

EXPLANATORY MEMORANDUM TO
THE ST HELENA, ASCENSION AND TRISTAN DA CUNHA CONSTITUTION
ORDER 2009

2009 No. 1751

1. This explanatory memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

This instrument provides a new Constitution for the British overseas territory of St Helena, Ascension and Tristan da Cunha. As Ascension and Tristan da Cunha will no longer be referred to as Dependencies of St Helena, the instrument also changes the name of the territory from St Helena and Dependencies to St Helena, Ascension and Tristan da Cunha. Although the three islands will continue to share the same Governor, Attorney General and superior courts, the new Constitution provides for distinct governmental arrangements in each of them. The Constitution also introduces for the first time enforceable fundamental rights and freedoms in each island.

3. Matters of special interest to the [Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments]

None

4. Legislative Context

This instrument is being made under the Saint Helena Act 1833, the British Settlements Acts 1887 and 1945 and all other powers enabling Her Majesty. It revokes the St Helena Constitution Order 1988 (S.I. 1988/1842), which sets out the present Constitution of the territory.

5. Territorial Extent and Application

This instrument applies to St Helena, Ascension and Tristan da Cunha only.

6. European Convention on Human Rights

Although this instrument is laid before Parliament, there is no provision for further parliamentary proceedings and no statement is therefore required.

7. Policy background

- *What is being done and why*

This Order is being made to provide more modern constitutional arrangements for St Helena, Ascension and Tristan da Cunha. The present Constitution was made in 1988 and is now in many respects deficient and out of date, in particular by including no

provisions guaranteeing the fundamental rights and freedoms of the individual. The new Constitution will correct these deficiencies and provide for governmental arrangements more suitable to the circumstances of each island. The new Constitution is the result of negotiations with elected representatives of the islands over the past six years.

- ***Consolidation***

In its 1999 White Paper “Partnership for Progress and Prosperity - Britain and the Overseas Territories”, the United Kingdom Government noted that there was great diversity within the Overseas Territories in terms of their size, population, economic developments and other factors, but that there was “a degree of coherence and similarity in the constitutional and institutional arrangements in place for [the Territories’] government and administration”. The United Kingdom Government therefore encouraged individual Territories “to review their own structures and arrangements in line with the idea of a new modern partnership” with the United Kingdom.

8. Consultation outcome

8.1 There has been extensive public consultation on this Order in St Helena, Ascension and Tristan da Cunha, through the publication of successive drafts of the Order and by means of public and workplace meetings and explanations and discussions in the local media. The Order has been debated and approved in the Legislative Council of St Helena and Island Councils of Ascension and Tristan da Cunha, each of which is predominantly composed of elected representatives of local people.

8.2 No public consultation was required in the United Kingdom as this Order forms part of the law of St Helena, Ascension and Tristan da Cunha. The Order was shown in draft to the House of Commons Foreign Affairs Committee in accordance with arrangements made between the Chairman of that Committee and the Foreign Secretary in 2002.

9. Guidance

No guidance is required in the United Kingdom. Explanations of the new Constitution have been published in St Helena, Ascension and Tristan da Cunha.

10. Impact

No impact on business, charities or voluntary bodies in the United Kingdom or the United Kingdom public sector. An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business in the United Kingdom.

12. Monitoring & review

The operation of the new Constitution will be kept under continual review in the coming years.

13. Contact

Susan Dickson at the Foreign and Commonwealth Office, Tel: 020 7008 3317 or email: susan.dickson@fco.gov.uk can answer any queries regarding the instrument.