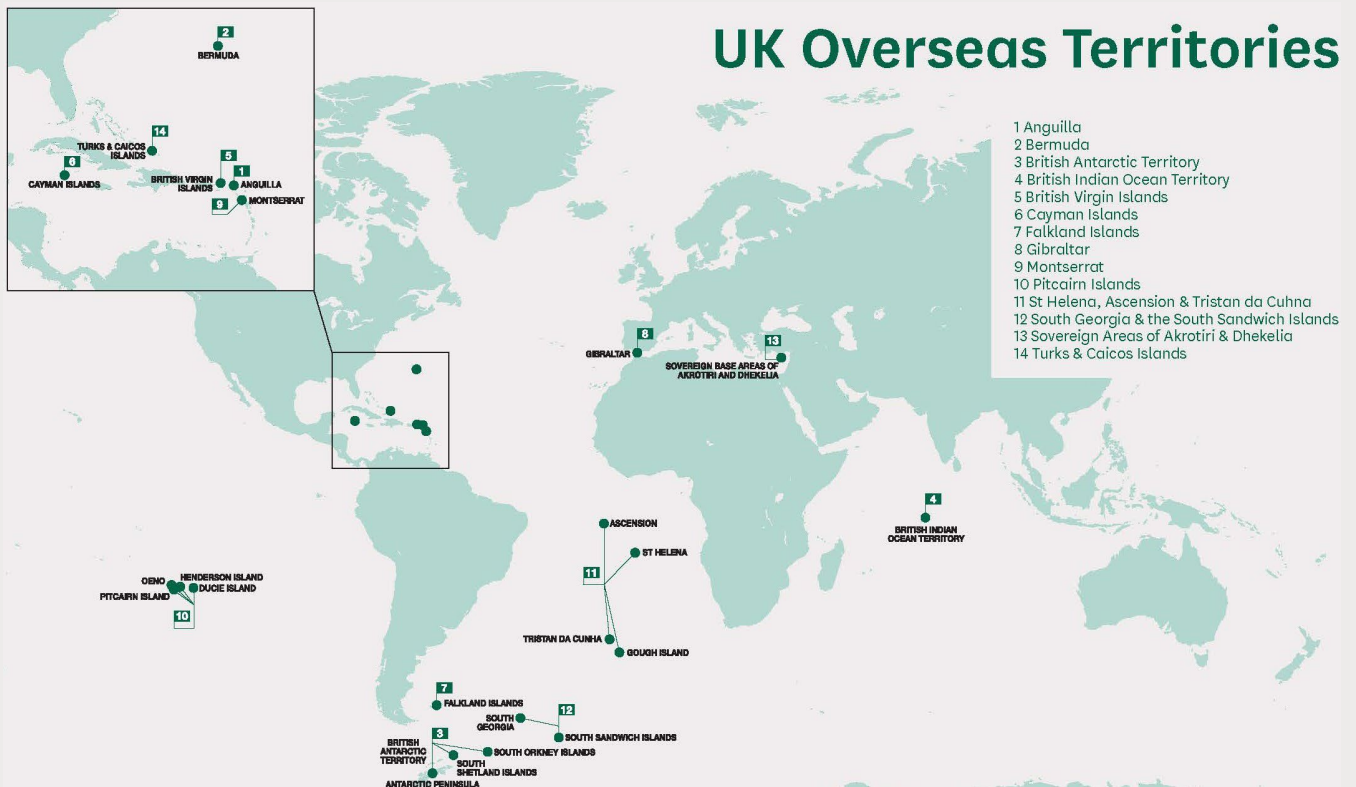


Research Briefing

26 May 2022

By Philip Loft

Direct rule in the British Virgin Islands?



