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STATUTORY INSTRUMENTS

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**1973 No. 1080**

**CARIBBEAN AND NORTH  
ATLANTIC TERRITORIES**

**The Bahamas Independence Order 1973**

<i>Made</i>	- - - -	<i>20th June 1973</i>
<i>Laid before Parliament</i>		<i>26th June 1973</i>
<i>Coming into Operation</i>		<i>10th July 1973</i>

At the Court at Windsor Castle, the 20th day of June 1973

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in Her by section 1 of the Bahamas Islands (Constitution) Act 1963 and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

**Citation, commencement and construction**

1.—(1) This Order may be cited as The Bahamas Independence Order 1973.

(2) Subject to the provisions of the next following subsection this Order shall come into operation on 10th July 1973 (in this Order referred to as “the appointed day”)

(3) The Governor and Commander-in-Chief of the Bahama Islands may at any time after 20th June 1973 exercise any of the powers conferred on the Governor-General by section 4(3) of this Order or Article 39(4) of the Constitution set out in the Schedule to this Order (in this Order referred to as “the Constitution”) to such an extent as may be necessary or expedient to enable the Constitution to function as from the appointed day.

- (a) (4) (a) For the purposes of the exercise by the Governor under subsection (3) of this section of the powers conferred by section 4(3) of this Order the Governor shall act in accordance with the advice of the Prime Minister.
- (b) For the purposes of the exercise by the Governor under the said subsection of the powers conferred by Article 39(4) of the Constitution the Governor shall act in accordance with the advice of the Prime Minister after consultation with the Leader of the Opposition.
- (c) For the purposes of this subsection references to the Prime Minister and Leader of the Opposition shall be construed as references to the persons performing the functions of

those offices under the Bahamas Islands (Constitution) Order 1969(1) (in this Order referred to as “the existing Order”, and in relation to the exercise by virtue of this subsection of the powers conferred by Article 39(4) of the Constitution the provisions of Article 40 of the Constitution shall apply as they would apply in relation to the exercise of those powers by virtue of Article 39(4) of the Constitution.

(5) Save where the context otherwise requires, expressions used in sections 1 to 17 of this Order shall have the same meaning as in the Constitution and the provisions of Articles 127 and 137 of the Constitution shall apply for the purposes of interpreting those sections as they apply for the purposes of interpreting the Constitution.

### **Revocation**

2. The existing Order is revoked; but the revocation of the existing Order shall not affect the operation on and after the appointed day of any law made or having effect as if made in pursuance of the existing Order or continued in force thereunder and having effect as part of the law of the Bahamas Islands immediately before the appointed day (including any law made before the appointed day and coming into operation on or after that day).

### **Establishment of Constitution**

3. Subject to the provisions of this Order, the Constitution shall come into effect in the appointed day.

### **Existing laws**

4.—(1) Subject to the provisions of this section, the existing laws shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Bahamas Independence Act 1973 and this Order.

(2) Where any matter that falls to be prescribed or otherwise provided for under the Constitution by Parliament or by any other authority or person is prescribed or provided for by or under an existing law (including any amendment to any such law made under this section) or is otherwise prescribed or provided for immediately, before the appointed day by or under the existing Order, that prescription or provision shall, as from that day, have effect (with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Bahamas Independence Act 1973 and this Order) as if it had been made under the Constitution by Parliament or, as the case may require, by the other authority or person.

(3) The Governor-General may by Order made at any time before 10th July 1974 make such amendments to any existing law as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of the Bahamas Independence Act 1973 and this Order or otherwise for giving effect to or enabling effect to be given to those provisions.

(4) An Order made by the Governor-General under subsection (3) of this section shall have effect from such day, not earlier than the appointed day, as may be specified therein.

(5) The provisions of this section shall be without prejudice to any powers conferred by this Order or by any other law upon any person or authority to make provision for any matter, including the amendment or repeal of any existing law.

(6) In this section “existing law” means any law having effect as part of the law of the Bahamas Islands immediately before the appointed day (including any law made before the appointed day and coming into operation on or after that day).

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(1) (1969 I, p. 1567).

## **Parliament**

5.—(1) The persons who immediately before the appointed day are members of the Senate established by the existing Order (in this section referred to as “the existing Senate”), having been appointed as such under paragraphs (a) and (b) respectively of section 30(2) of the Schedule to the existing Order, shall as from the appointed day be members of the Senate established by the Constitution as if they had been appointed as such under paragraphs (2) and (3) respectively of Article 39 of the Constitution and shall hold their seats as Senators in accordance with the provisions of the Constitution.

(2) The persons who immediately before the appointed day are members of the House of Assembly then established for the Bahamas Islands (in this section referred to as “the existing Assembly”) shall as from the appointed day be members of the House of Assembly established by the Constitution as if elected as such in pursuance of Article 46(2) of the Constitution and shall hold their seats in that House in accordance with the provisions of the Constitution.

(3) The persons who immediately before the appointed day are Speaker and Deputy Speaker of the existing Assembly shall as from the appointed day be Speaker and Deputy Speaker respectively of the House of Assembly established by the Constitution as if elected as such by that House in pursuance of Article 50(1) of the Constitution and shall hold office in accordance with the provisions of that Article.

(4) Any person who is a member of the Senate or the House of Assembly established by the Constitution by virtue of the preceding provisions of this section and who, since he was last appointed or elected as a member of the existing Senate or the existing Assembly before the appointed day, has taken the oath of allegiance in pursuance of section 45 of the Schedule to the existing Order shall be deemed to have complied with the requirements of Article 64 of the Constitution relating to the taking of the oath of allegiance.

(5) The rules of procedure of the existing Senate and the existing Assembly as in force immediately before the appointed day shall, except as may be otherwise provided in pursuance of Article 55(1) of the Constitution, be the rules of procedure respectively of the Senate and the House of Assembly established by the Constitution, but they shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

(6) Notwithstanding anything contained in Article 66(3) of the Constitution (but subject to the provisions of paragraphs (4) and (5) of that Article) Parliament shall, unless sooner dissolved, stand dissolved on the expiration of five years from the first sitting of the existing Assembly after the general election of members of the existing Assembly last preceding the appointed day.

