

**2006 No. 1913**

**CARIBBEAN AND NORTH ATLANTIC TERRITORIES**

**The Turks and Caicos Islands Constitution Order 2006**

*Made* - - - - *19th July 2006*

*Laid before Parliament* *20th July 2006*

*Coming into force in accordance with section 1(2)*

At the Court at Buckingham Palace, the 19th day of July 2006

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by sections 5 and 7 of the West Indies Act 1962(a) and of all other powers enabling Her to do so, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

**Citation and commencement**

1.—(1) This Order may be cited as the Turks and Caicos Islands Constitution Order 2006.

(2) This Order shall come into force on such day as the Governor, acting in his or her discretion, may appoint by proclamation published in the *Gazette*.

**Interpretation**

2.—(1) In this Order—

“the appointed day” means the day appointed by the Governor under section 1(2);

“the Constitution” means the Constitution set out in Schedule 2;

“the existing Constitution” means the Constitution set out in Schedule 2 to the Turks and Caicos Islands Constitution Order 1988(b);

“House of Assembly” means the House of Assembly established by the Constitution.

(2) Section 99 of the Constitution shall apply for the purposes of interpreting sections 1 to 10 of this Order and otherwise in relation to those sections as it applies for the purposes of interpreting and in relation to the Constitution.

**Revocations**

3. The instruments specified in Schedule 1 are revoked with effect from the appointed day.

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(a) 1962 c.19.

(b) S.I. 1988/247, amended by S.I. 1993/1248, 2002/2637.

## **Establishment of Constitution**

4. Schedule 2 shall have effect as the Constitution of the Turks and Caicos Islands on the appointed day; but until the House of Assembly is next dissolved after the appointed day—

- (a) section 27(1) of the Constitution shall have effect as if the reference in paragraph (c) to “six other Ministers” were a reference to “five other Ministers”;
- (b) section 27(6) of the Constitution shall have no effect;
- (c) section 41(1) of the Constitution shall have effect as if the reference in paragraph (b) to “fifteen elected members” were a reference to “thirteen elected members”, and as if the reference in paragraph (c) to “four appointed members” were a reference to “three appointed members”;
- (d) section 41(2) of the Constitution shall have no effect;
- (e) section 43(2) of the Constitution shall have effect as if the words “Subject to section 41(2)” were omitted and as if the reference to “fifteen electoral districts” were a reference to “thirteen electoral districts”;
- (f) section 45(1) of the Constitution shall have effect as if the reference in paragraph (b) to “two” were a reference to “one”.

## **Existing laws**

5.—(1) Subject to this section, the existing laws shall have effect on and after the appointed day as if they had been made in pursuance of the Constitution and shall be read and construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

(2) The Governor may, by regulations published in the *Gazette*, at any time within twelve months of the appointed day make such modifications or adaptations to any existing law as appear to the Governor to be necessary or expedient for bringing that law into conformity with the Constitution or otherwise for giving effect or enabling effect to be given to the Constitution; and any existing law shall have effect accordingly from such day (not being earlier than the appointed day) as may be specified in such regulations.

(3) Regulations made under this section may be amended or revoked in relation to any existing law affected by them by any authority competent to amend or revoke that law.

(4) In this section “existing laws” means laws and instruments (other than Acts of the Parliament of the United Kingdom and instruments made under them) having effect as part of the law of the Turks and Caicos Islands immediately before the appointed day.

## **Existing offices and officers**

6.—(1) Any office (except that of Chief Secretary) established by or under the existing Constitution and existing immediately before the appointed day shall on and after that day, so far as consistent with the Constitution, continue as if it had been established by or under the Constitution.

(2) Any person who immediately before the appointed day holds or is acting in any office continued by virtue of subsection (1) shall, on and after that day, continue to hold or act in that office as if he or she had been appointed to hold or act in it in accordance with or under the Constitution.

(3) Any person to whom subsection (2) applies who, before the appointed day, has made any oath or affirmation required to be made before assuming the functions of his or her office shall be deemed to have made any like oath or affirmation so required by the Constitution or any other law.

(4) Subsection (1) applies to any person who immediately before the appointed day holds office as a member of the Public Service Commission, and the Governor shall appoint two further members of the Public Service Commission established by the Constitution in accordance with section 83(2)(b) and (d) of the Constitution.

(5) The person who, immediately before the appointed day, holds the office of Chief Minister shall, on and after that day, hold the office of Premier in accordance with the Constitution.

### **House of Assembly**

7.—(1) Any person (except the Chief Secretary) who immediately before the appointed day is a member of the Legislative Council shall on that day become a member of the House of Assembly and shall be deemed to have complied with section 62 of the Constitution and shall hold his or her seat in accordance with the Constitution.

(2) The Standing Orders of the Legislative Council as in force immediately before the appointed day shall, except as may be otherwise provided under section 60 of the Constitution, have effect on and after that day as if they had been made under that section as Standing Orders of the House of Assembly but shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

(3) The Governor shall dissolve the House of Assembly not later than the expiration of four years from the date when the Legislative Council first met after the last general election before the appointed day.

(4) In this section “Legislative Council” means the Legislative Council established by the existing Constitution.

### **Electoral districts**

8.—(1) As soon as practicable after the appointed day, and before the House of Assembly is dissolved in accordance with section 7(3), the Governor shall appoint an Electoral District Boundary Commission in accordance with section 57 of the Constitution.

(2) The Commission so appointed shall, as soon as practicable and in accordance with section 58 of the Constitution, review the electoral district boundaries and submit a report to the Governor and the House of Assembly containing its recommendations for changes in the boundaries of electoral districts with a view to establishing fifteen electoral districts in the Islands.

### **Pending legal proceedings**

9.—(1) Any cause, matter or appeal pending before the Supreme Court or any appeal or application pending before the Court of Appeal immediately before the appointed day may, on or after that day, be continued, determined or appealed against as if such cause, matter or appeal had been instituted or was pending before the Supreme Court, or such appeal or application made to the Court of Appeal, as the case may be, as those courts are respectively constituted by the Constitution.

(2) Any decree or order of the Supreme Court or the Court of Appeal given or made before the appointed day, in so far as it has not been fully executed or enforced, may be executed or enforced on or after that day as if it were a decree or order of the Supreme Court or the Court of Appeal, as the case may be, as those courts are respectively constituted by the Constitution.

### **Power reserved to Her Majesty**

10. Her Majesty reserves to Herself power, with the advice and consent of Her Privy Council, to make laws for the peace, order and good government of the Turks and Caicos Islands.

*A.K. Galloway*  
Clerk of the Privy Council

## SCHEDULE 1

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The Turks and Caicos Islands Constitution Order 1988 (S.I. 1988/247)

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The Turks and Caicos Islands Constitution (Amendment) Order 2002 (S.I. 2002/2637)

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## PART I

### FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

#### **Fundamental rights and freedoms of the individual**

1. Whereas every person in the Islands is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, without distinction of any kind, such as race, national or social origin, political or other opinion, colour, religion, language, creed, association with a national minority, property, sex, birth or other status, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely—

- (a) life, liberty, security of the person and the protection of the law;
- (b) freedom of conscience, of expression and of assembly and association; and
- (c) protection for his or her private and family life, the privacy of his or her home and other property and from deprivation of property save in the public interest and on payment of fair compensation,

the subsequent provisions of this Part shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, and related rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said protected rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

#### **Protection of right to life**

2.—(1) Every person's right to life shall be protected by law. No person shall be deprived intentionally of his or her life.

(2) A person shall not be regarded as having been deprived of his or her life in contravention of this section if he or she dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is no more than absolutely necessary—

- (a) for the defence of any person from violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- (c) in action lawfully taken for the purpose of suppressing a riot, insurrection or mutiny,

or if he or she dies as a result of a lawful act of war.

#### **Protection from inhuman treatment**

3. No person shall be subjected to torture or to inhuman or degrading treatment or punishment.

#### **Protection from slavery and forced labour**

4.—(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced or compulsory labour.

(3) For the purposes of this section, "forced or compulsory labour" does not include—

- (a) any labour required in consequence of the sentence or order of a court;

- (b) any labour required of a member of a disciplined force in pursuance of his or her duties as such or, in the case of a person who has conscientious objections to service in a naval, military or air force, any labour that that person is required by law to perform in place of such service;
- (c) labour required of any person while he or she is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place in which he or she is detained; or
- (d) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

### **Protection from arbitrary arrest or detention**

5.—(1) Every person has the right to liberty and security of person. No person shall be deprived of his or her personal liberty save in accordance with a procedure prescribed by law in any of the following cases—

- (a) in execution of the sentence or order of a court, whether established for the Islands or some other country, in respect of a criminal offence of which he or she has been convicted or in consequence of his or her unfitness to plead to a criminal charge;
- (b) in execution of the order of a court punishing him or her for contempt of that court or of another court;
- (c) in execution of the lawful order of a court made in order to secure the fulfilment of any obligation imposed upon him or her by law;
- (d) for the purpose of bringing him or her before a court in execution of the lawful order of a court;
- (e) upon reasonable suspicion that he or she has committed, is committing or is about to commit a criminal offence;
- (f) in the case of a minor, under the order of a court or with the consent of his or her parent or guardian, for the purpose of his or her education or welfare;
- (g) for the purpose of preventing the spread of an infectious or contagious disease or in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his or her care or treatment or the protection of the community;
- (h) for the purpose of preventing the unlawful entry of that person into the Islands or for the purpose of effecting the expulsion, extradition or other lawful removal from the Islands of that person or the taking of proceedings relating thereto.

(2) Any person who is arrested or detained shall be informed promptly, in a language that he or she understands, of the reasons for his or her arrest or detention and of any charge against him or her.

(3) Any person who is arrested or detained shall have the right, at any stage and at his or her own expense, to retain and instruct without delay a legal representative of his or her own choice, and to hold private communication with that representative, and in the case of a minor he or she shall also be afforded a reasonable opportunity for communication with his or her parent or guardian; but when the person arrested or detained is unable to retain a legal representative of his or her own choice or be represented by a legal representative at the public expense, he or she may be represented, and hold private communication with, such person as a court may approve.

(4) Every person who is arrested shall be informed, as soon as he or she is brought to a police station or other place of custody, of his or her rights under subsection (3); and he or she shall also have the right, and shall be informed at the same time that he or she has the right, to remain silent and to have one person informed by the quickest practicable means of his or her arrest and his or her whereabouts.



(5) Any person who is arrested or detained in such a case as is mentioned in subsection (1)(d) or (e) and who is not released shall be brought promptly before a judge or other officer authorised to exercise judicial power; and if any person arrested or detained in such a case as is mentioned in subsection (1)(e) is not tried within a reasonable time he or she shall (without prejudice to any further proceedings that may be brought against him or her) be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he or she appears at a later date for trial or for proceedings preliminary to trial.

(6) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation in respect of it from that other person.

### **Provisions to secure protection of law**

6.—(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence—

- (a) shall be presumed to be innocent until he or she is proved guilty according to law;
- (b) shall be informed promptly, in a language that he or she understands and in detail, of the nature and cause of the accusation against him or her;
- (c) shall be given adequate time and facilities for the preparation of his or her defence;
- (d) shall be permitted to defend himself or herself before the court in person or, at his or her own expense, by a legal representative of his or her own choice or, when the interests of justice so require, by a legal representative at the public expense;
- (e) shall be afforded facilities to examine in person or by his or her legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his or her behalf before the court on the same conditions as those applying to witnesses called by the prosecution;
- (f) shall be permitted to have without payment the assistance of an interpreter if he or she cannot understand or speak the language used at the trial of the charge; and
- (g) shall, when charged on information in the Supreme Court, have the right to trial by jury;

and, except with his or her own consent, the trial shall not take place in his or her absence, unless he or she so conducts himself or herself in the court as to render the continuance of the proceedings in his or her presence impracticable and the court has ordered him or her to be removed and the trial to proceed in his or her absence, or unless, having had reasonable notice of the hearing and of the nature of the offence charged, he or she is voluntarily absent from the proceedings.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him or her shall, if he or she so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he or she has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he or she could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he or she shows that he or she has been pardoned for that offence under section 95.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such determination are instituted by any person before such a court or other adjudicating authority, the case shall be determined fairly within a reasonable time.

(9) All proceedings instituted in any court for the determination of the existence or extent of any civil right or obligation or to try any criminal charge, including the announcement of the decision of the court, shall be held in public.

(10) Nothing in subsection (9) shall prevent the court from excluding from the proceedings persons other than the parties and their legal representatives to such extent as the court—

- (a) may be empowered by law to do so and may consider strictly necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interlocutory proceedings or in the interests of the welfare of minors or the private lives of persons concerned in the proceedings; or
- (b) may be empowered or required by law to do so in the interests of defence, public safety, public order, or public morality.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—

- (a) subsection (2)(a) to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;
- (b) subsection (2)(e) to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;
- (c) subsection (5) to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force; but any court so trying such a member and convicting him or her shall in sentencing him or her to any punishment take into account any punishment awarded him or her under that disciplinary law.