Summary

- 1 Background: The Overseas Territories
- 2 Constitution of the BVI and the UK's powers to intervene
- 3 Commission of Inquiry into alleged corruption
- 4 Political change in the BVI
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- 6 Other recent BVI-UK tensions
- 7 UK direct rule in the Turks and Caicos Islands, 2009-2012

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Summary

In April 2022, the findings of a Commission of Inquiry into alleged corruption and mismanagement in the British Virgin Islands (BVI) was published by the Territory's Governor, John Rankin.

The Commission [said that](#) “almost everywhere” in BVI government the principles of openness, transparency and the rule of law were “ignored.”

The BVI is a UK Overseas Territory. This means the UK retains ultimate responsibility for its good governance and has the power to intervene in its domestic affairs. Among the [Commission's recommendations](#) is for UK direct rule to be imposed for at least two years, with the BVI's local assembly and ministerial government being suspended.

This paper sets out the Inquiry's key findings, the response of UK and BVI officials, and the recent history of tensions between the UK and the BVI.

Commission findings and recommendation to impose UK direct rule

The Commission concluded [governance in the BVI is poor](#). Its 45 recommendations included the dissolution of the locally elected House of Assembly and ministerial government for at least two years.

The UK-appointed Governor, potentially with a local advisory council, would instead oversee reform. The Commission also recommended an audit of public spending, with information potentially referred for criminal and civil proceedings, if deemed appropriate.

When is a decision on direct rule expected?

The UK Government has not made a decision on whether to impose direct rule but has said [significant changes are necessary](#). The Minister for the Overseas Territories, Amanda Milling, who visited the Territory in early May, said reforms “[must happen quickly](#).”

Resignation of Premier Fahie

In April 2022, BVI Premier Andrew Fahie was arrested in the United States on [charges relating to drugs trafficking and money laundering](#). In May, he pleaded not guilty to the charges. Dr Natalio Wheatley is now Premier.

Announcing the publication of the report, the Governor said its contents and recommendations [are not linked to Fahie's arrest](#).

Opposition in the BVI to direct rule

Local politicians and regional organisations have [opposed the recommendation to impose direct rule](#). Premier Wheatley has instead [established a cross-party coalition](#) to lead reform.

He has proposed to the UK Government that BVI politicians [work in partnership with the UK-appointed Governor](#) to implement the necessary reforms. The UK Government has not issued a response to this proposal.

Wheatley has sought to demonstrate the BVI is capable of leading change and pledged to introduce reforms. These include a new Register of Interests Act to require all BVI politicians [to publicly disclose their assets and interests](#).

History of BVI-UK tensions

The Commission's findings occur within the context of recent tensions between the Territory and the UK. These centre on the degree of autonomy the UK allows for the BVI's domestic affairs, especially in the economic sphere.

Financial services are particularly significant to the BVI's economy, and a previous BVI Government had [opposed the extension of beneficial ownership registers to the Territory](#). These registers are intended to promote greater transparency in who owns and controls a company or asset, helping to combat money laundering and corruption.

The BVI Government had also requested [greater flexibility in its ability to borrow and spend its reserves](#) during the Covid-19 pandemic. The UK rejected this request.

In January 2022, the BVI Government [established a committee](#) to examine whether greater powers could be devolved to it. It has recently re-iterated the Territory's [right to self-determination](#).

Direct rule in the Turks and Caicos

The last Territory to be subject to direct rule was the [Turks and Caicos Islands in 2009](#). This followed an uncovering of corruption and poor governance.

The planned [reinstatement of local rule was delayed](#), however, while the UK implemented further legislation to improve the transparency of the Territory's politics and see its public finances achieve a sustainable footing.

A new constitution for the Territory was [agreed in 2011](#) to restore a locally elected government. The UK-appointed Governor retained power over the regulation of financial services. New local elections [were held in 2012](#).

1 Background: The Overseas Territories

The British Virgin Islands (BVI) are one of 14 UK Overseas Territories (OTs). The BVI is situated in the Eastern Caribbean (see the front cover image for the location of the Territories).