(7) For the purposes of Articles 41 and 47 of the Constitution any period of ordinary residence in the Bahama Islands immediately before the appointed day shall be deemed to be residence in The Bahamas.

## **Ministers and Parliamentary Secretaries**

6.—(1) The person who immediately before the appointed day holds the office of Prime Minister under the existing Order shall, as from the appointed day, hold office as Prime Minister as if he had been appointed thereto under Article 73(1) of the Constitution.

(2) The persons (other than the Prime Minister) who immediately before the appointed day hold office as Ministers under the existing Order shall, as from the appointed day, hold the like offices as if they had been appointed thereto under Article 73(2) of the Constitution.

(3) Any person holding the office of Prime Minister or other Minister by virtue of subsection (1) or (2) of this section who immediately before the appointed day was charged with responsibility for any matter or department of government shall, as from the appointed day, be deemed to have been

charged with responsibility for the corresponding business or administration of the corresponding department of the Government under Article 77 of the Constitution.

(4) The persons who immediately before the appointed day hold office as Parliamentary Secretaries under the existing Order shall, as from the appointed day, hold the like offices as if they had been appointed thereto under Article 81(1) of the Constitution.

(5) Any person who holds office as Prime Minister or other Minister or Parliamentary Secretary as from the appointed day by virtue of the provisions of this section shall be deemed to have complied with the requirements of Article 84 of the Constitution relating to the taking of oaths.

### **Leader of the Opposition**

7. The person who immediately before the appointed day is the Leader of the Opposition (as defined for the purposes of the Schedule to the existing Order) shall, as from the appointed day, hold office as Leader of the Opposition as if he had been appointed thereto under Article 82 of the Constitution.

### **Existing officers**

8. Subject to the provisions of this Order and of the Constitution, every person who immediately before the commencement of this Order holds or is acting in a public office shall, as from the commencement of this Order, continue to hold or act in the like office as if he had been appointed thereto in accordance with the provisions of the Constitution.

### **Supreme Court and Court of Appeal Judges**

9.—(1) The Supreme Court and the Court of Appeal in existence immediately before the appointed day shall, as from the appointed day be the Supreme Court and the Court of Appeal for the purposes of the Constitution and the Chief Justice and the Judges of the Supreme Court and the President of the Court of Appeal and the Justices of Appeal holding office immediately before that day shall, as from that day, hold offices as Chief Justice or Justices of the Supreme Court or President of the Court of Appeal or Justices of Appeal, as the case may be, as if they had been appointed under the provisions of Chapter VII of the Constitution.

(2) Any proceedings pending before the Supreme Court immediately before the appointed day may be continued and any judgment of that Court given but not satisfied before the day may be enforced as if it were the judgment of the Supreme Court established by the Constitution.

### **Pending appeals**

10.—(1) Any proceedings pending immediately before the appointed day on appeal from the Supreme Court to the Court of Appeal for the Bahamas Islands may be continued after the appointed day before the Court of Appeal for The Bahamas established by the Constitution.

(2) Any Judgement of the Court of Appeal for the Bahama Islands in an appeal from a court of the Colony of the Bahama Islands given, but not satisfied, before the appointed day may be enforced after the appointed day as if it were a judgment of the Court of Appeal for The Bahamas established by the Constitution.

### **Exercise of jurisdiction by Court of Appeal for Turks and Caicos Islands**

11. A court of appeal for the Turks and Caicos Islands may, under arrangements between the Governments of that territory and the Government of The Bahamas, sit in The Bahamas and exercise there such jurisdiction and powers in respect of the Turks and Caicos Island as may be conferred upon it by any law for the time being in force in the Turks and Caicos Islands. Without prejudice to

the generality of the foregoing, persons committed to custody in the Turks and Caicos Islands when present in The Bahamas in connection with any proceedings in a court of appeal for the Turks and Caicos Islands may be held in custody in The Bahamas and persons may be committed to custody in The Bahamas by order of such a court.

### **Remuneration of certain persons**

12. Until provision is made under and in accordance with Article 135 of the Constitution, the salaries and allowances of the holders of each of the offices to which that Article applies, other than the Governor-General, shall be the salaries and allowances to which the holders of each of those offices or of the offices corresponding thereto were entitled immediately before the appointed day, and the salary and allowances of the Governor-General shall be the salary and allowances to which the Governor and Commander-in-Chief of the Bahama Islands was entitled immediately before such day.

### **Transitional provisions relating to existing Commissions**

13.—(1) Any power of the Governor and Commander-in-Chief of the Bahama Islands acting on the recommendation of the Public Service Commission established by the existing Order which has been validly delegated to any public officer under that Order shall, as from the appointed day, be deemed to have been delegated to that public officer to the extent that that power could be so delegated under Article 110 of the Constitution.

(2) Any matter which, immediately before the appointed day, is pending before an existing Commission or, as the case may be, before any person or authority on whom the power to deal with such matter has been conferred under the existing Order shall as from the appointed day be continued before the Public Service Commission established by the Constitution, or the Public Service Board of Appeal, or the Judicial and Legal Service Commission, or the Police Service Commission, so established or, as the case may be, the said person or authority: Provided that where an existing Commission or, as the case may be, any person or authority as aforesaid has, immediately before the appointed day, partly completed the hearing of a disciplinary proceeding (in this section referred to as “the original hearing”), no person shall take part in the continued hearing unless he has also taken part in the original hearing; and where by virtue of this subsection the original hearing cannot be so continued the hearing of the disciplinary proceeding shall be recommenced.

(3) A person who immediately before the appointed day holds the office of Chairman or other member of an existing Commission shall, as from the appointed day, continue to hold the like office as if he had been appointed thereto in accordance with the provisions of the Constitution and shall be deemed to have been duly appointed to each office under the Constitution.

(4) The provisions of Articles 107(3), 114(3), 116(3) or 118(3), as the case may be, of the Constitution shall have effect in relation to such a person as if the date of this appointment under the existing Order were the date of his appointment under the Constitution.

(5) Until Parliament otherwise prescribes under Article 117(2) of the Constitution the public offices to which Article 117(1) thereof applies shall be the offices of Solicitor-General, Registrar of the Supreme Court, Legal Draftsman, Senior Crown Counsel, Chief Magistrate, Registrar General, Stipendiary and Circuit Magistrate, Crown Counsel, Assistant Legal Draftsman, Assistant Registrar, Deputy Registrar General and Assistant Crown Counsel.