(12) (a) Every person convicted of a criminal offence by a court shall have the right to have his or her conviction or sentence reviewed by a higher court; and the exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

- (b) This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest court or was convicted following an appeal against acquittal.

(13) When a person has by a final decision been convicted of a criminal offence and when subsequently his or her conviction has been reversed, or he or she has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him or her.

(14) In this section, “legal representative” means a person entitled to practise in the Islands as an attorney.

### **Protection of right of prisoners to humane treatment**

7.—(1) All persons deprived of their liberty (in this section referred to as “prisoners”) have the right to be treated with humanity and with respect for the inherent dignity of the human person.

(2) Save where the interests of defence, public safety, public order, public morality, public health or the administration of justice otherwise require, unconvicted prisoners shall be segregated from convicted prisoners; and every unconvicted prisoner shall be entitled to be treated in a manner appropriate to his or her status as such.

(3) Juvenile prisoners shall be segregated from adult prisoners and every juvenile prisoner shall be treated in a manner appropriate to his or her age and legal status and, if he or she is an unconvicted prisoner and unless he or she is earlier released, to have any criminal proceedings against him or her pursued with the greatest possible expedition.

### **Protection for private and family life and for privacy of home and other property**

8.—(1) Every person has the right to respect for his or her private and family life, his or her home and his or her correspondence, and except with his or her own consent, no person shall be subjected to the search of his or her person or his or her property or the entry by others on his or her premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) that is reasonably required—
  - (i) in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development of mineral resources, or the development or utilisation of any other property in such a manner as to promote the public benefit;
  - (ii) for the purpose of protecting the rights and freedoms of other persons; or
  - (iii) for the prevention or detection of offences against the criminal law or the customs law;
- (b) to enable an officer or agent of the Government, a local government authority or a body corporate established by law for a public purpose to enter on the premises of any person in order to inspect those premises or anything on them for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government or that authority or body corporate, as the case may be; or
- (c) to authorise, for the purpose of enforcing the judgment or order of a court, the search of any person or property by order of a court or the entry upon any premises by such order,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

### **Protection of right to marry, etc**

9.—(1) Every man and woman of marriageable age (as determined by or under any law) has the right to marry and found a family.

(2) No person shall be compelled to marry, that is to say, to do so without his or her free and full consent.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that the law in question makes provision that is reasonably required—

- (a) in the interests of public order, public morality or public health;
- (b) for regulating, in the public interest, the procedures and modalities of marriage; or
- (c) for protecting the rights and freedoms of others,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

(4) Spouses shall be entitled to equal rights and shall be subject to equal responsibilities as between themselves and as regards their children both during marriage and, if the marriage is dissolved, on and after dissolution, but this equality of rights and responsibilities shall be subject to such arrangements or measures as may be agreed, or as may be ordered by a court, in the interests of their children.

### **Protection of freedom of conscience**

**10.**—(1) Except with his or her consent, no person shall be hindered in the enjoyment of his or her freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his or her religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his or her religion or belief in worship, teaching, practice and observance.

(2) Except with his or her consent (or, if he or she is a minor, the consent of his or her guardian) no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance.

(3) No religious community or denomination shall be prevented from or hindered in providing religious instruction for persons of that community or denomination in the course of any education provided by that community or denomination whether or not that community or denomination is in receipt of any government subsidy, grant or other form of financial assistance designed to meet, in whole or in part, the cost of such education.

(4) No person shall be compelled to take any oath which is contrary to his or her religion or belief or to take any oath in a manner which is contrary to his or her religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required—

- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion or belief without the unsolicited interference of persons professing any other religion or belief,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

(6) Every person who is a parent or legal guardian has the right to respect for his or her liberty to ensure the religious and moral education of his or her children in conformity with his or her own convictions.

(7) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

### **Protection of the right to education**

**11.**—(1) This section is without prejudice to section 10.

(2) Every child of the appropriate age, as provided by law, shall be entitled to receive primary education which shall, subject to subsection (3), be free.

(3) Every person who is the parent or legal guardian of a child shall be entitled to have his or her child (of whatever age) educated, at his or her own expense unless a law otherwise provides, in a private school (that is to say, a school other than one established by a public authority) and, in such a school, to ensure the religious and moral education of his or her child in accordance with his or her own convictions.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (3) to the extent that the law in question makes provision requiring private schools, as a condition of their being allowed to operate and on terms no more onerous than are applicable to schools established by a public authority, to satisfy—

- (a) such minimum educational standards (including standards relating to the qualifications of teaching staff and other staff) as may be prescribed by or under that or any other law; and
- (b) such minimum standards imposed in the interests of public order, public morality or public health as may be so prescribed,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

### **Protection of freedom of expression**

12.—(1) Except with his or her consent, no person shall be hindered in the enjoyment of his or her freedom of expression, and for the purposes of this section the said freedom includes freedom to hold opinions without interference, freedom to receive and impart (to the public generally or to any person or class of persons) ideas and information without interference, and freedom from interference with his or her correspondence or other means of communication.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) that is reasonably required—
  - (i) in the interests of defence, public safety, public order, public morality or public health; or
  - (ii) for the purpose of protecting the rights, reputations and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication or regulating public exhibitions or public entertainments; or
- (b) that imposes restrictions upon public officers or teachers that are reasonably required for the purpose of ensuring the proper performance of their functions,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

(3) For the purposes of subsection (2)(b) in so far as it relates to public officers, “law” in that subsection includes directions in writing regarding the conduct of public officers generally or any class of public officer issued by the Government.

### **Protection of freedom of assembly and association**

13.—(1) Except with his or her consent, no person shall be hindered in the enjoyment of his or her freedom of peaceful assembly and association, that is to say, his or her right to assemble freely and associate with other persons and in particular to form or belong to political parties or to form or belong to trade unions or other associations for the promotion and protection of his or her interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) that is reasonably required—
  - (i) in the interests of defence, public safety, public order, public morality or public health;
  - (ii) for the purpose of protecting the rights and freedoms of other persons; or
- (b) that imposes restrictions upon public officers that are reasonably required for the purpose of ensuring the proper performance of their functions,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

(3) For the purposes of subsection (2)(b), “law” in that subsection includes directions in writing regarding the conduct of public officers generally or any class of public officer issued by the Government.

### **Protection of freedom of movement**

14.—(1) Except with his or her consent, no person shall be hindered in the enjoyment of his or her freedom of movement, that is to say, the right to move freely throughout the Islands, the right

to reside in any part of the Islands, the right to enter or leave the Islands and immunity from expulsion from the Islands.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) for the imposition of restrictions on the movement or residence within the Islands or on the right to leave the Islands of persons generally or any class of persons that are reasonably required—
  - (i) in the interests of defence, public safety, public order, public morality or public health; or
  - (ii) for the purpose of protecting the rights and freedoms of other persons, except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society;
- (b) for the removal of a person from the Islands to be tried or punished in some other country for a criminal offence under the law of that country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law of the Islands of which he or she has been convicted;
- (c) for the imposition of restrictions on the movement or residence within the Islands or the right to leave the Islands of public officers that are reasonably required for the purpose of ensuring the proper performance of their functions;
- (d) for the imposition of restrictions on persons who are not Belongers; but—
  - (i) no restriction may be imposed by virtue only of this paragraph on the right of any such person, so long as he or she is lawfully present in the Islands, to move freely throughout the Islands and to reside anywhere in the Islands;
  - (ii) no restriction may be imposed by virtue only of this paragraph on the right of any such person to leave the Islands; and
  - (iii) no such person shall be liable, by virtue only of this paragraph, to be expelled from the Islands unless the requirements specified in subsection (5) are satisfied;
- (e) for the imposition of restrictions on the acquisition or use by any person of land or other property in the Islands;
- (f) for the imposition of restrictions, by order of a court, on the movement or residence within the Islands of any person or on any person's right to leave the Islands either in consequence of his or her having been found guilty of a criminal offence under the law of the Islands or for the purpose of ensuring a fair trial or that he or she appears before a court at a later date for trial of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his or her extradition or lawful removal from the Islands; or
- (g) for the imposition of restrictions on the right of any person to leave the Islands that are reasonably required in order to secure the fulfilment of any obligation imposed by law, except so far as the provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

(3) For the purposes of subsection (2)(c), "law" in that subsection includes directions in writing regarding the conduct of public officers generally or any class of public officer issued by the Government.

(4) Any restriction on a person's freedom of movement which is involved in his or her lawful detention shall not be held to be inconsistent with or in contravention of this section.

(5) The requirements to be satisfied for the purposes of subsection (2)(d) (that is to say, before a person who is not a Belonger may be expelled from the Islands) are as follows—

- (a) the decision to expel him or her is taken by an authority, in a manner and on grounds prescribed by law;

- (b) he or she has the right, save where the interests of defence, public safety or public order otherwise require, to submit reasons against his or her expulsion to a competent authority prescribed by law;
- (c) he or she has the right, save as aforesaid, to have his or her case reviewed by a competent authority prescribed by law; and
- (d) he or she has the right, save as aforesaid, to be represented for the purposes of paragraphs (b) and (c) before the competent authority or some other person or authority designated in that behalf by the competent authority.

### **Protection from discrimination**

15.—(1) Subject to subsections (4), (5) and (8), no law shall make any provision which is discriminatory either of itself or in its effect.

(2) Subject to subsections (6), (8) and (9), no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority.

(3) In this section, “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions such as by race, national or social origin, political or other opinion, colour, religion, language, creed, association with a national minority, property, sex, birth or other status whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) shall not apply to any law so far as that law makes provision—

- (a) for the appropriation of revenues or other funds of the Islands or for the imposition of taxation (including the levying of fees for the grant of licences);
- (b) with respect to the entry into or exclusion from, or the employment, engaging in any business or profession, movement or residence within, the Islands of persons who are not Belongers;
- (c) for the application, in the case of persons of any such description as is mentioned in subsection (3) (or of persons connected with such persons) of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law applicable to persons of that description; or
- (d) whereby persons of any such description as is mentioned in subsection (3) may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that it requires a person to be a Belonger or to possess any other qualification (not being a qualification specifically relating to any such description as is mentioned in subsection (3)) in order to be eligible for appointment to any office in the public service or in a disciplined force or any office in the service of a local government authority or of a body corporate established directly by any law for public purposes.

(6) Subsection (2) shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5).

(7) Subject to subsection (8), no person shall be treated in a discriminatory manner in respect of access to any of the following places to which the general public have access, namely, shops, hotels, restaurants, eating-houses, licensed premises, places of entertainment or places of resort.

(8) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) may be subjected to any restrictions on the rights and freedoms guaranteed by sections 8, 9, 10, 11, 12, 13 and 14,

being such a restriction as is authorised by section 8(2)(a), 9(3), 10(5), 11(4), 12(2), 13(2) or 14(2)(a), as the case may be.

(9) Nothing in subsection (2) shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

### **Protection from deprivation of property**

**16.—**(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—

- (a) the taking of possession or acquisition is necessary or expedient in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of any property in such a manner as to promote the public benefit or the economic well-being of the community; and
- (b) there is reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and
- (c) provision is made by a law applicable to that taking of possession or acquisition—
  - (i) for the prompt payment of adequate compensation; and
  - (ii) securing to any person having an interest in or right over the property a right of access to the Supreme Court, whether direct or on appeal from any other authority, for the determination of his or her interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he or she is entitled, and for the purpose of obtaining prompt payment of that compensation; and
  - (iii) giving to any party to proceedings in the Supreme Court relating to such a claim the same rights of appeal as are accorded generally to parties to civil proceedings in that Court sitting as a court of original jurisdiction.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1)—

- (a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest or right—
  - (i) in satisfaction of any tax, rate or due;
  - (ii) by way of penalty for breach of any law or forfeiture in consequence of a breach of any law;
  - (iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
  - (iv) by way of the taking of a sample for the purposes of any law;
  - (v) where the property consists of an animal upon its being found trespassing or straying;
  - (vi) in the execution of judgments or orders of a court;
  - (vii) by reason of its being in a dilapidated or dangerous state or injurious to the health of human beings, animals or plants;
  - (viii) in consequence of any law with respect to prescription or the limitation of actions; or
  - (ix) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry, or, in the case of land, for the purposes of carrying out on it work of reclamation, drainage, soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has, without reasonable and lawful excuse, refused or failed to carry out),



except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society; or

- (b) to the extent that the law in question makes provision for the taking of possession or acquisition of any of the following property (including an interest in or right over property), that is to say—
  - (i) enemy property;
  - (ii) property of a deceased person, a person of unsound mind or a minor, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest in it;
  - (iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or
  - (iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that the law in question makes provision for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no moneys have been invested other than moneys provided from public funds.