With a population of 30,000 the British Virgin Islands is the [fifth-most populous OT](#) (2019 data).¹ The majority of its inhabitants are [British citizens](#).²

The Territories all have historic links to the UK. With the UK and Crown Dependencies like Jersey, they [form one undivided realm](#), where the Queen is sovereign. This means they have no separate representation internationally.³

2 Constitution of the BVI and the UK's powers to intervene

Like other inhabited Territories, the BVI has its own constitution, locally elected legislature (the House of Assembly), and a UK-appointed Governor:

- The Governor is [John Rankin](#) (appointed 2021).⁴
- The **Premier** is Dr Natalio Wheatley (appointed May 2022). He was previously Deputy Premier.⁵
- The **Constitution** is the [Virgin Islands Constitution 2007](#).

Generally, the Governor is responsible for a Territory's defence and other external issues, while local legislatures govern domestic policy.

¹ UN, [World population prospects 2019](#). Unless stated all sources accessed 5 May 2022

² Gov.UK, [Types of British nationality: British OT citizen](#)

³ Foreign & Commonwealth Office, [The OTs: Security, success and sustainability](#), Cm 8374, 2012, p8

⁴ Gov.UK, [Governor to the BVI](#)

⁵ BBC News, [BVI premier Andrew Fahie replaced after drugs arrest](#), 6 May 2022, accessed 26 May 2022

2.1

Overview of the BVI's constitution

Unicameral legislature

The BVI has a single-chamber (unicameral) parliament. Its [House of Assembly](#) consists of 15 members. These include 13 directly elected members, an ex-officio member (the Attorney General) and a Speaker chosen from either within or outside the House.⁶

Ex-officio members are those who hold a position by virtue of holding another office.

Governor's powers

Main responsibilities are external affairs, internal security, police, and defence. The Governor also signs bills into law.⁷

However, with the support of a UK Secretary of State the Governor may reserve their assent to laws if they are considered inconsistent with the BVI's constitution (among other reasons).⁸

In exceptional circumstances, the Governor may also give assent to proposed bills that have failed to pass the local House of Assembly, if the Governor deems it urgent and necessary to meet the Territory's international obligations.⁹

2.2

Why does the UK have the power to intervene?

The BVI's constitution is enacted by the UK through an Order in Council. These are made by the UK Privy Council and are [legal instruments with the force of law](#).

The Privy Council is a forum through which executive decisions made by the UK Government are issued formally in the Queen's name. Some of these decisions, such as Orders in Council, have the force of law in OTs.¹⁰

This situation allows the UK Government to amend and repeal Territory constitutions. This is usually done with the consent of local populations, but

⁶ Government of the Virgin Islands, [House of Assembly](#)

⁷ [The Virgin Islands Constitution Order 2007, SI 2007/1678](#), Sections 60(1) and 79(1)

⁸ As above, Section 79(2)

⁹ As above, Section 81(1)

¹⁰ Privy Council Office, [Orders](#)

the UK reserves the right to intervene in the [name of preserving good governance](#).¹¹

UK Parliamentary scrutiny of OT constitutions

The Commons Foreign Affairs Committee usually receives drafts of the constitutions at least 28 sitting days before they are submitted to Her Majesty in Council. There is no requirement for the Commons or Lords to vote on changes to the BVI's constitution, however.¹²

3 Commission of Inquiry into alleged corruption

3.1 Creation of Commission, 2021

In 2021, the BVI's previous Governor, Gus Jaspert, established a Commission of Inquiry to determine whether corruption and abuse of office had occurred among elected and appointed BVI officials. Sir Gary Hickinbottom, previously a Lord Justice of Appeal, was appointed chair.¹³

The report was presented to the current Governor, John Rankin, with the intention of publishing its findings in June 2022 following consultation with local politicians.

