

Understanding Your Constitution

Part II The Governor

The Draft 2009 Cayman Islands Constitution has received agreement and consensus by the United Kingdom Government and the Cayman Islands Constitutional Delegation. Part of draft constitution relates to the Governor and his or her responsibilities.



THE GOVERNOR

Part II of the Draft 2009 Cayman Islands Constitution deals with the establishment of the Governor's office, the Deputy Governor's office, some of the roles and functions of those offices and how the Governor's salary is paid. Many of the responsibilities of the Governor under Part II can be linked to different sections of the present Constitution, especially in regards to the Executive branch of the Government, and therefore a major reason for the modernization was to create more continuity and simplicity.

Like the 1972 Constitution the Governor is still officially appointed by Her Majesty the Queen and is Her Majesty's representative in the Cayman Islands. The Governor's salary is determined by a Secretary of State and is paid out of the revenue of the Cayman Islands. The Draft 2009 Cayman Islands Constitution calls on the Governor, while exercising his or her functions, to promote good governance and to act in the best interests of the Cayman Islands as long as they do not run counter to the interests of the United Kingdom.

THE GOVERNOR AND CABINET

The Governor is not required to consult with Cabinet while performing any function which --

- he or she is authorized to perform in his or her discretion;
- he or she is deliberately authorized to perform without consulting Cabinet; and
- is related to his or her special responsibilities, other than external affairs.

However the Governor is required to keep the Cabinet informed on all matters that he or she is responsible for that involve the economic or financial interests of the Cayman Islands.

In matters where the Governor is required to consult with Cabinet he or she is required to follow the advice given by the Cabinet, unless the Governor is instructed by Her Majesty to not do so, or if the Governor decides that following the advice would negatively affect any of his or her special responsibilities.

DEPUTY GOVERNOR

One of the new features of the Draft 2009 Cayman Islands Constitution would be the establishment of the post of Deputy Governor. This post can already be found in most of the other Overseas Territories including the British Virgin Islands and Bermuda. Like the Governor, Her Majesty would make the appointments to the post of Deputy Governor, however the person who is appointed as Deputy Governor would have to be a Caymanian and be selected from among persons who hold or held a senior position in the public service.

The Deputy Governor would replace the Chief Secretary as the head of the civil service and would also be responsible for carrying out any other functions that may be delegated to him or her by the Governor. The Deputy Governor is also first in line to act as Governor whenever the Governor is unable to perform the functions of his or her office. If the Deputy Governor is unable to act as Governor, Her Majesty can designate any public officer who is Caymanian, to act as Governor.

GOVERNOR'S POWERS OF PARDON AND THE ADVISORY COMMITTEE ON THE PREROGATIVE OF MERCY

The Governor would retain his or her powers of pardon that were present in the 1972 Constitution; these powers are found in the Miscellaneous section of the 1972 Constitution. However the Governor is now required to consult an advisory body before using his or her powers of pardon. These powers give the Governor the authority to -

- fully or conditionally pardon a person that has been convicted of a crime;
- grant a break, of a specified or unspecified period of time, in the convict's sentence;
- substitute a less severe form of punishment;
- cancel or reduce a debt that the court has ordered a convicted person to pay.

The body that the Governor would consult in making these decisions is the Advisory Committee on the Prerogative of Mercy, which is another new feature of the Draft 2009 Cayman Islands Constitution. The Committee would comprise the Attorney General, the Chief Medical Officer and four other members who are appointed by the Governor after consultation with the Premier and the Leader of the Opposition (each party leader nominates two of those members). The Governor would be the presiding member at meetings of this Committee.

The Committee is responsible for advising the Governor on whether or not he or she should use his or her powers of pardon, but because the Committee only has an advisory role, the Governor is not required to follow that advice and would still make the final decision in his or her discretion.