(6) In this section “an exiting Commission” means the Public Service Commission established under the existing Order or, as the case may be, the Public Service Board of Appeal, or the Judicial and Legal Service Commission, or the Police Service Commission, so established.

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### **Emergency Powers Order in Council 1939**

**14.**—(1) The Emergency Powers Order in Council 1939(2) and any Order in Council amending that Order(3) shall cease to have effect as part of the law of The Bahamas on 10th July 1974 or such earlier date as Parliament may prescribe.

(2) Until such time as the said Orders cease to have effect under subsection (1) of this section they shall continue to have effect in respect of The Bahamas as they had effect in respect of the former Colony of the Bahama Islands immediately before the appointed day, except that the powers exercisable by the Governor thereunder shall be exercisable by the Governor-General acting in accordance with the advice of the Prime Minister.

### **Transfer of Crown Lands Fund for Development to Consolidated Fund**

**15.** All sums standing to the credit of the Crown Lands Fund for Development immediately before the appointed day shall as from that day from part of the Consolidated Fund, and all sums charged on the Crown Lands Fund for Development immediately before that day shall as from that day stand charged on the Consolidated Fund.

### **Transitional provisions relating to compensation etc**

**16.** Any compensation, gratuity, grant or allowance paid or payable, whether before or after the appointed day, under any regulations made by the Governor under section 15 of the Bahama Islands (Constitution) Order in Council 1963(4) or under section 9 of the Bahama Islands (Constitution) Order 1969, which under those regulations as in force immediately prior to the appointed day was or would have been exempt from tax in the Bahama Islands, shall be exempt from tax to the same extent in The Bahamas after the appointed day.

### **Alteration of this Order**

**17.**—(1) Parliament may alter any of the provisions of this Order (in so far as those provisions from part of the law of The Bahamas), other than those mentioned in subsections (2) and (3) of this section, in the same manner as it may alter the provisions of the Constitution other than those specified in paragraphs (2) and (3) of Article 54 of the Constitution.

(2) Parliament may alter subsection (6) of section 5 of this Order and this section in the same manner as it may alter the provisions specified in Article 54(3) of the Constitution.

(3) Parliament may alter sections 8, 9, 12, subsections (3), (4) and (5) of section 13 and section 16 of this Order in the same manner as it may alter the provisions specified in Article 54(2) of the Constitution.

(4) In this section “alter” has the same meaning as in Article 54(4)(b) of the Constitution.

*W. G. Agnew*

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(2) See S.I. 1952 I at p. 621

(3) The relevant amending instruments are S.I. 1956/731, 1963/88, 1633, 1964/267, 1199, 1965/131, 1968/724, 1973/759 (1956 I, p. 512; 1963 I, p. 105; III, p. 3084; 1964 I, p. 467, II, p. 2781; 1965 I p. 270; 1968 II, p. 2077; 1973 I, p. 2417).

(4) (1963 III, p. 4403).

## SCHEDULE TO THE ORDER

### THE CONSTITUTION OF THE COMMONWEALTH OF THE BAHAMAS

WHEREAS Four hundred and eighty-one years ago the rediscovery of this Family of Islands, Rocks and Cays heralded the rebirth of the New World;

AND WHEREAS the People of this Family of Islands recognise that the preservation of their Freedom will be guaranteed by a national commitment to Self-discipline, Industry, Loyalty, Unity and an abiding respect for Christian values and the Rules of Law;

NOW KNOW YE THEREFORE:

We the Inheritors of and Successors to this Family of Islands, recognising the Supremacy of God and believing in the Fundamental Rights and Freedoms of the Individual, DO HEREBY PROCLAIM IN SOLEMN PRAISE the Establishment of a Free and Democratic Sovereign Nation founded on Spiritual Values and in which no Man, Woman or Child shall ever be Slave or Bondsman to anyone or their Labour exploited or their Lives frustrated by deprivation, AND DO HEREBY PROVIDE by these Articles for the indivisible Unity and Creation under God of the Commonwealth of the Bahamas.

## CHAPTER I

### THE CONSTITUTION

#### **The State**

1. The Commonwealth of The Bahamas shall be a sovereign democratic State.

#### **The Constitution is supreme law**

2. This Constitution is the supreme law of the Commonwealth of The Bahamas and, subject to the provisions of this Constitution, if any other law is inconsistent with this Constitution, this Constitution, shall prevail and the other law shall, to the extent of the inconsistency, be void.

## CHAPTER II

### CITIZENSHIP

#### **Persons who become citizens on 10th July 1973**

3.—(1) Every person who, having been born in the former Colony of the Bahama Islands, is on 9th July 1973 a citizen of the United Kingdom and Colonies shall become a citizen of The Bahamas on 10th July 1973.

(2) Every person who, having been born outside the former Colony of the Bahama Islands, is on 9th July 1973 a citizen of the United Kingdom and Colonies shall, if his father becomes or would but for his death have become a citizen of The Bahamas in accordance with the provisions of the preceding paragraph, become a citizen of the Bahamas on 10th July 1973.

(3) Every person who on 9th July 1973 is a citizen of the United Kingdom and Colonies having become such a citizen under the British Nationality Act 1948 by virtue of his having been registered in the former Colony of the Bahamas Islands under that Act shall become a citizen of the Bahamas on 10th July 1973:

Provided that this paragraph shall not apply to any citizen of the United Kingdom and Colonies—

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- (a) who was not ordinarily resident in that Colony on 31st December 1972, or
- (b) who became registered in that Colony on or after 1st January 1973, or
- (c) who on 9th July 1973 possesses the citizenship or nationality of some other country.

#### **Persons who become citizens on 9th July 1974**

4. Every person who on 9th July 1973 is a citizen of the United Kingdom and Colonies—
- (a) having become such a citizen under the British Nationality Act 1948 by virtue of his having been naturalised in the former Colony of the Bahamas Islands before that Act come into force; or
  - (b) having become such a citizen by virtue of his having been naturalised in the former Colony of the Bahama Islands under that Act,

shall become a citizen of The Bahamas on 9th July 1974, unless, prior to that date, he has in such manner as may be prescribed declared that he does not desire to become a citizen of The Bahamas:

Provided that this section shall not apply to a citizen of the United Kingdom and Colonies who on 9th July 1973 possesses the citizenship or nationality of some other country.