However, due to the arrest of the BVI Premier (see below, section 4.1), he judged it in the public interest to bring forward publication to April 2022.¹⁴

3.2 Findings

The report found widespread instances and allegations of corruption across the public sector in the BVI, and [concluded that](#):

¹¹ Foreign & Commonwealth Office, [The Overseas Territories: Security, success and sustainability](#), 2012, Cm 8374, p119

¹² Foreign Affairs Committee, [Overseas Territories](#), 18 June 2008, HC 147, 2007-08, para 29

¹³ BVI Commission of Inquiry, [Homepage](#)

¹⁴ Government of the BVI, [Statement by His Excellency the Governor John Rankin, Cmg regarding the Commission of Inquiry report](#), 29 April 2022

Almost everywhere the principles of good governance such as openness, transparency and the rule of law are ignored.¹⁵

Sir Gary Hickinbottom judged it “highly likely” that a “substantial number” of elected officials may be involved. As examples, his report cites:

- Possible corruption among a “minority” of police officers and an “environment conducive to corruption” in the customs service.
- The issuing of government building contracts to those without a construction licence. It cites the example of a US\$1 million school wall project, split between 70 contractors, 40 of whom had no licence.
- “Manipulation” of independent public bodies. It raised concerns regarding the decision of the BVI Government from 2019 to reconstitute the membership of all statutory boards.¹⁶

3.3 Recommendations

The report made 45 recommendations. These included four primary recommendations relating to the BVI’s constitution, government, and the Territory’s relationship with the UK:

- **The dissolution of the Islands’ elected Assembly and termination of local ministerial government for two years.** Instead, the Governor, potentially supported by an advisory council, would drive public sector reform and further investigations.
- **A review of the BVI’s constitution** to introduce amendments to protect against the identified abuses.
- **A review of the discretionary powers of BVI ministers** with a view of curtailing them (for example, those relating to public appointments or issuing of contracts).
- **A series of audits into all areas of BVI Government**, to be shared with the Governor and local audit office, with a view to inform potential criminal or civil proceedings, if judged appropriate.¹⁷

It is ultimately for the UK Government to determine whether to suspend local rule in the BVI. As of 26 May 2022, it has not announced its intentions (see section 5, below, for more).

¹⁵ Government of the BVI, [Statement by His Excellency the Governor John Rankin, Cmg regarding the Commission of Inquiry report](#), 29 April 2022

¹⁶ As above

¹⁷ BVI Commission of Inquiry, [Report of the Commissioner the Rt Hon Sir Gary Hickinbottom](#), 4 April 2022, pp7, 13-15

However, Governor Rankin has announced criminal investigations into four areas, including allegations that earlier investigations into Covid-19 assistance programmes were obstructed by the previous Premier's office, and into the spending of public money on several development projects.¹⁸

Further reading on the Inquiry

- The report itself is: The [Report of the Commissioner the Rt Hon Sir Gary Hickinbottom](#), 4 April 2022. Pages 689-96 detail its recommendations.
- Caribbean Loop's [Ten things to know about the BVI Commission of Inquiry report](#), 1 May 2022, draws out ten key findings and recommendations.

4 Political change in the BVI

4.1 Arrest of Premier Fahie

In April 2022, BVI Premier Andrew Fahie was arrested in the United States on [charges relating to drugs trafficking and money laundering](#). In May, he pleaded not guilty to the charges.¹⁹

Announcing the publication of the report, the Governor said its contents and recommendations are not linked to the arrest of Fahie.²⁰

Fahie faced calls to resign as Premier upon his arrest. The acting Premier, Dr Natalio Wheatley, assumed office on 5 May 2022.²¹

¹⁸ BVI Beacon, [Update: Guv announces criminal probes advised by \[Commission of Inquiry\]](#), 12 May 2022, accessed 25 May 2022

¹⁹ Reuters, [BVI ex-premier Fahie pleads not guilty to drug charges](#), 25 May 2022, accessed 26 May 2022

²⁰ Government of the BVI, [Statement by His Excellency the Governor John Rankin, Cmg regarding the Commission of Inquiry report](#), 29 April 2022

²¹ Government of the BVI, [Address by Premier and Minister of Finance Dr. Honourable Natalio Wheatley \[...\]](#), 5 May 2022