### **Provisions for periods of public emergency**

17.—(1) Nothing contained in or done under the authority of any regulation made under the Emergency Powers Orders in Council 1939 to 1973(a) or any other law in force in the Islands to like effect shall be held to be inconsistent with or in contravention of section 5, section 6 other than subsections (4), (5) and (6) thereof or any provision of sections 7 to 16 (inclusive) to the extent that the regulation in question makes in relation to any period of public emergency provision, or authorises the doing during any such period of anything, that is reasonably justifiable in the circumstances of any situation arising or existing during that period for the purpose of dealing with that situation.

(2) Where any person who is lawfully detained in pursuance of such a regulation as is referred to in subsection (1) so requests at any time during the period of that detention (but if that person has already made such a request during that period, not earlier than six months after he or she last made such a request during that period), his or her case shall within one month of making the request be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice.

(3) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his or her detention to the authority by which it was ordered but, unless it is otherwise prescribed, that authority shall not be obliged to act in accordance with any such recommendations.

### **Enforcement of fundamental rights**

18.—(1) If any person alleges that any of the foregoing provisions of this Part has been, is being or is likely to be contravened in relation to him or her, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction—

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(a) See S.I. 1952/2031 (1952 I. p.620). The relevant amending instruments are S.I. 1956/731, 1963/88, 1633, 1964/267, 1199, 1965/131, 1968/724, 1973/759.

- (a) to hear and determine any application made by any person in pursuance of subsection (1); and
- (b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3),

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the foregoing provisions of this Part to the protection of which the person concerned is entitled; but the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.

(3) If, in any proceedings in any court established in the Islands other than the Supreme Court or the Court of Appeal, any question arises as to the contravention of any of the foregoing provisions of this Part, the court in which the question has arisen shall refer the question to the Supreme Court, unless, in its opinion, the raising of the question is merely frivolous or vexatious.

(4) An appeal shall lie as of right to the Court of Appeal from any final determination of any application or question by the Supreme Court under this section, and an appeal shall lie as of right to Her Majesty in Council from the final determination by the Court of Appeal of the appeal in any such case; but no appeal shall lie from a determination by the Supreme Court under this section dismissing an application on the ground that it is frivolous or vexatious.

(5) A law made under section 59 may confer upon the Supreme Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by this section.

(6) Any such law may make, or provide for the making of, provision with respect to the practice and procedure—

- (a) of the Supreme Court in relation to the jurisdiction and powers conferred upon it by or under this section;
- (b) of the Supreme Court or the Court of Appeal in relation to appeals under this section from determinations of the Supreme Court or the Court of Appeal; and
- (c) of other courts in relation to references to the Supreme Court under subsection (3),

including provision with respect to the time within which any application, reference or appeal shall or may be made or brought.

### **Interpretation of Part I**

**19.—**(1) In this Part, unless it is otherwise expressly provided or required by the context—

“contravention” in relation to any requirement includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

“court” means any court of law or tribunal having jurisdiction in the Islands, including Her Majesty in Council, but excepting, save in section 4, a court constituted by or under disciplinary law;

“disciplinary law” means a law regulating the discipline of any disciplined force;

“disciplined force” means—

- (a) a naval, military or air force;
- (b) any police force or prison service of the Islands;

“member” in relation to a disciplined force includes any person who, under the law regulating the discipline of that force, is subject to that discipline;

“minor” means a person who has not attained the age of eighteen years;

“period of public emergency” means any period during which—

- (a) Her Majesty is at war; or

(b) there is in force in the Islands a proclamation of emergency under the Emergency Powers Orders in Council 1939 to 1973 or under any other law in force in the Islands to like effect.

(2) In relation to any person who is a member of a disciplined force raised under the law of the Islands, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of the provisions of this Part other than sections 2, 3 and 4.

(3) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in the Islands, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any provisions of this Part.

## PART II

### THE GOVERNOR

#### **The Governor**

**20.**—(1) There shall be a Governor of the Turks and Caicos Islands who shall be appointed by Her Majesty by Commission under Her Sign Manual and Signet and shall hold office during Her Majesty's pleasure.

(2) The Governor shall have such functions as may be conferred upon him or her by or under this Constitution or any other law and such other functions as Her Majesty may from time to time be pleased to assign to him or her and, subject to this Constitution and, in the case of functions conferred upon him or her by or under any other law, subject to that law, shall perform all such functions (including functions which are expressed by this Constitution to be exercisable in his or her discretion or which the Governor is directed by this Constitution to exercise in his or her own judgement) according to such instructions, if any, as may be given to him or her by Her Majesty; but the question whether or not the Governor has in any matter complied with any such instructions shall not be inquired into by any court.

(3) A person appointed to the office of Governor shall, before assuming the functions of that office, make oaths of allegiance and for the due execution of that office in the forms set out in the Schedule to this Constitution.

#### **Emoluments of Governor**

**21.** The holder of the office of Governor shall receive such emoluments as may for the time being be fixed by a Secretary of State by directions in writing, and those emoluments are hereby charged on and shall be paid out of the revenues of the Islands.

#### **Deputy Governor**

**22.**—(1) There shall be a Deputy Governor who shall be a Belonger and shall be appointed by the Governor in pursuance of instructions given by Her Majesty through a Secretary of State, and who shall hold office during Her Majesty's pleasure.

(2) If the office of Deputy Governor is vacant or the person holding that office is acting in the office of Governor under section 23 or is for any reason unable to perform the functions of the office of Deputy Governor, then the Governor, acting in his or her discretion, may appoint a person who is a Belonger to act as Deputy Governor and any such person shall continue to act until his or her appointment is revoked by the Governor, acting in his or her discretion.

(3) The Deputy Governor shall assist the Governor in the exercise of his or her functions, and shall have such functions, not of a ministerial nature, as (subject to this Constitution and any other law) may be assigned to him or her by the Governor, acting in his or her discretion.

### **Acting Governor**

23.—(1) During any period when the office of Governor is vacant or the Governor is absent from the Islands or is for any reason unable to perform the functions of that office, those functions shall, during Her Majesty's pleasure, be assumed and performed by the person holding the office of—

- (a) Deputy Governor; or
- (b) Attorney General; or
- (c) Permanent Secretary, Finance,

in that order, or by such other person as Her Majesty may designate in that behalf by instructions given through a Secretary of State.

(2) Before assuming the functions of the office of Governor, any such person shall make oaths of allegiance and for the due execution of that office in the forms set out in the Schedule to this Constitution.

(3) A person shall not continue to perform the functions of the office of Governor under this section after the person holding that office or some other person having a prior right to perform those functions has notified him or her that he or she is about to assume or resume those functions.

(4) For the purposes of this section (and without prejudice to section 99(11)), the Governor shall not be regarded as absent from the Islands or as unable to perform the functions of his or her office at any time when there is a subsisting appointment of a deputy under section 24.

### **Governor's deputy**

24.—(1) Whenever the Governor—

- (a) has occasion to be absent from the seat of government but not from the Islands; or
- (b) has occasion to be absent from the Islands for a period which he or she has reason to believe will be of short duration; or
- (c) is suffering from an illness which he or she has reason to believe will be of short duration,

he or she may, by instrument in writing, appoint one of the persons holding one of the offices mentioned in paragraph (a), (b) or (c) of section 23(1), in that order, or if no such person is available, such other person as he or she may designate, to be his or her deputy during such absence or illness and in that capacity to perform on his or her behalf such of the functions of the office of Governor as may be specified in that instrument.

(2) The power and authority of the Governor shall not be abridged, altered or in any way affected by the appointment of a deputy under this section and, subject to this Constitution and any other law by or under which any function which a deputy is authorised to perform is conferred, the deputy shall comply with all instructions that may from time to time be given to him or her by Her Majesty through a Secretary of State or by the Governor; but the question whether or not the deputy has in any matter complied with any such instructions shall not be inquired into by any court.

(3) A person appointed as a deputy under this section shall not continue to perform his or her functions as such after the Governor, or some other person with a prior right of appointment as deputy, has notified him or her that he or she is about to assume or resume those functions.

(4) Subject to subsection (3), a person appointed as deputy under this section shall hold that office for such period as may be specified in the instrument by which he or she is appointed, but his or her appointment may be revoked at any time by Her Majesty through a Secretary of State or by the Governor.

(5) In this section "the Governor" does not include a deputy appointed under this section.

(6) In the exercise of any power conferred upon him or her by this section the Governor shall act in his or her discretion.

### **Exercise of Governor's functions**

25.—(1) Subject to this section, the Governor shall consult the Cabinet on the formulation of policy and in the exercise of all functions conferred upon him or her by this Constitution or any other law, except—

- (a) when acting under instructions given to him or her by Her Majesty through a Secretary of State;
- (b) when exercising any function conferred upon the Governor by this Constitution or any other law which is expressed to be exercisable by the Governor in his or her discretion or in his or her judgement or in accordance with the recommendation or advice of, or after consultation with, any person or authority other than the Cabinet; or
- (c) subject to section 33(5), in any case which, in his or her judgement, involves a matter for which he or she is responsible under section 33(1).

(2) In any case in which the Governor is required by this section to consult the Cabinet, he or she shall, subject to section 33(5), act in accordance with the advice given to him or her by the Cabinet unless he or she is instructed by Her Majesty through a Secretary of State to do otherwise.

(3) For the avoidance of doubt, no proposed decision of the Cabinet shall be taken where the Governor has referred to a Secretary of State the advice given to him or her in relation thereto with a view to the possibility of instructions under subsection (2), until the Governor notifies the Cabinet that no such instructions will be issued.

(4) Where the Governor is by this Constitution or any other law directed to exercise any function after consultation with any person or authority other than the Cabinet he or she shall not be obliged to exercise that function in accordance with the advice of that person or authority.

(5) Where the Governor is by this Constitution or any other law directed to exercise any function in accordance with the recommendation or advice of, or after consultation with, any person or authority, the question whether he or she has so exercised that function shall not be inquired into by any court.

## **PART III**

### **THE EXECUTIVE**

#### **Executive authority**

26.—(1) The executive authority of the Turks and Caicos Islands is vested in Her Majesty.

(2) Subject to this Constitution, the executive authority of the Turks and Caicos Islands shall be exercised on behalf of Her Majesty by the Governor, either directly or through officers subordinate to him or her.

(3) Nothing in this section shall preclude persons or authorities other than the Governor from exercising such functions as are or may be conferred upon them by any law.

#### **The Cabinet**

27.—(1) There shall be a Cabinet for the Turks and Caicos Islands, which shall consist of—

- (a) the Governor;
- (b) a Premier appointed by the Governor in accordance with subsection (2);
- (c) six other Ministers appointed by the Governor, acting in accordance with the advice of the Premier, from among the elected or appointed members of the House of Assembly, one of whom may, in accordance with such advice, be appointed by the Governor as Deputy Premier; and
- (d) the Attorney General.

(2) The Governor shall appoint as Premier the elected member of the House of Assembly who demonstrates to the Governor in writing that he or she commands the support of a majority of the elected members of the House.

(3) Appointments of the Premier and the other Ministers shall be made by the Governor by instrument under the public seal.

(4) If occasion arises for making an appointment of any Minister between a dissolution of the House of Assembly and the polling in the next following general election, a person who was an elected or appointed member of the House immediately before the dissolution may be appointed as a Minister as if he or she were still a member of the House.

(5) The Governor shall, without delay, report to Her Majesty through a Secretary of State every appointment made under this section.

(6) The number of Ministers referred to in subsection (1)(c) may be increased by a law made in pursuance of section 41(2) which increases the number of elected members of the House of Assembly; but in no circumstances may the number of such Ministers, taken together with the Premier, exceed one third of the total number of members of the House of Assembly.

### **Oaths**

**28.** The members of the Cabinet, other than the Governor, shall each, before entering upon the duties of his or her office as such member, make before the Governor oaths of allegiance and for the due execution of his or her office in the forms set out in the Schedule to this Constitution.

### **Tenure of office by Premier**

**29.—**(1) The Governor shall revoke the appointment of the Premier if a motion that the House of Assembly should declare a lack of confidence in the Government receives the affirmative votes of a majority of the elected members of the House; but before so revoking the Premier's appointment, the Governor shall consult the Premier and if the Premier so requests, the Governor, acting in his or her discretion, may dissolve the House of Assembly instead of revoking the appointment.

(2) The Premier shall vacate his or her office if, after the polling in a general election and before the House of Assembly first meets thereafter, the Governor, acting in his or her discretion, informs the Premier that he or she is about to appoint another person as Premier under section 27(2).

### **Tenure of office by Ministers**

**30.—**(1) Any Minister shall vacate his or her office—

- (a) if he or she ceases to be a member of the House of Assembly for any reason other than a dissolution;
- (b) if he or she is not a member of the House of Assembly when it first meets after a general election;
- (c) if he or she resigns his or her office by writing under his or her hand addressed to the Governor; or
- (d) if he or she is absent from the Islands or absent from three consecutive meetings of the Cabinet without—
  - (i) in the case of the Premier, having given the Governor prior notice of such absence; or
  - (ii) in the case of any other Minister, having obtained prior permission for such absence from the Premier.