#### **Persons entitled to be registered as citizens**

- 5.—(1) Any woman who, on 9th July 1973, is or has been married to a person—
- (a) who becomes a citizen of The Bahamas by virtue of Article 3 of this Constitution; or
  - (b) who, having died before 10th July 1973, would, but for his death, have become a citizen of the Bahamas by virtue of that Article,

shall be entitled, upon making application and upon taking the oath of allegiance or such declaration in such manner as may be prescribed, to be registered as a citizen of The Bahamas:

Provided that the right to be registered as a citizen of The Bahamas under this paragraph shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

(2) Any person who, on 9th July 1973, possesses Bahamian Status under the provisions of the Immigration Act 1967<sup>(5)</sup> and is ordinarily resident in the Bahamas Islands, shall be entitled, upon making application before 10th July 1974, to be registered as a citizen of The Bahamas.

(3) Notwithstanding anything contained in paragraph (2) of this Article, a person who has attained the age of eighteen years or who is a woman who is or has been married shall not, if he is a citizen of some county other than The Bahamas, be entitled to be registered as a citizen of the Bahamas under the provisions of that paragraph unless he renounces his citizenship of that other country, takes the oath of allegiance and makes and registers such declaration as may be prescribed:

Provided that where a person cannot renounce his citizenship of the other country under the law of that country he may instead make such declaration concerning that citizenship as may be prescribed.

(4) Any application for registration under paragraph (2) of this Article shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

(5) Any woman who on 9th July 1973 is or has been married to a person who subsequently becomes a citizen of The Bahamas by registration under paragraph (2) of this Article shall be entitled, upon making application and upon taking the oath of allegiance or such declaration as may be prescribed, to be registered as a citizen of The Bahamas:

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(5) Statute Law of the Bahamas Islands, No. 25 of 1967.



Provided that the right to be registered as a citizen of The Bahamas under this paragraph shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

(6) Any application for registration under this Article shall be made in such manner as may be prescribed as respects that application:

Provided that such an application may not be made by a person who has not attained the age of eighteen years and is not a woman who is or has been married, but shall be made on behalf of that person by a parent or guardian of that person.

### **Persons born in The Bahamas after 9th July 1973**

6. Every person born in The Bahamas after 9th July 1973 shall become a citizen of The Bahamas at the date of his birth if at that date either of his parents is a citizen of The Bahamas.

### **Persons born in The Bahamas after 9th July 1973 of non-citizen parents**

7.—(1) A person born in The Bahamas after 9th July 1973 neither of whose parents is a citizen of The Bahamas shall be entitled, upon making application on his attaining the age of eighteen years or within twelve months thereafter in such manner as may be prescribed, to be registered as a citizen of The Bahamas:

Provided that if he is a citizen of some country other than The Bahamas he shall not be entitled to be registered as a citizen of The Bahamas under this Article unless he renounces his citizenship of that other country, takes the oath of allegiance and makes and registers such declaration of his intentions concerning residence as may be prescribed.

(2) Any application for registration under this Article shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

### **Persons born outside The Bahamas after 9th July 1973**

8. A person born outside The Bahamas after 9th July 1973 shall become a citizen of The Bahamas at the date of his birth if at that date his father is a citizen of The Bahamas otherwise than by virtue of this Article or Article 3(2) of this Constitution.

### **Further provisions for persons born outside The Bahamas after 9th July 1973**

9.—(1) Notwithstanding anything contained in Article 8 of this Constitution, a person born legitimately outside The Bahamas after 9th July 1973 whose mother is a citizen of The Bahamas shall be entitled, upon making application on his attaining the age of eighteen years and before he attains the age of twenty-one years, in such manner as may be prescribed, to be registered as a citizen of The Bahamas:

Provided that if he is a citizen of some country other than The Bahamas he shall not be entitled to be registered as a citizen of The Bahamas under this Article unless he renounces his citizenship of that other country, takes the oath of allegiance and makes and registers such declaration of his intentions concerning residence as may be prescribed.

(2) Where a person cannot renounce his citizenship of some other country under the law of that country, he may instead make such declaration concerning that citizenship as may be prescribed.

(3) Any application for registration under this Article shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

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### **Marriage to citizens of The Bahamas**

**10.** Any woman who, after 9th July 1973, marries a person who is or becomes a citizen of The Bahamas shall be entitled, provided she is still so married, upon making application in such manner as may be prescribed and upon taking the oath of allegiance or such declaration as may be prescribed, to be registered as a citizen of The Bahamas:

Provided that the right to be registered as a citizen of The Bahamas under this Article shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

### **Deprivation of citizenship**

**11.—(1)** If the Governor-General is satisfied that any citizen of The Bahamas has at any time after 9th July 1973 acquired by registration, naturalisation or other voluntary and formal act (other than marriage) the citizenship of any other country, the Governor-General may by order deprive that person of his citizenship.

(2) If the Governor-General is satisfied that any citizen of The Bahamas has at any time after 9th July 1973 voluntarily claimed and exercised in any other country any rights available to him under the law of that country, being rights accorded exclusively to its citizens, the Governor-General may by order deprive that person of his citizenship.

### **Renunciation of citizenship**

**12.** Any citizen of The Bahamas who has attained the age of twenty-one years and who—

- (a) is also a citizen or national of any other country; or
- (b) intends to become a citizen or national of any other country,

shall be entitled to renounce his citizenship of The Bahamas by a declaration made and registered in such manner as may be prescribed;

Provided that—

- (a) in the case of a person who is not a citizen or national of any other country at the date of registration of his declaration or renunciation, if he does not become such a citizen or national within six months from the date of registration he shall be, and shall be deemed to have remained, a citizen of The Bahamas notwithstanding the making and registration of his declaration of renunciation; and
- (b) the right of any person to renounce his citizenship of The Bahamas during any period when The Bahamas is engaged in any war shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

### **Power of Parliament**

**13.** Parliament may make provision—

- (a) for the acquisition of citizenship of The Bahamas by persons who do not become citizens of The Bahamas by virtue of the provisions of this Chapter;
- (b) for depriving of his citizenship of The Bahamas any person who is a citizen of The Bahamas otherwise than by virtue of paragraphs (1) or (2) of Article 3 or Articles 6 or 8 of this Constitution; or
- (c) for the certification of citizenship of The Bahamas for persons who have acquired that citizenship and who desire such certification.