4.2 Opposition to direct rule in the BVI and Caribbean

Local politicians have opposed the report's recommendation to suspend the Territory's constitution and impose direct rule for two years. Premier Wheatley has said [direct rule is "not acceptable"](#) and that the BVI is capable of reform.²²

There is also regional opposition:

- Some legislators in the Turks and Caicos Islands (another Overseas Territory) have expressed opposition to direct rule.²³ The Territory is the most recent to have experienced UK direct rule—see below, section 7.
- The Caribbean Community (CARICOM) also objects to the proposal. CARICOM is an organisation of 20 member and associate states that seeks to promote economic integration in the region.²⁴
- The Organisation of Eastern Caribbean States (OECS) does not support UK direct rule, arguing it to be a "colonial-type decision."²⁵

All instead support a local solution to the problems identified in the report.

4.3 New cross-party government, May 2022

Since taking office in May, Premier Wheatley has established a cross-party government, which is intended to last for the next 10 to 12 months. A general election is due to be held at the end this period, in February 2023.²⁶

Wheatley has objected to UK direct rule, and instead argued that local politicians in the BVI can implement the reforms recommended in the Commission of Inquiry report.

The BVI Government has submitted a proposal to the UK Government suggesting that the Governor, Premier and Ministers could work together to achieve this.

Few details have been published, other than to state it would be the local BVI Government that introduces the legislative reforms. The Governor would play

²² Caribbean Loop, [Acting Premier: Direct rule is not an acceptable option for BVI](#), 1 May 2022

²³ BVI News, [Turks and Caicos legislators support BVI's call for no "UK direct rule."](#) 4 May 2022

²⁴ CARICOM, [Caribbean Community statement on the release of the report of the UK's BVI Commission of Inquiry](#), 3 May 2022

²⁵ Caribbean Loop, [OECS leaders condemn moves by Britain to impose direct rule on the BVI](#), 2 May 2022

²⁶ BVI News, [New cross-party national unity Gov't being proposed to Governor](#), 4 May 2022

a role in monitoring the Commission's recommendations in "partnership" with the Premier.²⁷

Can the new government drive reform?

The new BVI Government has sought to demonstrate its willingness to implement the Commission's recommendations. These include:

- A new proposed Register of Interests Act to require all BVI politicians to publicly disclose their assets and interests.²⁸
- Grants for social assistance to be moved away from a hybrid system, where applications could be made to both Assembly officials and ministers, to one managed by a government department alone.²⁹
- The appointment of new managing officials at the BVI port authority and BVI airports authority board. One official in the port authority is subject to the same money-laundering and drugs trafficking charges as former Premier Fahie.³⁰
- A new Speaker of the House of Assembly is due to be appointed. The previous speaker, Julian Willock, resigned in early May, reportedly at the request of Premier Wheatley. Willock denies any wrongdoing.³¹

5

Will direct rule be imposed?

UK Government statements

As of 26 May, no statement to this effect has yet been made by the UK Government.

However, on publication of the report the Foreign Secretary, Liz Truss, said that "substantial legislative and constitutional change is required" to restore good governance.³²

²⁷ Government of the British Virgin islands, [Statement by \[the\] Premier \[...\] update on reform and other developments](#), 24 May 2022, accessed 25 May 2022

²⁸ St Vincent Times, [BVI will introduce new "integrity in public life" law](#), 25 May 2022, accessed 25 May 2022

²⁹ Government of the British Virgin islands, [Statement by \[the\] Premier \[...\] update on reform and other developments](#), 24 May 2022, accessed 25 May 2022

³⁰ The BVI Beacon, [Government makes plans ahead of UK decision](#), 19 May 2022, accessed 25 May 2022

³¹ Virgin Islands News, [Attorney Corine N. George-Massicote tipped to be new Speaker](#), 24 May 2022, accessed 25 May 2022

³² Foreign, Commonwealth and Development Office, [Foreign Secretary statement on the BVI](#), 29 April 2022

The Minister for the Overseas Territories, Amanda Milling, completed a visit to the Territory on 4 May 2022, in which she met local politicians. In her press statement following the visit, she said change “[must happen quickly](#)” in order to restore good governance.³³

6 Other recent BVI-UK tensions

The Commission’s findings were published in the context of a strained period of relations between the BVI Government and the UK. These are primarily focused on the degree of autonomy the Territory has from the UK.