(2) A Minister other than the Premier shall also vacate his or her office if—

- (a) the Premier vacates his or her office; or
- (b) his or her appointment is revoked by the Governor, acting in accordance with the advice of the Premier, by instrument under the public seal.

### **Performance of functions of Premier in certain events**

**31.**—(1) If the Premier is unable, due to illness or his or her absence from the Islands, to perform the functions of his or her office, the Governor may authorise any other Minister to perform those functions.

(2) In exercising his or her powers under this section the Governor shall act in accordance with the advice of the Premier unless, in the Governor's judgement, it is impracticable to obtain the Premier's advice owing to his or her illness or absence, in which case the Governor shall exercise the power acting in his or her discretion.

(3) Any authority given under this section shall be conferred by the Governor by instrument under the public seal, and may be revoked in like manner.

### **Assignment of responsibilities to members of Cabinet**

**32.**—(1) Subject to subsections (2) and (3), the Governor, acting after full consultation with and on the advice of the Premier, may by directions in writing charge any member of the Cabinet with responsibility for the conduct (subject to this Constitution and any other law) of any business of the Government, including responsibility for the administration of any department of government.

(2) In exercising his or her functions under subsection (1), the Governor shall act in accordance with the advice of the Premier unless he or she is instructed by a Secretary of State to do otherwise.

(3) Without prejudice to section 33(3), a member of the Cabinet shall not be charged with responsibility under this section for any of the matters mentioned in section 33(1).

(4) A member of the Cabinet charged with responsibility for any matter under this section shall exercise his or her responsibility in accordance with the policies of the Government as determined by the Cabinet and in accordance with the principle of the collective responsibility of the members of the Cabinet for the policies and decisions of the Government.

(5) The Governor, acting in his or her discretion, may at any time call for any official papers or seek any official information or advice which is available to a member of the Cabinet with respect to any matter for which that member is charged with responsibility under this section.

### **Governor's special responsibilities**

**33.**—(1) The Governor, acting in his or her discretion, shall be responsible for the conduct, subject to this Constitution, of any business of the Government with respect to the following matters—

- (a) defence;
- (b) external affairs;
- (c) the regulation of international financial services;
- (d) internal security, including the Police Force;
- (e) the appointment of any person to any public office, the suspension, termination of appointment, dismissal or retirement of any public officer, or the taking of any disciplinary action in respect of such an officer, the application to any public officer of the terms or conditions of employment of the public service for which financial provision has been made, or the organisation of the public service in so far as it does not involve new financial provision.

(2) The Governor, acting in his or her discretion, may assign to a member of the Cabinet responsibility for the conduct on behalf of the Governor of any business in the House of Assembly with respect to any of the matters mentioned in subsection (1).

(3) The Governor, acting in his or her discretion, may by directions in writing delegate, with the prior approval of a Secretary of State, to the Premier or any other Minister designated by him or her after consultation with the Premier such responsibility for matters relating to external affairs or internal security as the Governor may think fit upon such conditions as he or she may impose.

(4) Where the Governor, acting in his or her discretion, determines that the exercise of any function conferred upon any other person or authority (other than the House of Assembly) would involve or affect any matter mentioned in subsection (1), the Governor may, acting in his or her discretion, give directions as to the exercise of that function, and the person or authority concerned shall exercise the function in accordance with those directions.

(5) Before exercising any function with respect to any matter mentioned in subsection (1), paragraphs (a), (b), (c) and (d), the Governor shall consult the Cabinet but may, if he or she thinks it right to do so, act against any advice given to him or her by the Cabinet; but the Governor shall not be obliged to consult the Cabinet in any case in which, in his or her judgement—

- (a) it is in the public interest that he or she should act without consulting the Cabinet;
- (b) the matters to be decided are too unimportant to require the advice of the Cabinet; or
- (c) the matters to be decided are too urgent to admit obtaining the advice of the Cabinet by the time within which it may be necessary for him or her to act.

### **Summoning of Cabinet**

**34.** The Cabinet shall be summoned by the Governor acting in his or her discretion; but the Governor shall summon the Cabinet if requested to do so by the Premier or by four or more members.

### **Proceedings in, and quorum of, Cabinet**

**35.—(1)** The Governor shall, so far as is practicable, attend and preside at meetings of the Cabinet.

(2) In the absence of the Governor from any meeting of the Cabinet, the Deputy Governor or the Attorney General, in that order, shall preside at the meeting.

(3) No business shall be transacted at any meeting of the Cabinet if there are less than five members present, including the person presiding, of whom three are Ministers.

(4) Subject to subsection (3), the Cabinet shall not be disqualified for the transaction of business by reason of any vacancy in its membership (including any vacancy not filled when the Cabinet is first constituted or reconstituted at any time) and the validity of the transaction of business in the Cabinet shall not be affected by reason only of the fact that some person who was not entitled to do so took part in the proceedings.

### **Attendance of other persons at meetings**

**36.** The Governor, or any person presiding over a meeting of the Cabinet in his or her absence, may, acting in his or her discretion, summon any public officer or other person to a meeting of the Cabinet whenever the business before the Cabinet renders the presence of that officer or other person desirable.

### **Cabinet Secretary**

**37.—(1)** There shall be a Cabinet Secretary, whose office shall be a public office and who shall be appointed in accordance with section 86.

(2) The Cabinet Secretary shall attend meetings of the Cabinet and be responsible for keeping the minutes of the meetings of the Cabinet and for conveying the conclusions reached at the meetings to the appropriate person or authority; and he or she shall have such other functions as the Governor, acting after consultation with the Premier, may from time to time direct.

(3) The Cabinet Secretary shall—

- (a) transmit copies of all papers submitted for consideration by the Cabinet to its members;
- (b) inform all its members of the summoning of any meeting of the Cabinet and of the matters to be discussed at any such meeting; and



- (c) furnish all its members, as soon as practicable after each meeting of the Cabinet, with a copy of the confirmed minutes of the previous meeting showing the matters discussed and the conclusions reached at the meeting.

(4) The Cabinet Secretary shall also have general responsibility, under the authority of the Governor and the Premier, for the coordination of Government business.

(5) In exercising his or her functions under subsection (3)(a) and (b) the Cabinet Secretary shall comply with any instructions given to him or her by the Governor, acting in his or her discretion.

(6) The functions conferred on the Cabinet Secretary by this section may be exercised by the Cabinet Secretary in person or by officers subordinate to him or her acting under and in accordance with his or her general or special instructions.

### **Advisory National Security Council**

**38.**—(1) There shall be an Advisory National Security Council (in this section referred to as “the Council”) for the Turks and Caicos Islands which shall consist of—

- (a) the Governor, as Chairman;
  - (b) the Premier;
  - (c) the Attorney General;
  - (d) the Minister of Finance;
  - (e) one other Minister appointed in writing by the Governor, acting in accordance with the advice of the Premier.
- (2) A Minister appointed under subsection (1)(e) shall vacate his or her seat on the Council if—
- (a) his or her office becomes vacant under section 30; or
  - (b) the Governor so directs in writing, acting in accordance with the advice of the Premier.
- (3) The purpose of the Council is to make recommendations to the Governor on—
- (a) the matters mentioned in section 33(1)(a), (b), (c) and (d); and
  - (b) the exercise of the Governor’s functions during a period of public emergency as defined in section 19(1);

but the Governor shall not be obliged to act in accordance with the recommendations of the Council.

(4) In the absence of the Governor the Deputy Governor shall preside at any meeting of the Council.

(5) The Governor, acting in his or her discretion, may summon a meeting of the Council whenever he or she considers it desirable to do so, and shall summon such a meeting whenever the Premier or the Cabinet so requests.

(6) Subject to this section, the Council may regulate its own procedure.

(7) The Cabinet Secretary shall be the Secretary to the Council.

### **Powers of Attorney General**

**39.**—(1) The Attorney General shall have power, in any case in which he or she considers it desirable to do so—

- (a) to institute and undertake criminal proceedings against any person before any court in respect of any offence against any law in force in the Islands;
- (b) to take over and continue any such criminal proceedings that have been instituted by any other person or authority; and
- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or herself or any other person or authority.

(2) The powers of the Attorney General under subsection (1) may be exercised by the Attorney General in person or by officers subordinate to him or her acting under and in accordance with his or her general or special instructions.

(3) The powers conferred upon the Attorney General by subsection (1)(b) and (c) shall be vested in him or her to the exclusion of any other person or authority; but where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

(4) For the purposes of this section, any appeal from any determination in any criminal proceedings before any court, or any case stated or question of law reserved for the purpose of any such proceedings, to any other court or to Her Majesty in Council shall be deemed to be part of those proceedings.

(5) In the exercise of the powers conferred upon him or her by this section, section 52(2) and section 53(2) the Attorney General shall not be subject to the direction or control of any other person or authority.

## PART IV THE LEGISLATURE

### **Constitution of legislature**

**40.** There shall be a legislature for the Turks and Caicos Islands which shall consist of Her Majesty and a House of Assembly.

### **The House of Assembly**

**41.—**(1) The House of Assembly shall consist of—

- (a) a Speaker, elected as provided in section 42;
- (b) fifteen elected members;
- (c) four appointed members; and
- (d) the Attorney General.

(2) A law made under section 59 may increase the number of elected members of the House of Assembly; but no such law shall come into force—

- (a) unless a bill providing for the electoral districts and their boundaries to take account of the additional elected members in accordance with section 58 has been passed; and
- (b) until the dissolution of the House of Assembly next following the enactment of such law.

### **The Speaker and Deputy Speaker**

**42.—**(1) When the House of Assembly first meets after a general election, or after the office of Speaker has fallen vacant for any reason other than a dissolution of the House, and before it proceeds to the despatch of any other business, the House shall elect a person to be Speaker of the House.

(2) The Speaker shall be elected from among the elected or appointed members of the House of Assembly who are not members of the Cabinet or from among persons who are not members of the House, and shall be elected by a majority of the votes of the elected and appointed members of the House; but no person shall be elected as Speaker who is not qualified to be an appointed member or who would for any reason be disqualified from being an appointed member.

(3) When the House of Assembly first meets after a general election, and before it proceeds to the despatch of any other business except the election of a Speaker, it shall elect a member, from

among the elected or appointed members of the House who are not members of the Cabinet, to be the Deputy Speaker, by a majority of the votes of the elected and appointed members of the House; and if the office of Deputy Speaker falls vacant for any reason other than a dissolution of the House, the House shall, as soon as convenient, elect another such member to that office.

- (4) A person shall vacate the office of Speaker or Deputy Speaker—
- (a) on dissolution of the House of Assembly;
  - (b) if he or she informs the House of Assembly, by writing under his or her hand addressed to the House and received by the Clerk of the House, that he or she resigns his or her office;
  - (c) (i) in any circumstances which, in the case of the Speaker, would cause him or her to vacate his or her seat if he or she were an appointed member; or  
(ii) in the case of the Deputy Speaker, if he or she ceases to be a member of the House of Assembly;
  - (d) if on the date of his or her election as Speaker or Deputy Speaker he or she is a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the Government, or if on any date after such election he or she or a firm in which he or she is a partner or a company of which he or she is a director or manager becomes a party to any such contract, or if he or she becomes a partner in a firm or a director or manager of a company which is a party to any such contract, and he or she does not, before the expiration of thirty days from the date in question, disclose to the House of Assembly or, if that is impracticable, to the Clerk of the House in writing, the nature of such contract and his or her interest, or the interest of such firm or company, in it and the House does not exempt him or her from vacating his or her office under this paragraph;
  - (e) if he or she becomes a member of the Cabinet; or
  - (f) on the passing, by the votes of two-thirds of the elected and appointed members, of a motion expressing no confidence in him or her as Speaker or Deputy Speaker, as the case may be.

### **Elected members**

43.—(1) The elected members of the House of Assembly shall be persons qualified for election in accordance with this Constitution and, subject to this Constitution, shall be elected in the manner provided by law.

(2) Subject to section 41(2), for the purposes of elections to the House of Assembly, the Islands shall be divided into fifteen electoral districts each of which shall return one member to the House.

### **Qualifications for elected membership**

44. Subject to section 47, a person shall be qualified to be elected as a member of the House of Assembly if, and shall not be qualified to be so elected unless, he or she—

- (a) has attained the age of twenty-one years; and
- (b) is, on the date of his or her nomination for election, resident in the Islands and has been so resident for not less than twelve months, in the aggregate, out of the two years immediately preceding that date; and
- (c) is a Belonger.

### **Appointed members**

45.—(1) Appointed members of the House of Assembly shall be appointed from among persons qualified under section 46, and so far as possible from among persons representing shades of opinion which would not otherwise be represented in the House, as follows—

- (a) one shall be appointed by the Governor, acting in his or her discretion;

- (b) two shall be appointed by the Governor, acting in accordance with the advice of the Premier;
- (c) one shall be appointed by the Governor, acting in accordance with the advice of the Leader of the Opposition.