## **Interpretation**

**14.**—(1) Any reference in this Chapter to the father of a person shall, in relation to any person born out of wedlock other than a person legitimated before 10th July 1973, be construed as a reference to the mother of that person.

(2) For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(3) Any reference in this Chapter to the national status of the father of a person at the time of that person's birth, shall, in relation to a person born after the death of the father, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before 10th July 1973 and the birth occurred after 9th July 1973 the national status that the father would have had if he had died on 10th July 1973 shall be deemed to be his national status at the time of his death.

## **CHAPTER III**

### **PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL**

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

**15.** Whereas every person in The Bahamas is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, whatever his race, place of origin, political opinions, colour, creed or sex, 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 the privacy of his home and other property and from deprivation of property without compensation,

the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid 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 rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

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

**16.**—(1) No person shall be deprived intentionally of his life save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(2) A person shall not be regarded as having been deprived of his life in contravention of this Article if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable—

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
- (d) in order to prevent the commission by that person of a criminal offence,

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

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### **Protection from inhuman treatment**

**17.—**(1) No person shall be subjected to torture or to inhuman or degrading treatment or punishment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that the law in question authorises the infliction of any description of punishment that was lawful in the Bahamas Islands immediately before 10th July 1973.

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

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

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

(3) For the purposes of this Article, “forced 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 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 which that person is required by law to perform in place of such service;
- (c) labour required of any person while he is lawfully detained which, 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 is detained; or
- (d) any labour required during a period of public emergency (that is to say, a period to which Article 29 of this Constitution applies) 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**

**19.—**(1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases—

- (a) in execution of the sentence or order of a court, whether established for The Bahamas or some other country, in respect of a criminal offence of which he has been convicted or in consequence of his unfitness to plead to a criminal charge or in execution of the order of a court on the grounds of his contempt of that court or of another court or tribunal;
- (b) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed upon him by law;
- (c) for the purpose of bringing him before a court in execution of the order of a court;
- (d) upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence;
- (e) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;
- (f) 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 care or treatment or the protection of the community;

(g) for the purpose of preventing the unlawful entry of that person into The Bahamas or for the purpose of effecting the expulsion, extradition or other lawful removal from The Bahamas of that person or the taking of proceedings relating thereto; and, without prejudice to the generality of the foregoing, a law may, for the purposes of this sub-paragraph, provide that a person who is not a citizen of The Bahamas may be deprived of his liberty to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within The Bahamas or prohibiting him from being within such an area.

(2) Any person who is arrested or detained shall be informed as soon as is reasonably practicable, in a language that he understands, of the reasons for his arrest or detention and shall be permitted, at his own expense, to retain and instruct without delay a legal representative of his own choice and to hold private communication with him; and in the case of a person who has not attained the age of eighteen years he shall also be afforded a reasonable opportunity for communication with his parent or guardian.

(3) Any person who is arrested or detained in such a case as is mentioned in sub-paragraph (1) (c) or (d) of this Article and who is not released shall be brought without undue delay before a court; and if any person arrested or detained in such a case as is mentioned in the said sub-paragraph (1)(d) is not tried within a reasonable time he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

(5) Where a person is detained by virtue of such a law as is referred to in Article 29 of this Constitution, the following provisions shall apply—

- (a) he shall, as soon as reasonably practicable and in any case not more than five days after the commencement of his detention, be furnished with a statement in writing, in a language that he understands, of the grounds upon which he is detained;
- (b) not more than fourteen days after the commencement of his detention, a notification shall be published in the Gazette stating that he has been detained and giving particulars of the provisions of law under which his detention is authorised;
- (c) he may from time to time request that his case be reviewed under sub-paragraph (d) of this paragraph but, where he has made such a request, no subsequent request shall be made before the expiration of three months from the making of the previous request;
- (d) where a request is made under sub-paragraph (c) of this paragraph, the case shall, within one month of the making of the request, be reviewed by an independent and impartial tribunal established by law, prescribed over by the Chief Justice or another Justice of the Supreme Court appointed by him, and consisting of persons who are Justices of the Supreme Court or who are qualified to be appointed as Justices of the Supreme Court;
- (e) he shall be afforded reasonable facilities to consult and instruct, at his own expense, a legal representative of his own choice, and he and any such legal representative shall be permitted to make written or oral representations or both to the tribunal appointed for the review of his case.

(6) On any review by a tribunal in pursuance of paragraph (5) of this Article of the case of any detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by whom it was ordered, but, unless it is otherwise provided by law, that authority shall not be obligated to act in accordance with any such recommendations.

(7) When any person is detained by virtue of such a law as is referred to in Article 29 of this Constitution the Prime Minister or a Minister authorised by him shall, not more than thirty days after

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the commencement of the detention and thereafter not more than thirty days after the making of the previous report, make a report to each House stating the number of persons detained as aforesaid and the number of cases in which the authority that ordered the detention has not acted in accordance with the recommendations of a tribunal appointed in pursuance of paragraph (5) of this Article:

Provided that in reckoning any period of thirty days for the purposes of this paragraph no account shall be taken of any period during which Parliament stands prorogued or dissolved.

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

**20.**—(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 is proved or has pleaded guilty;
- (b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;
- (c) shall be given adequate time and facilities for the preparation of his defence;
- (d) shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice or by a legal representative at the public expense where so provided by or under a law in force in The Bahamas;
- (e) shall be afforded facilities to examine in person or by his 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 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 cannot understand 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 own consent the trial shall not take place in his absence unless he so conducts himself in the court as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf, shall, if he 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 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 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 shows that he has been pardoned for that offence.

(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 a determination are instituted by any person before

such a court or other adjudicating authority, the case shall be given a fair hearing 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, including the announcement of the decision of the court, shall be held in public.

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

- (a) may be empowered by law so to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings;
- (b) may be empowered or required by law to do so in the interests of defence, public safety or public order; or
- (c) may be empowered or required to do so by rules of court and practice existing immediately before 10th July 1973 or by any law made subsequently to the extent that it makes provision substantially to the same effect as provision contained in any such rules.

