

Government, he said, continues to function.

“There are some strains and, once you go through these sorts of things, it takes a while sometimes for the healing process to work, but it generally does,” he said.

For his part, Seymour added, there was no need for worry about any disruptions in government or “early elections”.

“Everything is moving smoothly,” he said. “Everyone’s doing their job, everyone is taking on their responsibility. The premier is still our commander and we still have our admiration and respect for the premier.”

### **What were the changes and next steps**

Now that the changes have been approved, the draft Order in Council will be sent “shortly” to the Foreign Affairs Committee for 28 days and then to the Privy Council, the premier explained.

While the committee has been vocal on other key changes it would like to see in Overseas Territories, such on belongingship or voting rights, McLaughlin said he does not anticipate there will be issues for Cayman, adding that there may still be “tweaks”.

“There [were] major concerns around the issue around same-sex relationships or partnerships which the FAC had raised over and over again and was seen by the UK government to be a major stumbling block,” he said, noting that the issue, “some may say unhappily, has now been resolved”.

However, McLaughlin hastened to add that in politics “you never know, when it’s done, it will be done and not before that can we start to celebrate”.

He said Cayman should now focus on what is still a very important and useful set of reforms, including the mandatory requirement for the UK to consult with the premier on any legislation or Orders in Council that may directly affect the Cayman Islands and that Cabinet can offer its view on the legislation or order.

“What this does for the first time is to put into the Cayman Islands Constitution a provision that appears in no other constitution of any Overseas Territory – a mandatory provision that, before the UK Government or the Parliament may legislate for us, that at a minimum they must consult with the Premier and the Cabinet has to signify its view on the proposal,” he said in his statement about the changes.

McLaughlin continued that the provision “buys not only time but the opportunity for broader consultation across Whitehall and Westminster in the UK”, adding, “So that we don’t wind up with situations where the UK Parliament, simply on a whim, can amend legislation that is progressing through the House of Commons and that has the effect of intervening in areas of domestic policy by legislating for us.”

#### Some of the changes:

- Mandatory consultation on laws directly affecting the Cayman Islands
- Removal of the governor’s power to write Standing Orders for the Legislative Assembly
- Renaming the Legislative Assembly as Parliament
- Addition of an eighth minister (deferred until the next election)
- Creation of Parliamentary Secretaries
- Creation of a Police Service Commission

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