(2) No person shall be appointed under this section who has unsuccessfully stood as a candidate for election as an elected member at any election since the last dissolution of the House of Assembly.

### **Qualifications for appointed membership**

46. Subject to section 47, a person shall not be qualified to be appointed as a member of the House of Assembly unless he or she has attained the age of twenty-one years and is qualified to be registered as an elector in the Islands.

### **Disqualifications for elected or appointed membership**

47.—(1) No person shall be qualified to be an elected member or an appointed member of the House of Assembly who—

- (a) is, by virtue of his or her own act, under any acknowledgement of allegiance, obedience or adherence to any foreign power or state;
- (b) holds or is acting in any public office;
- (c) has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged;
- (d) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in the Islands;
- (e) at the date of election, is under sentence of death imposed on him by a court of law in any country, or is serving or has at any time within the period of five years immediately preceding that date been serving any part of a sentence of imprisonment (by whatever name called) of at least twelve months imposed on him or her by such a court or substituted by competent authority for some other sentence imposed on him or her by such a court; or is under such a sentence of imprisonment the execution of which has been suspended;
- (f) is a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the Government and—
  - (i) in the case of an appointed member, has not disclosed to the Governor in writing the nature of such contract and his or her interest, or the interest of such firm or company, in it; or
  - (ii) in the case of an elected member, has not, within the period of one month immediately preceding the date of election, published in the *Gazette* a notice setting out the nature of such contract and his or her interest, or the interest of such firm or company, in it;
- (g) is disqualified for membership of the House of Assembly by any law relating to offences of corruption or to offences connected with elections; or
- (h) in the case of an elected member, is disqualified for election by any law by reason of his or her holding or acting in any office the functions of which involve—
  - (i) any responsibility for, or in connection with, the conduct of any election; or
  - (ii) any responsibility for the compilation or revision of any register of electors.

(2) For the purposes of subsection (1)(e)—

- (a) where a person is serving two or more sentences of imprisonment that are required to be served consecutively he or she shall, throughout the whole time during which he or she so serves, be regarded as serving a sentence exceeding twelve months if (but not unless) any one of those sentences exceeds that term; and

- (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

### **Tenure of seats of members of House of Assembly**

**48.**—(1) Subject to this Constitution, an appointed member of the House of Assembly shall hold his or her seat in the House during Her Majesty's pleasure.

(2) Every appointed or elected member of the House of Assembly shall vacate his or her seat in the House at the next dissolution of the House after his or her appointment or election.

(3) An appointed or elected member of the House of Assembly shall also vacate his or her seat in the House—

- (a) if he or she resigns it by writing under his or her hand addressed to the Speaker;
- (b) if, without the written permission of the Speaker, he or she is absent from three consecutive meetings of the House;
- (c) if he or she ceases to be ordinarily resident in the Islands;
- (d) if he or she becomes a party to any contract with the Government, or if any firm in which he or she is a partner or any company of which he or she is a director or manager becomes a party to any such contract, or if he or she becomes a partner in a firm or a director or manager of a company which is a party to any such contract, unless exempted by the Speaker from vacating his or her seat; or
- (e) if any circumstances arise such that, if he or she were not a member of the House, would cause him or her to be disqualified for appointment or election, as the case may be, by virtue of any provision of section 47(1), other than paragraph (f).

(4) (a) If circumstances such as are referred to in subsection (3)(e) arise because a member is declared bankrupt, adjudged to be of unsound mind, under sentence of death or imprisonment or convicted or reported guilty of an offence of corruption or an offence relating to elections and it is open to the member to appeal against the decision (either with or without the leave of a court or other authority) that member shall forthwith cease to perform his or her functions as a member of the House of Assembly, but, subject to paragraph (c), he or she shall not vacate his or her seat in the House until the expiration of a period of thirty days thereafter.

- (b) The Governor, acting in his or her discretion, in the case of an appointed member, or the Speaker, in the case of an elected member, may at the request of the member, from time to time, extend the period of thirty days to enable the member to pursue an appeal against the decision, save that extensions of time exceeding in the aggregate one hundred and fifty days shall not be given without the approval, signified by resolution, of the House of Assembly.
- (c) If, on the determination of any appeal, such circumstances as aforesaid continue to exist and no further appeal is open to the member, or if for any reason, including the refusal of leave to appeal or the expiration of any time limit for entering an appeal, it ceases to be open to the member to appeal, he or she shall forthwith vacate his or her seat.
- (d) If at any time before the member vacates his or her seat such circumstances as aforesaid cease to exist, his or her seat shall not become vacant on the expiration of the period referred to in paragraph (a) and he or she may resume the performance of his or her functions as a member.

### **Qualifications of electors and entitlement to vote**

**49.**—(1) Subject to subsection (2), a person shall be qualified to be registered as an elector for the purpose of the election of members of the House of Assembly if, and shall not be so qualified unless—

- (a) he or she was lawfully registered as such an elector on the date of commencement of this Constitution; or
- (b) on the qualifying date—

- (i) he or she has attained the age of eighteen years; and
- (ii) he or she is resident in the Islands and has been so resident for not less than twelve months, in the aggregate, out of the two years immediately preceding the qualifying date; and
- (iii) he or she is a Belonger.

(2) No person shall be qualified to be registered as an elector under this section who on the qualifying date—

- (a) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in the Islands;
- (b) is under sentence of death imposed on him by a court of law in any country or is serving a sentence of imprisonment (by whatever name called) for a term exceeding twelve months imposed on him or her by such a court or substituted by competent authority for some other sentence imposed on him or her by such a court; or
- (c) is disqualified by or under any law in force in the Islands from being registered as an elector by reason of having been convicted of an offence relating to elections.

(3) Section 47(2) shall apply for the purpose of subsection (2)(b) of this section as it applies for the purpose of section 47(1)(e).

(4) In this section “qualifying date” means such date as may be appointed by or under any law as the date with reference to which the qualifications of persons for registration as electors, for the purpose of the election of members of the House of Assembly, are to be ascertained.

(5) A person registered as an elector shall be entitled to vote at an election unless he or she is prohibited from so doing by reason of his or her conviction, prior to the election, of an election offence which disqualifies him or her from voting; but no person shall be entitled to vote in an electoral district if—

- (a) he or she is not registered as an elector in that district; or
- (b) he or she has voted in another electoral district.

### **Leader of the Opposition**

**50.**—(1) The Governor shall appoint as the Leader of the Opposition the elected member of the House of Assembly who demonstrates to the Governor in writing that he or she commands the support of the majority of the elected members of the House in opposition to the Government.

(2) If at any time between the polling in a general election and the next following dissolution of the House of Assembly the Governor, acting in his or her discretion, is satisfied that, if the office of the Leader of the Opposition were then vacant, he or she would appoint to that office a person other than the person then holding that office, the Governor shall revoke the appointment of the Leader of the Opposition.

(3) The office of the Leader of the Opposition shall also become vacant—

- (a) if for any reason other than a dissolution of the House of Assembly the holder of that office ceases to be a member of the House; or
- (b) the holder of that office is appointed as a Minister.

### **Determination as to validity of membership of *ex officio* and appointed members**

**51.** Any question as to whether a person is an *ex officio* member or an appointed member of the House of Assembly, or whether any such member has vacated his or her seat, shall be determined by the Governor acting in his or her discretion.

### **Determination as to validity of membership of elected members**

**52.**—(1) The Supreme Court shall have jurisdiction to hear and determine any question as to whether—

- (a) any person has been validly elected as a member of the House of Assembly; or
- (b) an elected member of the House has vacated his or her seat in the House or is required by virtue of section 48(4) to cease to perform his or her functions as such member.

(2) An application to the Supreme Court for the determination of any question under subsection (1) may be made by the Attorney General or by any person who is a registered elector; and an application for the determination of any question under paragraph (b) of that subsection may also be made by any member of the House of Assembly.

### **Penalty for unauthorised person sitting or voting**

**53.**—(1) Any person who sits or votes in the House of Assembly knowing, or having reasonable grounds for believing, that he or she is not entitled to do so shall be liable to a penalty not exceeding five hundred dollars for each day on which he or she so sits or votes.

(2) The penalty referred to in subsection (1) shall be recoverable by action in the Supreme Court at the suit of the Attorney General.

### **Sessions of House of Assembly**

**54.**—(1) The sessions of the House of Assembly shall be held at such times and places as the Governor may appoint by proclamation published in the *Gazette*; but there shall be at least one session in every year and a session shall be held within one month after any general election.

(2) When the House of Assembly is in session, the Speaker may call meetings of the House from time to time and, if no meeting has been called sooner, shall call a meeting within three months of the previous meeting or at any time when requested to do so by the Governor or by seven or more members of the House.

### **Prorogation and dissolution**

**55.**—(1) The Governor, acting in accordance with the advice of the Premier, may at any time prorogue the House of Assembly by proclamation published in the *Gazette*.

(2) The Governor, acting after consultation with the Premier, may at any time dissolve the House of Assembly by proclamation published in the *Gazette*.

(3) The Governor shall dissolve the House of Assembly at the expiration of four years from the date when the House first meets after any general election, unless it has been sooner dissolved.

### **General elections and filling vacant seats**

**56.**—(1) A general election shall be held at such time within three months after every dissolution of the House of Assembly as the Governor shall appoint by proclamation published in the *Gazette*.

(2) Whenever an elected member of the House of Assembly vacates his or her seat, for any reason other than a dissolution of the House, an election shall be held to fill the vacancy, on such date as the Governor shall appoint by proclamation published in the *Gazette*, within three months of the occurrence of the vacancy unless the House is sooner dissolved or will be dissolved under section 55(3) within four months of the occurrence of the vacancy.

(3) Whenever an appointed member of the House of Assembly vacates his or her seat, for any reason other than a dissolution of the House, the Governor shall, as soon as practicable, appoint a person to fill the vacancy under section 45.

### **Electoral District Boundary Commission**

**57.**—(1) An Electoral District Boundary Commission (in this section and in section 58 referred to as a “Commission”) shall be appointed from time to time at such time as the Governor, after consultation with the Premier and the Leader of the Opposition, may determine; but a Commission shall be appointed not later than four years after the last Commission submitted its report under section 58.

(2) A Commission shall consist of—

- (a) a Chairman, being a person who holds or has held high judicial office or high legal office, appointed by the Governor, acting in his or her discretion;
- (b) a member appointed by the Governor, acting in accordance with the advice of the Premier;
- (c) a member appointed by the Governor, acting in accordance with the advice of the Leader of the Opposition.

(3) A person shall not be qualified to be appointed as a member of a Commission if he or she is a member of the House of Assembly or a public officer other than the holder of a judicial office.

(4) The Chairman or other member of a Commission shall vacate his or her office—

- (a) on the day following the submission of the report of the Commission under section 58;
- (b) if any circumstances arise that, if he or she were not a member, would cause him or her to be disqualified for appointment as such; or
- (c) if the Governor, acting in his or her discretion, directs that he or she shall be removed from office for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(5) A Commission may regulate its own procedure and, with the consent of the Governor acting in his or her discretion, may confer powers and impose duties on any public officer or on any authority of the Government for the purpose of the discharge of its functions.

(6) A Commission may act notwithstanding any vacancy in its membership (including any vacancy not filled when appointments of members are first made) and its proceedings shall be valid notwithstanding that some person who was not entitled to do so took part in them; but any decision of a Commission shall require the concurrence of not less than two members of the Commission.

(7) In the exercise of its functions under this Constitution, a Commission shall not be subject to the direction or control of any other person or authority.

### **Review and alteration of electoral district boundaries**

**58.**—(1) A Commission shall, as soon as practicable after its appointment, review the electoral district boundaries into which the Islands are divided and, taking into account the changes or proposed changes, if any, in the number of electoral districts, shall submit a report to the Governor and the House of Assembly containing its recommendations for any changes in the number and boundaries of the electoral districts.

(2) In determining its recommendations under this section, a Commission shall seek to ensure that electoral districts contain, so far as is reasonably practicable, approximately equal numbers of persons qualified to be registered as electors under section 49; but a Commission may depart from this principle to such extent as it considers expedient in order to take into account—

- (a) the density of population and, in particular, the need to ensure adequate representation of sparsely populated areas;
- (b) the means of communication;
- (c) geographical features.

(3) As soon as may be after a Commission has submitted a report under this section, the Governor shall cause a bill to be introduced into the House of Assembly for giving effect, whether with or without modifications, to the recommendations contained in the report; and such a bill—



- (a) may contain provisions for any matters which are incidental to or consequential upon its principal provisions; and
- (b) shall include a provision for the coming into force of the measure when enacted for the determination of the electoral districts to which it relates upon the next dissolution of the House of Assembly after enactment.