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

- (a) sub-paragraph (2)(a) of this Article to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;
- (b) sub-paragraph (2)(e) of this Article 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) paragraph (5) of this Article 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, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

### **Protection for privacy of home and other property**

**21.—**(1) Except with his consent, no person shall be subjected to the search of his person or his property or the entry by others on his 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 Article to the extent that the law in question makes provision—

- (a) which 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; or
  - (ii) for the purpose of protecting the rights and freedoms of other persons;
- (b) to enable to officer or agent of the Government of The Bahamas, a local government authority or a body corporate established by law for public purposes to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property

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that is lawfully on those premises and that belongs to that Government, 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 in any civil proceedings, the search of any person or property by order of a court or the entry upon any premises by such order,

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

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

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

(2) Except with his consent (or, if he is a person who has not attained the age of eighteen years, the consent of his 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 if that instruction, ceremony or observance relates to a religion other than his own.

(3) No religious body or denomination shall be prevented from or hindered in providing religious instruction for persons of that body or denomination in the course of any education provided by that body or denomination whether or not that body 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 course of education.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his 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 Article 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 practice any religion without the unsolicited interference of members of any other religion,

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

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

**23.**—(1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this Article the said freedom includes freedom to hold opinions, to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

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

- (a) which 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, preventing the disclosure of information received in confidence, maintaining the



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authority and independence of the courts, or regulating telephony, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainment; or

- (b) which imposes restrictions upon persons holding office under the Crown or upon members of a disciplined force,

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

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

**24.**—(1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of peaceful assembly and association, that is to say, his 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 protection of his 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 Article to the extent that the law in question makes provision—

- (a) which 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 and freedoms of other persons; or
- (b) which imposes restrictions upon persons holding office under the Crown or upon members of a disciplined force,

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

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

**25.**—(1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of movement, and for the purposes of this Article the said freedom means the right to move freely throughout The Bahamas, the right to reside in any part thereof, the right to enter The Bahamas, the right to leave The Bahamas and immunity from expulsion therefrom.

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

- (a) which is reasonably required—
  - (i) in the interests of defence, public safety, public order, public morality, public health, town and country planning or the prevention of plant or animal diseases; or
  - (ii) for the purpose of protecting the rights and freedoms of other persons,

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

- (b) for the removal of a person from The Bahamas to be tried outside The Bahamas for a criminal offence or to undergo imprisonment in some other country in respect of a criminal offence of which he has been convicted;
- (c) for the imposition of restrictions upon the movement or residence within The Bahamas of public officers or members of a disciplined force that are reasonably required for the purpose of the proper performance of their functions; or
- (d) for the imposition of restrictions on the movement or residence within The Bahamas of any person who is not a citizen of The Bahamas or the exclusion or expulsion therefrom of any such person; or

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(e) for the imposition of restrictions on the right of any person to leave The Bahamas in the public interest, or for securing compliance with any international obligation of the Government of The Bahamas particulars of which have been laid before Parliament.

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

(4) For the purposes of sub-paragraph (c) of paragraph (2) of this Article "law" in that paragraph includes directions in writing regarding the conduct of public officers generally or any class of public officer issued by the Government of The Bahamas.

### **Protection from discrimination on the grounds of race, etc**

26.—(1) Subject to the provisions of paragraphs (4), (5) and (9) of this Article, no law shall make any provision which is discriminatory either of itself or in its effect.

(2) Subject to the provisions of paragraphs (6), (9) and (10) of this Article, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this Article, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed 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) Paragraph (1) of this Article shall not apply to any law so far as that law makes provision—

- (a) for the appropriation of revenues or other funds of The Bahamas or for the imposition of taxation (including the levying of fees for the grant of licences); or
- (b) with respect to the entry into or to exclusion from, or the employment, engaging in any business or profession, movement or residence within, The Bahamas of persons who are not citizens of The Bahamas; or
- (c) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law; or
- (d) whereby persons of any such description as is mentioned in paragraph (3) of this Article may be subjected to any disability or restriction or may be accorded any privilege or advantages 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; or
- (e) for authorising the granting of licences or certificates permitting the conduct of a lottery, the keeping of a gaming house or the carrying on of gambling in any of its forms subject to conditions which impose upon persons who are citizens of The Bahamas disabilities or restrictions to which other persons are not made subject.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of paragraph (1) of this Article to the extent that it makes provision with respect to standards or qualifications (not being a standard or qualification specifically relating to race, place of origin, political opinions, colour or creed) in order to be eligible for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established by law for public purposes.

(6) Paragraph (2) of this Article 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 paragraphs (4) or (5) of this Article.

(7) Subject to the provisions of sub-paragraph (4)(e) and of paragraph (9) of this Article, 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) Subject to the provisions of this Article no person shall be treated in a discriminatory manner—

- (a) in respect of any conveyance or lease or agreement for, or in consideration of, or collateral to, a conveyance or lease of any freehold or leasehold hereditaments which have been offered for sale or lease to the general public;
- (b) in respect of any covenant or provisions in any conveyance or lease or agreement for, or in consideration of, or collateral to, a conveyance or lease restricting by discriminatory provisions the transfer, ownership, use or occupation of any freehold or leasehold hereditaments which have been offered for sale or lease to the general public.

(9) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that the law in question makes provision whereby persons of any such description as is mentioned in paragraph (3) of this Article may be subjected to any restriction on the rights and freedoms guaranteed by Articles 21, 22, 23, 24 and 25 of this Constitution, being such a restriction as is authorised by Article 21(2)(a), 22(5), 23(2), 24(2) or 25(2) (a) or (e), as the case may be.

