



Statement on Constitutional Reform Agreed by the UK

By Premier Hon. Alden McLaughlin, MBE, JP, MLA

13 November, 2019

Good morning.

Mr. Speaker, before concluding my Budget Policy Statement last Wednesday I informed this Honourable House that I had been awaiting a letter from Lord Ahmad of Wimbledon, the Minister of State for the Overseas Territories on the final package of Constitutional modernisation changes that were approved by Her Majesty's Government. I promised that when I got that letter I would advise this Honourable House and the public.

The letter indeed arrived on Monday Mr. Speaker and with your permission I would like to read it to this Honourable House and thereafter lay it and the accompanying draft Order in Council on the table of this Honourable House.

Mr. Speaker, the letter is addressed to me dated 10 November, 2019. It reads:

Dear Alden

Constitutional Reform

I am writing to provide an update on plans to reform the Cayman Islands Constitution. I am pleased to confirm that I have been able to secure agreement within the United Kingdom Government to a final package of proposals that accepts the majority of your suggestions (Order in Council at Annex A). Of your counter proposals, we have been able to accept your request for a provision in the Constitution that the United Kingdom will consult the Cayman Islands on any legislation affecting them and a narrower definition of the Governor's duty to consult Cabinet. I am sure that you will agree that this is a positive development, not just for the future relationship between the United Kingdom and the Cayman Islands, but also for the future governance of the Cayman Islands.

I have welcomed the fact that our bilateral discussions to date have included representatives from both the Government and Opposition in the Cayman Islands. As you know, the next step in agreeing this package is to obtain the broadest possible cross Party and public support for these reforms. Generally, the policy of the UK Government has been to require a referendum, unless the reforms are declared by the Premier and Leader of the Opposition to be minor or uncontroversial. However, I would also note that the UK Government's position on this matter is reserved, as there may be circumstances where a referendum may not be possible or appropriate.

Therefore, I would be grateful if you could outline how you intend to seek the broadest possible support for the reforms to the Constitution, both within the Legislative Assembly and the wider public. If the decision was not to hold a referendum, it would be helpful if you could explain the case for not doing so.

I would be grateful for your views on the final package of constitutional reform proposals. Subject to the points made above, if you agree to the package the Foreign Affairs Committee will be notified and the draft Order in Council will be sent to the Privy Council for the order to be made.

You will have also seen that a General Election has now been called and under the rules of Purdah, I will not be able to make any new decisions that bind any future Government.

Yours Sincerely,

Lord (Tariq) Ahmad of Wimbledon

Minister of State for the Commonwealth and the United Nations

Prime Minister's Special Representative for Preventing Sexual Violence in Conflict

And Mr. Speaker that letter as indicated attaches a draft Order in Council, which sets out the changes that the UK Government is prepared to make to the current Constitution.

Mr. Speaker, I think it will be helpful to all honourable members and to the broader public if I spend a little time explaining what those changes are.

Mr. Speaker, members will remember, I am sure, that what gave the impetus to the most recent attempts by us, not just the Government but the Opposition as well, to have some amendments made to the Constitution was what we termed as the over-reaching by the UK Parliament when the Sanctions and Anti-Money Laundering Bill was proceeding through its stages in the UK Parliament. In the end there was success in attaching a certain amendment to that bill, which had the effect of legislating for the Cayman Islands in the area of financial services.

Mr. Speaker, I think we were all justifiably outraged at this over-reach and effectively the UK Parliament intervening in a matter, which is currently the devolved responsibility of this Legislature and the Government.

And so Mr. Speaker, we opened discussions with the UK Government to talk about ways in which our Constitution could be strengthened to discourage that sort of intervention. We are not just exposed to matters in respect of financial services but also in relation to any number of matters including one that is currently on the table, the issue around the definition of marriage.

You can sit down and think through a whole range of issues that the UK Parliament, if it were so inclined, without any changes to our Constitution would be able to and perhaps be inclined depending on the complexion the new government takes on to do.

So Mr. Speaker, one of the most important bits we believe that is required is to have a provision in the Constitution, which although acknowledging that ultimately the UK does have the power to legislate for us would put some parameters around when that was done and how that was done and what process would have to be followed before it could be done.

Mr. Speaker, Section 125 of the current Constitution reserves unto Her Majesty the power to legislate for peace, order and good government of the territory; a provision that is common through almost all of the Overseas Territories' constitutions.

We sought the Leader of the Opposition at the time and the Deputy Leader of the Opposition who is still the Deputy Leader of the Opposition as part of a delegation made up of myself, the ministers for Financial Services and Commerce and the Attorney General and Sir Jeffrey Jowell.

We sought to find ways to circumscribe that provision. It was a very hard fought battle. The UK did not concede on this point until very recently with this letter we've just received. And I think it is the most important concession of all and there are a number of other important ones. While it comes at the very end, I want to talk about it first because I think it is so important.

What the UK has now agreed to is to insert a new section 126, which doesn't exist in the current Constitution, which would read as follows:

“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.”

What it does for the first time is, if we agree to it, to put into the Cayman Islands Constitution a provision that appears in no other constitution of any other Overseas Territory; a mandatory provision that before the UK Government or the Parliament may legislate for us that at a minimum they have to consult with the Premier and the Cabinet has to signify its view on the proposal.

This Mr. Speaker buys not only time, but the opportunity for broader consultation across Whitehall and Westminster in the UK so that we don't wind up with situations as have occurred most recently where Parliament, simply on a whim, amends legislation that is progressing through the House and effectively intervenes in areas of domestic policy in the Cayman Islands by legislating for us. It is an incredible concession and frankly we would be fools if we were to look this gift horse in the mouth and say this is not something that would be good for the Cayman Islands.