(4) Where any bill introduced under this section proposes to give effect to the recommendations of a Commission with modifications, there shall be laid before the House of Assembly at the same time a statement of the reasons for the modifications.

## PART V

### POWERS AND PROCEDURE OF HOUSE OF ASSEMBLY

#### **Power to make laws**

**59.** Subject to this Constitution, the Governor with the advice and consent of the House of Assembly may make laws for the peace, order and good government of the Islands.

#### **Standing Orders of House of Assembly**

**60.**—(1) Subject to this Constitution and to any Instructions under Her Majesty's Sign Manual and Signet, the House of Assembly may make, amend and revoke Standing Orders for the regulation and orderly conduct of its own proceedings, and for the passing, intituling and numbering of bills and their presentation to the Governor for assent, but such Standing Orders shall not have effect until approved by the Governor.

(2) Standing Orders made under this section may provide for the establishment of committees of the House of Assembly (in addition to the Standing Committees to be established under section 61) and for the proceedings and conduct of business before any such committees.

#### **Standing Committees**

**61.**—(1) The House of Assembly shall establish at least two Standing Committees of the House, each of which shall be charged with responsibility for monitoring the conduct of business of the Government for which responsibility has been assigned to a Minister or Ministers under section 32(1).

(2) Each Standing Committee shall consist of members of the House of Assembly who are not Ministers.

(3) The composition of each Standing Committee shall, so far as possible, ensure that the representation of political parties in the Committee is proportionate to the numerical strength of those parties in the House of Assembly.

(4) At least one Standing Committee shall be presided over by a member of the House of Assembly in opposition to the Government.

(5) Each Standing Committee shall have power—

- (a) to summon any Minister, or any public officer of a department of government for which a Minister is responsible, to appear before it;
- (b) subject to any law or Standing Orders, to require any person so summoned to answer questions and provide information about the conduct of business of the Government by the Minister or department concerned;
- (c) to report upon its activities to the House of Assembly.

(6) The House of Assembly shall publish reports submitted to it under subsection (5)(c).

(7) Subject to the foregoing provisions of this section, Standing Orders shall provide for the composition and functions of, and proceedings and conduct of business before, Standing Committees.

#### **Oaths by members of House of Assembly**

**62.** No member of the House of Assembly shall be permitted to take part in the proceedings of the House, other than proceedings necessary for the purposes of this section, until he or she has made and subscribed before the House an oath of allegiance in the form set out in the Schedule to this Constitution; but the election of a Speaker and Deputy Speaker may take place before the members of the House make such oath.

#### **Presiding in House of Assembly**

**63.—(1)** The Speaker or, in his or her absence, the Deputy Speaker or, if they are both absent, an elected or appointed member of the House of Assembly (not being a member of the Cabinet) elected by the elected and appointed members of the House, shall preside in the House.

(2) References in this section to absence of the Speaker or the Deputy Speaker shall include circumstances in which either office is vacant.

#### **Voting**

**64.—(1)** Save as otherwise provided in this Constitution, all questions proposed for decision in the House of Assembly shall be determined by a majority of the votes of the members present and voting.

(2) The person presiding shall not vote unless on any question the votes are equally divided in which case he or she shall have and exercise a casting vote if, but not unless, in the case of the Speaker, he or she is an elected or appointed member.

#### **Validity of proceedings**

**65.** The House of Assembly shall not be disqualified for the transaction of any business by reason of any vacancy in its membership (including any vacancy not filled when the House is first constituted or is reconstituted at any time), and any proceedings in the House shall be valid notwithstanding that some person who was not entitled to do so voted or otherwise took part in the proceedings of the House.

#### **Quorum**

**66.—(1)** A quorum of the House of Assembly shall be eight members not including the person presiding, of whom five are elected members.

(2) If at any sitting of the House of Assembly any member who is present draws the attention of the person presiding at the sitting to the absence of a quorum and, after such interval as may be prescribed in Standing Orders, the person presiding at the sitting ascertains that a quorum of the House is still not present, the House shall be adjourned.

#### **Introduction of bills, etc**

**67.—(1)** Subject to this Constitution and to Standing Orders, any member may introduce any bill or propose any motion for debate in, or may present any petition to, the House of Assembly, and the same shall be debated and disposed of according to Standing Orders.

(2) Except upon the recommendation of a Minister, the House of Assembly shall not—

- (a) proceed upon any bill (including any amendment to a bill) which, in the opinion of the person presiding in the House, makes provision for imposing or increasing any tax, for imposing or increasing any charge on the revenues or other funds of the Islands or for

altering any such charge otherwise than by reducing it, or for compounding or remitting any debt due to the Islands; or

- (b) proceed upon any motion (including any amendment to a motion) the effect of which in the opinion of the person presiding in the House is that provision would be made for any of the purposes aforesaid.

### **Governor's reserved power**

**68.**—(1) If the Governor considers it urgently necessary, for the purpose of securing compliance with an international obligation, that any bill introduced, or any motion to which this section applies proposed, in the House of Assembly should have effect, then, if the House fails to pass the bill or carry the motion within such time and in such form as the Governor thinks fit, and notwithstanding any provisions of this Constitution or any other law or any Standing Orders, the Governor may declare that such bill or motion shall have effect as if it had been passed or carried by the House, either in the form in which it was introduced or proposed or with such amendments as the Governor thinks fit which have been moved or proposed in the House or any committee of the House; and such bill or motion shall be deemed thereupon to have been so passed or carried, and the provisions of this Constitution and, in particular, the provisions relating to assent to bills and disallowance of laws, shall have effect accordingly.

(2) The Governor shall not make any declaration under this section except in accordance with the following conditions—

- (a) the question whether the declaration should be made shall first be submitted in writing by the Governor to the Cabinet and if, upon the question being so submitted to it, the Cabinet advises the Governor that the declaration should be made, the Governor may make the declaration;
- (b) if, when the question whether the declaration should be made is submitted to it as aforesaid, the Cabinet does not, within such time as the Governor thinks reasonable and expedient, advise the Governor that the declaration should be made, then the Governor may submit the said question to a Secretary of State and may make the declaration if, upon the question being so submitted to him, a Secretary of State authorises the Governor to make the declaration.

(3) If any member of the Cabinet so desires, he or she may, within thirty days of the date of the making of a declaration under this section, submit to the Governor a statement in writing of his or her comments on the making of such declaration, and the Governor shall forward such statement, or a copy of it, as soon as practicable to a Secretary of State.

(4) This section applies to any motion—

- (a) relating to or for the purposes of a bill;
- (b) proposing or amending a resolution which, if passed by the House of Assembly, would have the force of law; or
- (c) proposing or amending a resolution upon which the coming into force or continuance in force of any subsidiary instrument depends.

(5) For the purposes of this section, a bill shall be validly introduced, and a motion shall be validly proposed, if it is introduced or proposed by any one member of the House of Assembly.

(6) The powers conferred upon the Governor by subsections (1) and (2) shall be exercised by the Governor in his or her discretion.

### **Assent to bills**

**69.**—(1) A bill shall not become a law until—

- (a) the Governor has assented to it in Her Majesty's name and on Her Majesty's behalf and has signed it in token of his or her assent; or
- (b) Her Majesty has given Her assent to it through a Secretary of State and the Governor has signified Her assent by proclamation published in the *Gazette*.

(2) When a bill is presented to the Governor for his or her assent, the Governor shall, subject to this Constitution and to any Instructions addressed to him or her under Her Majesty's Sign Manual and Signet or through a Secretary of State, declare that he or she assents, or refuses to assent, to it, or that he or she reserves the bill for the signification of Her Majesty's pleasure; but the Governor shall reserve for the signification of Her Majesty's pleasure—

- (a) any bill which in his or her judgement is in any way repugnant to, or inconsistent with, this Constitution; and
- (b) any bill which determines or regulates the privileges, immunities or powers of the House of Assembly or of its members,

unless he or she has been authorised by a Secretary of State to assent to it.

### **Return of bills by Governor**

70. The Governor may return to the House of Assembly any bill presented to him or her for his or her assent, transmitting with it any amendments which he or she may recommend, and the House shall deal with such recommendation.

### **Disallowance of laws**

71.—(1) Any law to which the Governor has given his or her assent may be disallowed by Her Majesty through a Secretary of State.

(2) Whenever a law has been disallowed by Her Majesty the Governor shall, as soon as practicable, cause notice of the disallowance to be published in the *Gazette* and the law shall be annulled with effect from the date of the publication of that notice.

(3) Section 16(1) of the Interpretation Act 1978(a) shall apply to the annulment of any law under this section as it applies to the repeal of an Act of Parliament, save that any enactment repealed or amended by or in pursuance of that law shall have effect as from the date of the annulment as if that law had not been made.

### **Privileges, immunities and powers of House of Assembly**

72. A law made under section 59 may determine and regulate the privileges, immunities and powers of the House of Assembly and of its members, but no such privileges, immunities or powers shall exceed those of the Commons House of Parliament of the United Kingdom or of its members.

## **PART VI**

### **THE JUDICATURE**

#### **The Supreme Court**

### **Constitution of Supreme Court**

73.—(1) There shall be a Supreme Court for the Turks and Caicos Islands which shall have such jurisdiction and powers as may be conferred upon it by this Constitution and any other law.

(2) The judges of the Supreme Court shall be a Chief Justice and such number of other judges not exceeding two as may be determined by the Governor, acting in his or her discretion; but the office of a judge shall not, without the consent of that judge, be abolished during his or her continuance in office.

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(a) 1978 c.30.

(3) The judges of the Supreme Court shall be persons qualified for appointment under subsection (4) and shall be appointed by the Governor, acting in accordance with section 82, by instrument under the public seal.

(4) A judge of the Supreme Court must be—

- (a) a barrister or solicitor of the United Kingdom, of any other part of the Commonwealth, or of Ireland;
- (b) a member of the Faculty of Advocates or a Writer to the Signet of Scotland; or
- (c) an attorney of the Supreme Court admitted under the Legal Profession Ordinance<sup>(a)</sup> or under any law for the time being in force in the Islands making like provision,

and of at least ten years' standing as such.

(5) It shall be lawful for a person qualified for appointment as a judge of the Supreme Court to be so appointed (regardless of his or her age) for such term as may be specified in the instrument of appointment, and section 74 shall have effect in relation to any person so appointed as if he or she would attain the retiring age applicable to that office on the day on which the specified term expires.

### **Tenure of office of judges of Supreme Court**

**74.**—(1) Subject to this section, a judge of the Supreme Court shall vacate his or her office when he or she attains the age of sixty-five years; but—

- (a) the Governor may permit a judge who attains the age of sixty-five years to continue in office until he or she has attained such later age, not exceeding the age of seventy years, as may have been agreed between the Governor and that judge; and
- (b) a judge who has attained the age at which he or she would otherwise vacate office under this subsection may continue in office for such period as may be necessary to enable him or her to deliver judgment or to do any other thing in relation to any proceeding commenced before him or her before he or she attained that age.

(2) A judge of the Supreme Court may be removed from office only for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with subsection (3).

(3) A judge of the Supreme Court shall be removed from office by the Governor by instrument under the public seal if the question of the removal of that judge from office has, at the request of the Governor made in pursuance of subsection (4), been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833<sup>(b)</sup> or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or misbehaviour.

(4) If the Governor considers that the question of removing a judge of the Supreme Court from office for inability as aforesaid or misbehaviour ought to be investigated, then—

- (a) the Governor shall appoint a tribunal, which shall consist of a Chairman and not less than two other members selected by the Governor from among persons who hold or have held high judicial office;
- (b) the tribunal shall inquire into the matter and report on the facts thereof to the Governor and advise the Governor whether he or she should request that the question of the removal of that judge should be referred by Her Majesty to the Judicial Committee; and
- (c) if the tribunal so advises, the Governor shall request that the question should be referred accordingly.

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<sup>(a)</sup> Ordinance No. 5 of 1997.  
<sup>(b)</sup> 1833 c.41.

(5) The provisions of the Commissions of Inquiry Ordinance<sup>(a)</sup> as in force on the date of commencement of this Constitution shall, subject to this section, apply as nearly as may be in relation to tribunals appointed under subsection (4) or, as the context may require, to their members as they apply in relation to Commissions or Commissioners appointed under that Ordinance.

(6) If the question of removing a judge of the Supreme Court from office has been referred to a tribunal under subsection (4) the Governor may suspend the judge from performing the functions of his or her office, and any such suspension may at any time be revoked by the Governor, and shall in any case cease to have effect—

- (a) if the tribunal advises the Governor that he or she should not request that the question of the removal of the judge from office should be referred by Her Majesty to the Judicial Committee; or
- (b) if the Judicial Committee advises Her Majesty that the judge ought not to be removed from office.

(7) The powers conferred upon the Governor by this section shall be exercised by the Governor in his or her discretion.