6.1 Beneficial company ownership registers

In May 2018, the UK Parliament approved legislation requiring the UK OTs to make their beneficial company ownership register [publicly accessible by the end of 2020](#) (this has now been extended to 2023).

“Beneficial ownership” refers to the person who ultimately owns or controls an asset, such as property or a company. This may differ from the direct legal owner, who may not control or benefit from that asset. A register allows law enforcement agencies, for example, to check who ultimately owns an asset.³⁴

The legislation is therefore intended to address economic crime, including money-laundering and corruption.

Several OT Governments criticised the decision, arguing that it had been reached unilaterally by the UK and would damage their financial service industries.

In 2017, around 60% of BVI government revenues come from financial and professional services. There were also around 417,000 companies registered in the BVI, holding global assets estimated to have a total value of US\$1.5 trillion.³⁵

Then-Premier of the British Virgin Islands, Orlando Smith, said the Act represented a “fundamental breach in the constitutional relationship and

³³ Government of the BVI, [Press statement on the \[Commission of Inquiry\] report from Minister for the Overseas Territories](#), 4 May 2022

³⁴ Commons Library, [Registers of beneficial ownership](#), CBP 8259, section 3.1

³⁵ Capital Economics Limited, [Creating value: The BVI’s global contribution](#), June 2017., p5

modern partnership” between the UK and the BVI. He argued the BVI constitution [reserved such issues to the local government](#).³⁶

In 2020, the new Government of Andrew Fahie committed to work with the UK Government to implement a register. However, he did so with reservations, including a suggestion for a model specific to the BVI.³⁷

6.2 Dispute over an economic stimulus

In 2020, the question of an economic stimulus for the BVI in response to the Covid-19 pandemic [also created tensions between the BVI and the UK](#).

The dispute was centred on the 2012 Protocols for effective financial management, which limits the amount of borrowing the BVI Government can undertake. If breached, the UK can increase financial oversight of the Territory, reducing its degree of self-government.

While the BVI Government called for greater flexibility in the protocol’s restrictions due to declining revenue and tourist numbers in 2020, the Governor denied the protocol was a barrier for action.³⁸

A stimulus package was later passed without changes to the protocol.³⁹

6.3 Constitutional reform and independence from the UK?

Constitutional Review Committee

Calls to reform the BVI’s constitution, which was introduced in 2007, predate the Commission of Inquiry.

Constitutional reform in the BVI has been on the agenda since 2016, and Andrew Fahie, when Premier, had called for further reforms to allow the BVI greater control over its economy.⁴⁰

³⁶ Government of the Virgin Islands, [Premier Smith statement on UK Sanctions and Anti-Money Laundering Bill](#), 10 May 2018, accessed 25 May 2022

³⁷ Government of the Virgin Islands, [BVI Premier reiterates Territory’s commitment to an appropriate framework for publicly accessible registers](#), 22 September 2020, accessed 25 May 2022

³⁸ The BVI Beacon, [Premier, governor trade jabs over protocols](#), 28 May 2020, accessed 25 May 2022

³⁹ M. Benwell et al, [“Covid-19 and the British OTs: A comparative view,”](#) Vol. 110, February 2021, pp159-70, at p164

⁴⁰ British Virgin Islands London Office, [House of Assembly statement by Premier Fahie—Constitutional review](#), 11 June 2022, accessed 25 May 2022

A committee to examine the constitution was established in January 2022. Its review of the constitution is expected to last no more than two years.⁴¹

In its 2012 White Paper on the Territories, the UK Government stated that the current balance between the UK and the Territories is the “right one:”

We expect [Territory] constitutions to continue to evolve and to require adjustment in the light of circumstances. But we believe that the fundamental structure of our constitutional relationships is the right one: powers are devolved to the elected governments of the Territories to the maximum extent possible consistent with the UK retaining those powers necessary to discharge its sovereign responsibilities [such as defence].⁴²

Independence?