Mr. Speaker, along with that and in the same vein, is that the UK has agreed to the following provision being added to our Constitution in Section 44 to again make plain that the responsibility for the creation of domestic policy is a matter squarely for the Government of the Cayman Islands and not for the UK.

So Mr. Speaker, it is proposed that Section 44 of the Constitution, which deals with the Cabinet, be amended by adding the following subsection:

“(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.”.

This is something we have borrowed from the states of Jersey. We have known over the many years that the Crown Dependencies are treated differently in almost every respect when it comes to constitutional matters than the Overseas Territories and so we felt that to get a provision similar to what they have in their constitution in our Constitution will give us some increased insulation from intervention by the UK Parliament and indeed the government in areas, which are indeed devolved responsibilities of the local government.

Mr. Speaker, the UK has also agreed that they will remove the Governor's right to disallow legislation passed by this Honourable House. That is a massive concession.

If we truly are to be a mature democracy, what we decide in this Honourable House as legislation ought to be the legislation subject of course to it being constitutional because it's always subject to challenge in the courts if it is unconstitutional.

But for the UK to concede that their appointed Governor would give up the right, which they currently have, to disallow legislation passed by this Parliament is I think a clear indication of the degree of maturity at which the UK is satisfied these Islands currently enjoy in terms of its Government and its Legislature.

There is another provision, which many members are not aware of. That is the power in the Constitution for the Governor all by him or herself to legislate for this jurisdiction in areas of the Governor's special responsibility. There is on the cards right now the ability of the Governor, if this parliament does not act in the way that the UK thinks we ought to act, to effectively legislate with respect to the definition of marriage. There is implicit, in what the UK has said, that clear warning that if this Legislature does not act, they will. They can do so in two ways: one, the Governor can legislate directly for us under the current constitutional provisions or they can act by Order in Council.

The first is a fairly simple exercise and can happen very swiftly. The other is a much more complex exercise. But in this deal we have negotiated, the UK has agreed to remove the power for the Governor to legislate unilaterally for this territory. Now I don't know how other members of this House may feel, but we all battle through the political

campaigns for the right to represent our people and to make those decisions with respect to legislation.

Mr. Speaker I have always bristled at the prospect of a UK governor having the ability in one fell swoop, by one stroke of the pen, to legislate for my country.

We would be fools in this House and we ought to be tarred and feathered if we, having negotiated this, allow this opportunity to pass to remedy that situation.

Those are the key and important bits that really move Cayman into a whole new dimension politically and constitutionally giving us greater responsibility to control our own destiny. And Mr. Speaker, what caps all of that off is the UK's agreement for this Legislative Assembly's name to be changed to reflect the true standing that we will have in constitutional terms and for this august assembly to be renamed the Parliament of the Cayman Islands and for the members to be called Members of Parliament.

Mr. Speaker, you have been there as often as I have if not more. You know that when you are dealing with international matters; when you are dealing with the UK Government or any other government, they understand intuitively that you as an MLA, a member of the Legislative Assembly, that a legislative assembly is an inferior body in constitutional terms to a parliament.

It is far less likely that the UK Parliament will seek to deal with another parliament in the way they have dealt with this Legislative Assembly in the past.

I hope members are appreciating the significance of the constitutional changes that collectively we can all take credit for; of moving this country to a whole new level where we have greater autonomy, greater responsibility and a greater sense of insulation from international assaults on our right to control our own destiny.

There is also the provision for the creation of a public police service commission, and a number of other changes, but one other truly important one in the same vein is that the UK has agreed to amend Section 71 of the Constitution, which gives to the Governor the power and authority to create standing orders for this House; to remove that responsibility from him and to confer it on the House.

I hope, God willing, to bring to this House early in the New Year the bill finally severing executive authority for this assembly being exercised by the Governor.

We will have an independent legislature in every sense and this assembly, which is populated by people who have been elected by the people of the Cayman Islands; they will have the authority to decide what standing orders govern the proceedings here.

These are important changes to the overall advancement of these Islands. There is one other provision, which I understand is giving some members pause and that is the provision that will increase the number of ministers from 6 to 7 plus the Premier, which makes 8.

I have heard that some members have said that I am trying to do this for myself. We do not have to have an eighth minister during my term. I only have 16 or 17 months here. I have carried this weight for six and a half years and I will carry it to the end if it kills me.

I don't need to have another minister. What I am trying to do, because I carry three big ministries plus the premiership I can't be Premier again nor do I want to, is put in place a system that works best for my beloved country. Those who aspire to this role of Premier and Government ought to welcome these changes with open arms. This Government has 16 months left to run and then there will be another election and the complexion of Government will be different.

These are changes that are good and in some cases critical to the well-being of these Islands and they have been hard fought for and hard won. I lay this letter and this draft order on the table of this Honourable House. I welcome members to debate this as part of the budget and Throne Speech and policy statement debate, which will ensue shortly.

I look forward to what members have to say about it and based on what members say is how I will be guided over the course of the next little while as to how we move this down the road.

I have had clear indications from major players in the financial services Industry, from the Chamber of Commerce and more broadly based on the statement I made on Friday of how welcomed these sorts of advancements will be and how much comfort people will take in knowing that we have greater control of what happens here and less risk of our affairs being interfered with by people who not only have no idea of what truly goes on here but in many cases, sadly, do not mean us well.

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