### **Acting judges of Supreme Court**

**75.**—(1) If the office of Chief Justice is vacant, or if the holder of that office is for any reason unable to perform the functions of that office, then, until some other person has been appointed to, and has assumed the functions of, that office, or until the holder of that office has resumed those functions, as the case may be, such one of the other judges of the Supreme Court or such other person qualified for appointment as a judge of the Supreme Court as the Governor, acting in accordance with section 82, may appoint for that purpose shall act in that office.

(2) If the office of a judge of the Supreme Court other than the Chief Justice is vacant, or if any such judge is acting as Chief Justice or is for any reason unable to perform the functions of his or her office, the Governor, acting in accordance with section 82, may appoint a person qualified for appointment as a judge of the Supreme Court to act as such a judge.

(3) A person may be appointed under subsection (1) or (2) notwithstanding that he or she has attained the age of sixty-five years.

(4) Any person appointed under this section to act as a judge of the Supreme Court shall, unless he or she is removed from office under section 74, continue to act for the period of his or her appointment or, if no such period is specified, until his or her appointment is revoked by the Governor, acting in his or her discretion; but a person whose appointment so to act has expired or been revoked may, with the permission of the Governor, acting in his or her discretion, continue so to act for such period as may be necessary to enable him or her to deliver judgment or to do any other thing in relation to any proceeding commenced before him or her previously thereto.

### **Oaths to be taken by judges of Supreme Court**

**76.** Before assuming the functions of his or her office, every judge of the Supreme Court shall make and subscribe before the Governor, or some other person authorised by the Governor, acting in his or her discretion, oaths of allegiance and for the due execution of his or her office in the forms set out in the Schedule to this Constitution.

## **The Court of Appeal**

### **Constitution of Court of Appeal**

**77.**—(1) There shall be a Court of Appeal for the Turks and Caicos Islands which shall have such jurisdiction and powers as may be conferred upon it by this Constitution and any other law.

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(a) Ordinance No. 7 of 1986.

(2) For the purposes of hearing and determining appeals the Court of Appeal may sit either in the Islands or in such places outside the Islands as the President of the Court may from time to time direct.

(3) The judges of the Court of Appeal shall be a President and two Justices of Appeal, or such other number of Justices of Appeal, not being less than two, as may be determined by the Governor, acting in his or her discretion; but the office of a Justice of Appeal shall not, without the consent of that Justice of Appeal, be abolished during his or her continuance in office.

(4) The judges of the Court of Appeal shall be appointed by the Governor, acting in accordance with section 82, by instrument under the public seal, for such period as may be specified in their respective instruments of appointment.

(5) A person shall be qualified to be appointed as a judge of the Court of Appeal if, and shall not be qualified to be so appointed unless, he or she holds or has held high judicial office and is qualified for appointment as a judge of the Supreme Court under section 73(4).

(6) A judge of the Supreme Court may exercise any of the powers of a single judge of the Court of Appeal to such extent as may be prescribed by any law relating to the Court of Appeal.

### **Tenure of office of judges of Court of Appeal**

**78.**—(1) Subject to this section, the office of a judge of the Court of Appeal shall become vacant upon the expiration of the period of his or her appointment to that office.

(2) A judge of the Court of Appeal may be removed from office only for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with subsection (3).

(3) A judge of the Court of Appeal shall be removed from office by the Governor by instrument under the public seal if the question of the removal of that judge from office has, at the request of the Governor made in pursuance of subsection (4), been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833 or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or misbehaviour.

(4) If the Governor considers that the question of removing a judge of the Court of Appeal from office for inability as aforesaid or misbehaviour ought to be investigated, then—

- (a) the Governor shall appoint a tribunal, which shall consist of a Chairman and not less than two other members selected by the Governor from among persons who hold or have held high judicial office;
- (b) the tribunal shall inquire into the matter and report on the facts thereof to the Governor and advise the Governor whether he or she should request that the question of the removal of that judge should be referred by Her Majesty to the Judicial Committee; and
- (c) if the tribunal so advises, the Governor shall request that the question should be referred accordingly.

(5) The provisions of the Commissions of Inquiry Ordinance as in force on the date of commencement of this Constitution shall, subject to this section, apply as nearly as may be in relation to tribunals appointed under subsection (4) or, as the context may require, to their members as they apply in relation to Commissions or Commissioners appointed under that Ordinance.

(6) If the question of removing a judge of the Court of Appeal from office has been referred to a tribunal under subsection (4) the Governor may suspend the judge from performing the functions of his or her office, and any such suspension may at any time be revoked by the Governor, and shall in any case cease to have effect—

- (a) if the tribunal advises the Governor that he or she should not request that the question of the removal of the judge from office should be referred by Her Majesty to the Judicial Committee; or

(b) if the Judicial Committee advises Her Majesty that the judge ought not to be removed from office.

(7) The powers conferred upon the Governor by this section shall be exercised by the Governor in his or her discretion.

### **Acting judges of Court of Appeal**

**79.**—(1) If the office of the President of the Court of Appeal is vacant, or if the holder of that office is for any reason unable to perform the functions of that office, then, until some other person has been appointed to, and has assumed the functions of, that office, or until the holder of that office has resumed those functions, as the case may be, such one of the Justices of Appeal or such other person qualified for appointment as a judge of the Court of Appeal as the Governor, acting in accordance with section 82, may appoint for that purpose shall act in the office of President.

(2) If the office of a Justice of Appeal is vacant, or if any Justice of Appeal is acting as the President or is for any reason unable to perform the functions of his or her office, the Governor, acting in accordance with section 82, may appoint a person possessing such legal qualifications and experience as he or she, after consultation with the President, may deem appropriate to act as a Justice of Appeal.

(3) Any person appointed under this section to act as a judge of the Court of Appeal shall, unless he or she is removed from office under section 78, continue to act for the period of his or her appointment or, if no such period is specified, until his or her appointment is revoked by the Governor, acting in his or her discretion; but a person whose appointment so to act has expired or been revoked may, with the permission of the Governor, acting in his or her discretion, continue so to act for such period as may be necessary to enable him or her to deliver judgment or to do any other thing in relation to any proceeding commenced before him or her previously thereto.

### **Oaths to be taken by judges of Court of Appeal**

**80.** Before assuming the functions of his or her office, every judge of the Court of Appeal shall make and subscribe before the Governor, or some other person authorised by the Governor, acting in his or her discretion, oaths of allegiance and for the due execution of his or her office in the forms set out in the Schedule to this Constitution.

## Judicial Service Commission

### **Judicial Service Commission**

**81.**—(1) There shall be a Judicial Service Commission for the Turks and Caicos Islands, which shall consist of a Chairman and two other members.

(2) Of the members of the Judicial Service Commission—

- (a) the Chairman shall be appointed by the Governor, acting in his or her discretion;
- (b) the other two members shall be appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition, from among persons who hold or have held high judicial office.

(3) The members of the Judicial Service Commission shall be appointed by instrument under the public seal for such period, not being less than one year nor more than four years, as may be specified in their respective instruments of appointment.

(4) The office of a member of the Judicial Service Commission shall become vacant—

- (a) at the expiration of the period specified in the instrument by which he or she was appointed;
- (b) if he or she resigns his or her office by writing under his or her hand addressed to the Governor; or



- (c) if the Governor, acting in his or her discretion, directs that he or she shall be removed from office for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(5) Any decision of the Judicial Service Commission shall require the concurrence of not less than two members of the Commission.

(6) In the exercise of its functions the Judicial Service Commission shall not be subject to the direction or control of any other person or authority.

### **Appointments, etc, to judicial offices**

**82.—(1) Power—**

- (a) to make appointments to the offices of judge of the Supreme Court, judge of the Court of Appeal, magistrate and registrar; and
- (b) to remove or exercise disciplinary control over persons holding or acting in the offices of magistrate and registrar,

is vested in the Governor, acting in accordance with the advice of the Judicial Service Commission, unless the Governor is instructed by Her Majesty through a Secretary of State to do otherwise.

(2) In this section, “registrar” means registrar of any court in the Islands.

## **PART VII**

### **THE PUBLIC SERVICE**

#### **Public Service Commission**

### **Public Service Commission**

**83.—(1)** There shall be a Public Service Commission for the Turks and Caicos Islands, which shall consist of a Chairman and four other members.

(2) Of the members of the Public Service Commission—

- (a) the Chairman shall be appointed by the Governor, acting in his or her discretion;
- (b) one member shall be appointed by the Governor, acting in accordance with the advice of the Premier;
- (c) one member shall be appointed by the Governor, acting after consultation with the Premier;
- (d) one member shall be appointed by the Governor, acting in accordance with the advice of the Leader of the Opposition;
- (e) one member shall be appointed by the Governor, acting after consultation with the Leader of the Opposition.

(3) The members of the Public Service Commission shall be appointed by instrument under the public seal for such period, not being less than one year nor more than four years, as may be specified in their respective instruments of appointment.

(4) No person shall be qualified to be appointed as a member of the Public Service Commission if he or she is a public officer or if he or she is or has been within the preceding three years—

- (a) an elected or appointed member of the House of Assembly; or
- (b) the holder of any office in any political party.

(5) The office of a member of the Public Service Commission shall become vacant—

- (a) at the expiration of the period specified in the instrument by which he or she was appointed;

- (b) if he or she resigns his or her office by writing under his or her hand addressed to the Governor;
- (c) if he or she becomes an elected or appointed member of the House of Assembly, the holder of any office in any political party, or a public officer; or
- (d) if the Governor, acting in his or her discretion, directs that he or she shall be removed from office for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(6) Whenever the office of the Chairman of the Public Service Commission is vacant or the holder of that office is for any reason unable to perform the functions of that office, such one of the other members of the Public Service Commission as the Governor, acting in his or her discretion, may appoint shall act in the office of the Chairman.

(7) If the office of a member of the Public Service Commission other than the Chairman is vacant or the holder of that office is acting as the Chairman or is for any other reason unable to perform the functions of his or her office, the Governor, acting in the manner prescribed by subsection (2) for the appointment of that member, may appoint a person who is qualified for appointment as a member of the Commission to act as a member of the Commission; and any person so appointed shall, subject to subsection (5), continue so to act until he or she is notified by the Governor, acting in his or her discretion, that the circumstances giving rise to the appointment have ceased to exist.

(8) No business shall be transacted at any meeting of the Public Service Commission if there are less than four members of the Commission present.

(9) Any question proposed for decision at any meeting of the Public Service Commission shall be determined by a majority of the votes of the members present and voting; and if on any question the votes are equally divided the Chairman shall have and exercise a casting vote.

(10) The Public Service Commission shall be served by a secretariat, the members of which shall be public officers.

(11) In the exercise of its functions the Public Service Commission shall not be subject to the direction or control of any other person or authority.

### **Appointment, etc, of public officers**

**84.**—(1) Power to make appointments to public offices, and to remove or exercise disciplinary control over persons holding or acting in such offices, is vested in the Governor, acting in accordance with the advice of the Public Service Commission, unless the Governor is instructed by Her Majesty through a Secretary of State to do otherwise.

(2) The Governor, acting after consultation with the Public Service Commission, may, by regulations published in the *Gazette*, delegate to any member of the Commission or any public officer, to such extent and subject to such conditions as may be prescribed in the regulations, any of the powers vested in the Governor to make appointments to public offices and to remove or exercise disciplinary control over persons holding or acting in such offices.

(3) This section shall not apply to—

- (a) any office to which section 85 applies;
- (b) any office mentioned in section 82;
- (c) any office in the Police Force;
- (d) the office of Cabinet Secretary except as respects power to remove or exercise disciplinary control over a person holding or acting in that office.

### **Particular offices**

**85.**—(1) Subject to subsections (3) and (4), power to make appointments to the offices to which this section applies and to remove or exercise disciplinary control over persons holding or acting in such offices is vested in the Governor, acting in his or her discretion.

(2) This section applies to the offices of Attorney General; Permanent Secretary, Finance; Chief Auditor; and Commissioner of Police.

(3) Before making any appointment to the office of Attorney General, the Governor shall consult the Premier.

(4) A person holding the office of Attorney General or Chief Auditor may be removed from office only for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and with the prior approval of a Secretary of State.

### **Appointment of Cabinet Secretary**

**86.**—(1) Power to make appointments to the office of Cabinet Secretary is vested in the Governor, acting in accordance with the advice of the Premier.

(2) Whenever occasion arises for making an appointment under this section the Public Service Commission shall submit to the Premier a list of public officers who appear to the Commission to be qualified for the appointment and the Premier shall recommend to the Governor a person whose name appears on the list.

### **Additional functions of Public Service Commission**

**87.** The Public Service Commission shall exercise the following additional functions—

- (a) the supervision of, and the provision of advice upon, the policies and programmes of the Government for the training of public officers at all levels;
- (b) the issue from time to time of guidelines on the conduct and ethics of the public service, and supervision of their observance;
- (c) the provision of advice of a general nature upon questions relating to the pay and conditions of service of public officers;
- (d) such other functions as may be conferred upon it by law or by regulations made by the Governor, acting after consultation with the Public Service Commission.

