

## **The Governor's statement on Constitution Review**

The following statement concerning the Constitutional Review was issued by HE the Governor, Mr. Peter J. Smith, CBE.

A review will commence shortly of the constitutional framework within which a renewed and modernised partnership should operate between Cayman and the UK. The review will be based on recognition of mutual responsibilities and obligations and will be completed following extensive public consultation and debate within a **nine-month period** following the commencement.

A Constitutional Review Commission will be formed to carry out the review process and will consist of three people, two of whom, including the Chairman, will be Caymanian, and one of whom but not necessarily the Chairman, will be a lawyer. The public is invited to submit recommendations for individual members of the Commission to my office, either officially or in private, before close of play on Friday **23 March 2001**.

The review is well timed. The present Constitution of the Cayman Islands dates from 1972 and there has been a series of interim amendments in the intervening 29-year period. A draft revised Constitution was produced in 1992 but never promulgated.

Furthermore, there has been considerable social and economic development and change in the Cayman Islands since 1972, as well as a substantial change in the international climate on, for example, human rights issues generally. In addition the UK is now a full member of the European Community with its additional attendant responsibilities.

Constitutional review is being carried out in many of the Overseas Territories in line with the spirit of the White Paper. In order to assist that review process and to see if any changes are needed, a Constitutional Modernisation Checklist has been drawn up. This gives an indication of the standards which Overseas Territories should seek to achieve, the obligations which they should strive to meet, and the expectations of HMG in key areas of modernisation. In the interests of transparency and open debate, I am attaching the 18-point checklist, which is not meant to be exhaustive.

I would hope to be in a position to give details of the Review Commission in a Proclamation in the first few days of April.

### **CONSTITUTIONAL MODERNISATION CHECKLIST**

1. The proposals should be consistent with the UK's international and treaty obligations.
2. The proposals should promote more open, transparent and accountable government, and contribute to the fair and equitable exercise of power and delivery of public services.
3. Consideration should be given to improvements to the operation and composition of the legislature and the promotion of democratic process.
4. The role of Executive Council and the exercise of collective responsibility by the Ministers and Members of ExCo for government policy and decisions should be explained and endorsed within the constitution.
5. Proposals for change should encourage respect for the rule of law, the constitution and

high standards in public life, incorporating reference to Codes of Conduct for Elected Representatives and officials.

6. Proposals should promote representative and participative government and help enable all sectors of the community to influence government policy and practice. They should indicate whether reforms are necessary to constituency boundaries, the electoral system and the franchise.
7. Proposals should help to support efforts to tackle and control international and domestic crime and corruption.
8. Proposals should be consistent with the preservation and enhancement of the reputation of any international financial services industry for honest administration and probity, and should ensure the removal of any impediments to the efficient regulation of financial sectors including the exchange of information.
9. Consideration should be given as to whether proposed constitutional changes are consistent with the requirement to establish Independent Regulatory Authorities in territories with financial services.
10. Proposals should promote freedom of expression, opinion and association and the right to information, including improvements necessary for their delivery.
11. Proposals should help to ensure high standards of justice and law enforcement and strengthen the delivery of an access to judicial services.
12. Modern international standards of respect for human rights should be adopted consistent with the provisions of the European Convention on Human Rights (ECHR) enshrined in the Human Rights Act and other relevant International Conventions. There should be a machinery for the enforcement of these rights.
13. Proposals should help to improve procedures for the administration and prudent management of government finance, including adequate independent audit.
14. As sovereign power with ultimate responsibility for the United Kingdom Overseas Territories, HMG should have the powers necessary to discharge its responsibilities towards them, to implement the UK's international obligations and to minimise the risk of contingent liabilities.
15. Consideration should be given to whether the executive or legislative powers held and exercised by the Governor are adequate in respect of:-
  - (a) his responsibilities under the constitution;
  - (b) the authorisation of expenditure required to enable him to discharge his responsibilities;
  - (c) finance;
  - (d) good government;
  - (e) periods of public emergency;
  - (f) public order;
  - (g) the passing or amendment of legislation, including the use of "a one line veto";
  - (h) appointments to public offices; and
  - (i) where relevant, oversight of offshore financial industries.

16. Does the constitution provide for a Register of Interests of all members of the Legislature/Executive Councils and holders of prescribed public office? Can sanctions be imposed for failure to comply? If not, should appropriate measures be included?
17. Does the constitution make provision for a Complaints Commissioner (Ombudsman) for individual complaints on mal-administration? If not, should there be provision?
18. Do the changes suggested by the OT government have the support of the majority of the population? What is the evidence for such support? Has there been extensive local consultation (with or without the assistance of a Constitutional Commissioner or Commission) followed by a debate in the legislature in which the suggested changes have been approved by motion.