Both Fahie and Wheatley have cited the right of the BVI to self-determination.⁴³ In May 2022, Wheatley said he would publish an earlier review on the options on greater self-government, including political independence from the UK.⁴⁴

The UK Government position is that any Territory that wishes to become independent may seek to do so, but the decision must be based on a “clear and constitutionally expressed wish” of the Territory’s population (such as a referendum). The UK undertakes to help a Territory achieve this if it wishes.⁴⁵

7

UK direct rule in the Turks and Caicos Islands, 2009-2012

Direct rule from the UK on another OT was most recently imposed on the Turks and Caicos Islands.

In 2009, the Governor-appointed Commission of Inquiry concluded there was a “high probability” of “systematic” corruption on the Islands. This included the misuse of public funds by its local government.⁴⁶

⁴¹ BVI Platinum, [Lisa Penn-Lettsome leads 11-member constitutional review commission](#), 20 January 2022, accessed 25 May 2022

⁴² Foreign & Commonwealth Office, [The Overseas Territories: Security, success and sustainability](#), 2012, Cm 8374, p14

⁴³ Government of the BVI, [Premier Fahie welcomes final adoption of UN resolution on Virgin Islands decolonisation](#), 23 December 2021, accessed 25 May 2022.

⁴⁴ BVI News, [Gov’t plans to make self-governance assessment report public](#), 23 May 2022, accessed 25 May 2022

⁴⁵ PQ 149316 [on [British OTs: Self-determination of states](#)], 9 February 2021

⁴⁶ Foreign Affairs Committee, [Turks and Caicos Islands](#), 24 March 2010, HC 469, 2009-10, para 6

The UK Government accepted the Commission's recommendation to [suspend part of its constitution for two years](#). This involved removing the local cabinet and elected legislature and providing the UK-appointed Governor with additional powers over public finances and services.⁴⁷

The reforms to the Islands' public services took longer than expected, with elections [planned for July 2011 delayed](#).⁴⁸ The UK Government had laid out several tests to first be achieved, including the need to put the Territory's finances on a sustainable basis and the introduction of new laws to improve transparency and management among its government and political parties.⁴⁹

Elections for a new Assembly restoring local government were held in 2012.⁵⁰

The new constitution, agreed in 2011, still provides for additional powers for the Governor to [regulate international financial services and public officials](#).⁵¹

For more on these events, see the Library briefing, [The Turks and Caicos Islands](#), SN5038 (last updated December 2012).

Commons Library briefings on the UK Overseas Territories

- [Same-sex marriage in the Overseas Territories](#), April 2022
- [The UK's Overseas Territories and sanctions against Russia](#), CBP 9485, March 2022
- [The UK's Overseas Territories: Climate change and biodiversity](#), CBP 9290, October 2021
- [Coronavirus: UK support to the Overseas Territories](#), CBP9021, June 2021

⁴⁷ HC Deb, [Turks and Caicos Islands: Governance](#), 16 March 2009, cc39WS-40WS

⁴⁸ Foreign & Commonwealth Office, [Elections postponed in Turks and Caicos Islands](#), 21 September 2010

⁴⁹ HC Deb, [Turks and Caicos Islands](#), 9 December 2010, cc40WS-41WS

⁵⁰ HC Deb, [Turks and Caicos Islands](#), 11 December 2012, c28WS

⁵¹ [Turks and Caicos Islands Constitution Order 2011, SI 2011/1681](#), Schedule 2, Paragraph 37

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