### **Regulations regarding Public Service Commission**

**88.** The Governor, acting after consultation with the Public Service Commission, may, by regulations published in the *Gazette*, make provision for—

- (a) the organisation of the work of the Commission and the manner in which it performs its functions;
- (b) consultation by the Commission with persons or authorities other than members of the Commission;
- (c) the protection and privileges of members of the Commission in respect of the performance of their functions and the privilege of communications to and from the Commission and its members in the case of legal proceedings;
- (d) the definition and trial of offences in relation to the functions of the Commission and the imposition of penalties for such offences; but no such penalty shall exceed a fine of two thousand five hundred dollars or imprisonment for a term of one year or both such fine and imprisonment.

## **Pensions**

### **Applicability of pensions law**

**89.**—(1) Subject to section 91, the law applicable to the grant and payment to any officer, or to his widow or widower, children, dependants or personal representatives, of any pension, gratuity or other like allowance (in this section and in sections 90 and 91 referred to as “an award”) in

respect of the service of that officer in a public office shall be that in force on the relevant day or any later law not less favourable to the person concerned.

(2) For the purposes of this section the relevant day is—

- (a) in relation to an award granted before the appointed day, the day on which the award was granted;
- (b) in relation to an award granted or to be granted on or after the appointed day to or in respect of a person who was a public officer before that day, the day immediately before that day;
- (c) in relation to an award granted or to be granted to or in respect of a person who first becomes a public officer on or after the appointed day, the day on which he or she becomes a public officer.

(3) For the purposes of this section, in so far as the law applicable to an award depends on the option of the person to or in respect of whom it is granted or to be granted, the law for which he or she opts shall be taken to be more favourable to him or her than any other law for which he or she might have opted.

(4) In this section “the appointed day” means the date of commencement of this Constitution.

### **Pensions, etc, charged on revenues of Islands**

**90.** Awards granted under any law in force in the Islands shall be charged on and paid out of the revenues of the Islands.

### **Grant and withholding of pensions, etc**

**91.—**(1) The power to grant any award under any pensions law in force in the Islands (other than an award to which, under that law, the person to whom it is payable is entitled as of right) and, in accordance with any provisions in that respect contained in any such law, to withhold, reduce in amount or suspend any award payable under any such law is hereby vested in the Governor, acting in his or her discretion.

(2) In this section “pensions law” means any law relating to the grant to any person, or to the widow or widower, children, dependants or personal representatives of that person, of an award in respect of the services of that person in a public office, and includes any instrument made under any such law.

## **PART VIII**

### **THE COMPLAINTS COMMISSIONER**

#### **The Complaints Commissioner**

**92.—**(1) There shall be a Complaints Commissioner for the Turks and Caicos Islands.

(2) The Complaints Commissioner shall be appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition, by instrument under the public seal.

(3) No person shall be qualified to be appointed as Complaints Commissioner if he or she is or has been within the preceding three years—

- (a) an elected or appointed member of the House of Assembly; or
- (b) the holder of any office in any political party.

(4) The office of the Complaints Commissioner shall become vacant—

- (a) at the expiration of the period specified in the instrument by which he or she was appointed;
- (b) if he or she resigns his or her office by writing under his or her hand addressed to the Governor;

- (c) if he or she becomes an elected or appointed member of the House of Assembly or the holder of any office in any political party; or
- (d) if the Governor, acting in his or her discretion, directs that he or she shall be removed from office for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

#### **Functions of Complaints Commissioner**

**93.**—(1) The Complaints Commissioner shall have such functions and jurisdiction as may be prescribed by law.

(2) In the exercise of his or her functions, the Complaints Commissioner shall not be subject to the direction or control of any other person or authority.

## **PART IX**

### **MISCELLANEOUS**

#### **Grants of land, etc**

**94.** Subject to the provisions of any law, the Governor, or any person authorised by the Governor in writing under his or her hand, may, in Her Majesty's name and on Her behalf, make and execute under the public seal grants and dispositions of any land or other immovable property within the Islands that may be lawfully granted or disposed of by Her Majesty.

#### **Powers of pardon, etc**

**95.**—(1) The Governor may, in Her Majesty's name and on Her behalf—

- (a) grant to any person convicted of any offence against any law in force in the Islands, a pardon, either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period, from the execution of any punishment imposed on him or her for such an offence;
- (c) substitute a less severe form of punishment for that imposed by any sentence for such an offence; or
- (d) remit the whole or any part of any sentence passed for such an offence or of any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.

(2) In the exercise of his or her powers under this section the Governor shall act in his or her discretion but shall first consult the Cabinet unless in any particular case the matter is in his or her judgement too urgent to permit such consultation.

#### **Public offices and appointments**

**96.** The Governor, in Her Majesty's name and on Her behalf, may constitute such offices for the Islands as may be lawfully constituted by Her Majesty and, subject to this Constitution and any other law, may make appointments to any such office; and any person so appointed, unless it is otherwise provided by this Constitution or any such law, shall hold office during Her Majesty's pleasure.

#### **Discipline of public service**

**97.**—(1) Subject to this Constitution and any other law, the Governor may for cause shown to his or her satisfaction remove or suspend from the exercise of his or her functions any person holding or acting in a public office, or take such disciplinary action with respect to such a person as may seem to the Governor desirable.

(2) An officer who is suspended from the exercise of his or her functions shall be paid such salary, not being less than half his or her rate of salary, for the period of suspension as the Governor may determine.

### **Registration of interests**

**98.**—(1) There shall be for the Islands a Register of Interests, which shall be maintained by a Registrar who shall be appointed, and may be removed from office, by the Governor acting in his or her discretion.

(2) It shall be the duty of any person to whom this section applies to declare to the Registrar, for entry in the Register of Interests, such interests, assets, income and liabilities of that person, or of any other person connected with him or her, as may be prescribed by law.

(3) A person shall make a declaration under subsection (2) upon assuming the functions of his or her office and at such intervals thereafter (being no longer than twelve months) as may be prescribed by law.

(4) This section applies to all members of the House of Assembly (including Ministers) and the holders of such other offices (except that of Governor) as may be prescribed by law.

(5) A law made under this Constitution shall make provision for giving effect to this section, including the sanctions which may be imposed for a failure to comply with, or the making of false statements in purported compliance with, subsections (2) and (3) and, notwithstanding anything contained in Part IV of this Constitution, the sanctions which may be imposed may include the suspension of a member of the House of Assembly from sitting and voting in the House for such period as may be prescribed in such a law.

### **Interpretation**

**99.**—(1) In this Constitution, unless the context otherwise requires—

“appointed member” means a member of the House of Assembly appointed under section 45;

“Belonger” means a person who under the law in force in the Islands regulating immigration has the status of Belonger;

“Court of Appeal” means the Court of Appeal established by section 77;

“elected member” means a member of the House of Assembly elected in pursuance of section 43;

“functions” includes powers and duties;

“*Gazette*” means the official *Gazette* of the Turks and Caicos Islands;

“Government” means the Government of the Turks and Caicos Islands;

“Governor” means the person for the time being appointed as Governor of the Islands, and includes any person performing the functions of the Governor in pursuance of section 23 and, to the extent to which a deputy appointed under section 24 is authorised to act, that deputy;

“high judicial office” means the office of judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or Ireland or a court having jurisdiction in appeals from such a court;

“high legal office” means the office of a Law Officer, Director of Public Prosecutions, or a person exercising the functions of principal legislative draftsman, in some part of the Commonwealth or Ireland;

“the Islands” means the Turks and Caicos Islands;

“law” includes any subsidiary instrument;

“meeting” means any sitting or sittings of the House of Assembly commencing when the House first meets after being summoned at any time and terminating when the House is adjourned *sine die* or at the conclusion of a session;

“member” in relation to the House of Assembly includes the Speaker or other person presiding over the House;

“Minister” means a person appointed as Premier or other Minister under section 27;

“Premier” means the person appointed as such under section 27(2);

“public office” means, subject to subsection (2), an office of emolument in the public service;

“public officer” means the holder of any public office, and includes a person appointed to act in any public office;

“public service” means the service of the Crown in a civil capacity in respect of the government of the Islands;

“session” in relation to the House of Assembly means the sittings of the House commencing when the House first meets after its prorogation or dissolution at any time, and terminating when the House is next prorogued or dissolved without having been prorogued;

“sitting” in relation to the House of Assembly means a period during which the House is sitting continuously without adjournment, and includes any period during which the House is in committee;

“Standing Orders” means the Standing Orders of the House of Assembly made under section 60;

“subsidiary instrument” means any proclamation, regulation, order, rule or other like instrument having the force of law.

(2) For the purposes of this Constitution, a person shall not be considered as holding or acting in a public office by reason only that he or she—

- (a) is in receipt of any remuneration or allowance as a member of the House of Assembly, the Public Service Commission, the Judicial Service Commission or an Electoral District Boundary Commission;
- (b) is in receipt of a pension or other like allowance in respect of service under the Crown; or
- (c) is on leave of absence pending relinquishment of a public office;

and a provision in any law that a person shall not be disqualified for appointment or election as a member of the House of Assembly by reason of his or her holding or acting in any public office or class of public office specified in that law shall have effect as if it were included in this Constitution.

(3) Any person who has vacated his or her seat in the House of Assembly or has vacated any office constituted by or under this Constitution may, if qualified, again be appointed or elected as a member of that body or to that office, as the case may be, from time to time.

(4) Except where the context otherwise requires, a reference in this Constitution to the holder of an office by the term designating his or her office shall be construed as a reference to any person for the time being lawfully performing the functions of that office.

(5) Where the holder of any office constituted by or under this Constitution is on leave of absence pending the relinquishment of that office, the person or authority having power to make appointments to that office may appoint another person to that office; and where two or more persons concurrently hold the same office by virtue of an appointment made in pursuance of this subsection, the person last appointed shall, in respect of any function conferred on the holder of that office, be deemed to be the sole holder of that office.

(6) Where by this Constitution any person is directed, or power is conferred on any person or authority to appoint a person, to act in an office if the holder of that office is unable to perform the functions of that office, the validity of any performance of those functions by the person so directed or of any appointment made in exercise of that power shall not be called in question in any court on the ground that the holder of the office is not unable to perform the functions of the office.

(7) In this Constitution, unless it is otherwise provided or the context otherwise requires—

- (a) any reference to power to make appointments to any public office shall be construed as including a reference to power to make appointments on promotion and transfer, appointments on contract and appointments to act in an office during any period when it is vacant or the holder of that office is absent from the Islands or is for any other reason unable to perform the functions of the office;
- (b) any reference to power to remove a public officer from office shall be construed as including a reference to any power conferred by any law to require or permit that officer to retire from the public service and to any power or right to terminate a contract on which a person is employed as a public officer and to determine whether any such contract shall or shall not be renewed.

(8) Any power conferred by this Constitution to make any subsidiary instrument or to give any instructions or directions or make any designation shall be construed as including a power exercisable in like manner to amend or revoke any such instrument, instructions, directions or designation.

(9) Where a person is required by this Constitution to make an oath he or she shall, if he or she so desires, be permitted to comply with that requirement by making an affirmation in the form provided for in the Schedule to this Constitution.

(10) For the purposes of this Constitution, the resignation of a member of the House of Assembly or the holder of any office constituted by this Constitution that is required to be addressed to any person shall, unless otherwise expressly provided, be deemed to have effect from the time at which it is received by that person.

(11) For the purposes of this Constitution, a person shall not be regarded as absent from the Islands or as unable to perform the functions of his or her office by reason only that he or she is in passage from one part of the Islands to another.

## SCHEDULE TO THE CONSTITUTION

### Forms of Oaths and Affirmations

#### *1. Oath of Allegiance*

I .....do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

#### *2. Oath for the due execution of the office of Governor*

I .....do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors in the office of Governor of the Turks and Caicos Islands. So help me God.

#### *3. Oath for the due execution of office of a member of the Cabinet*

I .....do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors in the office of member of the Cabinet. So help me God.

#### **4. Judicial Oath**

I ..... do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors in the office of ..... and will do right to all manner of people after the laws and usages of the Turks and Caicos Islands, without fear or favour, affection or ill will. So help me God.

#### *5. Affirmations*

In the forms respectively set forth, for the word “swear” there shall be substituted the words “solemnly and sincerely affirm and declare”, and the words “So help me God” shall be omitted.



## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order establishes a new Constitution of the Turks and Caicos Islands. The new Constitution sets out a modernised Chapter on fundamental rights and freedoms of the individual. It provides for a Governor as Her Majesty's representative in the Islands. It provides for a House of Assembly composed of elected and appointed members, and for a Cabinet and Ministers appointed from among the members of the House. It also provides for the judiciary, the public service and a Complaints Commissioner for the Islands.

The Order revokes the Turks and Caicos Islands Constitution Order 1988 (as amended), to which the current Constitution is scheduled.