(10) Nothing in paragraph (2) of this Article 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**

27.—(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 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 manner as to promote the public benefit or the economic well-being of the community; and
- (b) the necessity therefor is such as to afford 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 making of prompt and adequate compensation in the circumstances; 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 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 is entitled, and for the purpose of obtaining prompt payment of that compensation; and
- (d) any party to proceedings in the Supreme Court relating to such a claim is given by law 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 in this Article shall be construed as affecting the making or operation of any law so far as it provides for the taking of possession or acquisition of property—

- (a) in satisfaction of any tax, rate or due;
- (b) by way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence under the law of The Bahamas;

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- (c) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
- (d) upon the attempted removal of the property in question out of or into The Bahamas in contravention of any law;
- (e) by way of the taking of a sample for the purposes of any law;
- (f) where the property consists of an animal upon its being found trespassing or straying;
- (g) in the execution of judgments or orders of courts;
- (h) by reason of its being in a dilapidated or dangerous state or injurious to the health of human beings, animals or plants;
- (i) in consequence of any law making provision for the validation of titles to land or (without prejudice to the generality of the foregoing words) the confirmation of such titles, or for the extinguishment of adverse claims, or with respect to prescription or the limitation of actions;
- (j) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon—
  - (i) of work or reclamation, drainage, soil conservation or the conservation of other natural resources; or
  - (ii) of agricultural 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; or
- (k) to the extent that the law in question makes provision for the vesting or taking of possession or acquisition or administration of—
  - (i) enemy property;
  - (ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of twenty-one years, for the purposes of its administration for the benefit of the persons entitled to the beneficial interest therein;
  - (iii) property of a person adjudged insolvent or a defunct company that has been struck off the Register of Companies, or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of that insolvent person 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 this Article to the extent that the law in question makes provision for the orderly marketing or production or growth or extraction of any agricultural or fish product or mineral or water or any article or thing prepared for market or manufactured therefor or for the reasonable restriction of the use of any property in the interest of safeguarding the interests of others or the protection of tenants, licensees or others having rights in or over such property.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that the law in question makes provision for the compulsory taking 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 directly by law for public purposes in which no monies have been invested other than monies provided by Parliament or by any Legislature established for the former Colony of the Bahamas Islands.

## **Enforcement of fundamental rights**

**28.**—(1) If any person alleges that any of the provisions of Articles 16 to 27 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him 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—

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

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 provisions of the said Articles 16 to 27 (inclusive) to the protection of which the person concerned is entitled:

Provided that the Supreme Court shall not exercise its powers under this paragraph 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 for The Bahamas other than the Supreme Court or the Court of Appeal, any question arises as to the contravention of any of the provisions of the said Articles 16 to 27 (inclusive), the court in which the question has arisen shall refer the question to the Supreme Court.

(4) No law shall make provision with respect to rights of appeal from any determination of the Supreme Court in pursuance of this Article that is less favourable to any party thereto than the rights of appeal from determinations of the Supreme Court that are accorded generally to parties to civil proceedings in that Court sitting as a court of original jurisdiction.

(5) Parliament may make laws to confer upon the Supreme Court such additional or supplementary powers as may appear to be necessary or desirable for enabling the Court more effectively to exercise the jurisdiction conferred upon it by paragraph (2) of this Article and may make provision with respect to the practice and procedure of the Court will exercising that jurisdiction.

## **Provisions for time of war or emergency**

**29.**—(1) This Article applies to any period when—

- (a) The Bahamas is at war; or
- (b) there is in force a proclamation (in this section referred to as a “proclamation of emergency”) made by the Governor-General and published in the Gazette declaring that a state of public emergency exists for the purposes of this section.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of Article 19, any provision of Article 20 other than paragraph (4) therefor, or any provision of Articles 21 to 26 (inclusive) of this Constitution to the extent that the law in question makes in relation to any period to which this Article applies provisions, or authorises the doing during any such period of anything, which is reasonably justifiable in the circumstances of any situation or existing during that period for the purpose of dealing with that situation.

(3) Where any proclamation of emergency has been made, copies thereof shall as soon as practicable be laid before both Houses of Parliament, and if for any cause those Houses are not due to meet within five days the Governor-General shall, by proclamation published in the Gazette, summon them to meet within five days and they shall accordingly meet and sit upon the day

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appointed by the proclamation and shall continue to sit and act as if they had stood adjourned or prorogued to that day;

Provided that if the proclamation of emergency is made during the period between a dissolution of Parliament and the next ensuing general election—

- (a) the Houses to be summoned as aforesaid shall be the Houses referred to in Article 66 of this Constitution unless the Governor-General is satisfied that it will be practicable to hold that election within seven days of the making of the proclamation of emergency; and
- (b) if the Governor-General is so satisfied, he shall (instead of summoning the Houses so referred to meet within five days of the making of the Proclamation) summons the Houses of the new Parliament to meet as soon as practicable after the Holding of that election.

(4) A proclamation of emergency shall, unless it is sooner revoked by the Governor-General, cease to be in force at the expiration of a period of fourteen days beginning on the date on which it was made or such longer period as may be provided under paragraph (5) of this Article, but without prejudice to the making of another proclamation of emergency at or before the end of that period.

(5) If at any time while a proclamation of emergency is in force (including any time while it is in force by virtue of the provisions of this paragraph) a resolution is passed by each House of Parliament approving its continuance in force for a further period, not exceeding six months, beginning on the date on which it would otherwise expire, the proclamation shall, if not sooner revoked, continue in force for that further period.

### **Saving of existing law**

**30.**—(1) Subject to paragraph (3) of this Article, nothing contained in or done under the authority of any written law shall be held to be inconsistent with or in contravention of any provision of Articles 16 to 27 (inclusive) of this Constitution to the extent that the law in question—

- (a) is a law (in this Article referred to as “an existing law”) that was enacted or made before 10th July 1973 and has continued to be part of the law of The Bahamas at all times since that day;
- (b) repeals and re-enacts an existing law without alteration; or
- (c) alters an existing law and does not thereby render that law inconsistent with any provision of the said Articles 16 to 27 (inclusive) in a manner in which, or to an extent to which, it was not previously so inconsistent.

(2) In sub-paragraph (1)(c) of this Article the reference to altering an existing law includes references to repealing it and re-enacting it with modifications or making different provisions in lieu thereof, and to modifying it; and in paragraph (1) of this Article “written law” includes any instrument having the force of law and in this paragraph and the said paragraph (1) references to the repeal and re-enactment of an existing law shall be construed accordingly.

(3) This Article does not apply to any regulation or other instrument having legislative effect made, or to any executive act done, after 9th July 1973 under the authority of any such law as is mentioned in paragraph (1) of this Article.

### **Interpretation**

**31.**—(1) In this Chapter—

“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 having jurisdiction in The Bahamas other than a court established by a disciplinary law, and includes the Judicial Committee of Her Majesty's

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Privy Council or any court substituted therefore by any law made under Article 105 of this Constitution and—

- (a) In Article 16, Article 18, Article 19, paragraphs (2), (3), (5), (8), (9) and (10) of Article 20, Article 26 and paragraph (3) of Article 28 of this Constitution includes, in relation to an offence against a disciplinary law, a court established by such a law; and
- (b) In Article 18, Article 19 and paragraph (3) of Article 28 of this Constitution includes, in relation to an offence against a disciplinary law, any person or authority empowered to exercise jurisdiction in respect of that offence;

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

“disciplined force” means—

- (a) a naval, military or air force;
- (b) the Police Force of The Bahamas;
- (c) the Prison Service of The Bahamas; or
- (d) any other force or service specified by Act of Parliament to be a disciplined force for the purposes of this Chapter;

“legal representative” means a person entitled to practice in The Bahamas as Counsel and Attorney of the Supreme Court;

“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.

(2) Any reference in Articles 16, 19, 25 and 27 of this Constitution to a criminal offence shall be construed as including an offence against disciplinary law, and any such reference in paragraphs (2) to (7) (inclusive) of Article 20 of this Constitution shall, in relation to proceedings before a court constituted by or under disciplinary law, be construed in the same manner.

(3) In relation to any person who is a member of a disciplined force raised under a law of any country other than The Bahamas and lawfully present in The Bahamas, 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 of the provisions of this Chapter.

## CHAPTER IV

### THE GOVERNOR-GENERAL

#### **Establishment of office of Governor-General**

**32.** There shall be a Governor-General of The Bahamas who shall be appointed by Her Majesty and shall hold office during Her Majesty's pleasure and who shall be Her Majesty's representative in The Bahamas.

#### **Acting Governor-General**

**33.—**(1) Whenever the office of Governor-General is vacant or the holder of the office is absent from The Bahamas or is for any other reason unable to perform the functions of his office, those functions shall be performed—

- (a) by any person for the time being designated by Her Majesty in that behalf who is in The Bahamas and able to perform those functions; or
- (b) at any time when there is no person in The Bahamas so designated and able to perform those functions, by the holder of the office of Chief Justice; or

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(c) at any time referred to in sub-paragraph (b) of this paragraph when the office of Chief Justice is vacant or the holder thereof is absent from The Bahamas or is for any other reason unable to perform those functions, by the President of the Senate.

(2) The holder of the office of Governor-General or any person designated under sub-paragraph (1)(a) of this Article or by sub-paragraph (1)(b) of this Article shall not, for the purposes of this Article, be regarded as absent from The Bahamas or as unable to perform the functions of the office of Governor-General at any time when there is a subsisting appointment of a deputy under Article 34 of this Constitution.

### **Deputy to Governor-General**

**34.**—(1) Whenever the Governor-General—

- (a) has occasion to be absent from The Bahamas for a period which he has reason to believe will be of short duration; or
- (b) is suffering from an illness that he has reason to believe will be of short duration,

he may, acting in accordance with the advice of the Prime Minister, by instrument under the Public Seal, appoint any person in The Bahamas to be his deputy during such absence or illness and in that capacity to perform on his behalf such of the functions of the office of Governor-General as may be specified in that instrument.

(2) The power and authority of the Governor-General shall not be abridged, altered or in any way affected by the appointment of a deputy under this Article, and in the exercise of any function that is exercisable by the Governor-General acting in accordance with his own deliberate judgment or after consultation with any person or authority a deputy shall conform to and observe any instructions that the Governor-General, acting in like manner, may address to him:

Provided that the question whether or not a deputy has conformed to or observed any such instructions shall not be enquired into in any court.

(3) A person appointed as a deputy under this Article shall hold that appointment for such period as may be specified in the instrument by which he is appointed, and his appointment may be revoked at any time by the Governor-General acting in accordance with the advice of the Prime Minister.

### **Personal staff of Governor-General**

**35.**—(1) Parliament may prescribe the offices that are to constitute the personal staff of the Governor-General, the salaries and allowances that are to be paid to the members of the staff and the other sums that are to be paid in respect of the expenditure attaching to the office of Governor-General.

(2) Any salaries or other sums prescribed under paragraph (1) of this Article are hereby charged on and shall be paid out of the Consolidated Fund.

(3) Subject to the provisions of paragraph (4) of this Article, power to make appointments to the offices for the time being prescribed under paragraph (1) of this Article as offices that are to constitute the personal staff of the Governor-General, and to remove and to exercise disciplinary control over persons holding or acting in any such office, is hereby vested in the Governor-General acting in accordance with his own deliberate judgment.

(4) The Governor-General, acting in accordance with his own deliberate judgment, may appoint to any of the offices prescribed under paragraph (1) of this Article such public officers as he may select from a list submitted by the Public Service Commission, but—

- (a) the provisions of paragraph (3) of this Article shall apply in relation to an officer so appointed as respects his service on the personal staff of the Governor-General but not as respects his service as a public officer;



- (b) an officer so appointed shall not, during continuance on the personal staff of the Governor-General, perform the functions of any public office; and
- (c) an officer so appointed may at any time be appointed by the Governor-General, if the Public Service Commission so recommend, to assume or resume the functions of a public office and he shall thereupon vacate his office on the personal staff of the Governor-General, but the Governor-General may, in his own deliberate judgment, decline to release the officer for that appointment.

(5) All offices prescribed under paragraph (1) of this Article as offices that are to constitute the personal staff of the Governor-General shall, for the purposes of Chapter VIII, be deemed to be public offices.

### **Public Seal**

**36.** The Governor-General shall keep and use the Public Seal for sealing all things that shall pass the Public Seal.

### **Oaths to be taken by Governor-General**

**37.** A person appointed to the office of Governor-General or assuming the functions of that office under Article 33 of this Constitution shall, before entering upon the duties of that office, take and subscribe the oath of allegiance and an oath for the due execution of the office of Governor-General in such form as is prescribed by any law in force in The Bahamas, such oaths being administered by the Chief Justice or such other Justice of the Supreme Court as may be designated by the Chief Justice.

## **CHAPTER V**

### **PARLIAMENT**

#### **PART 1**

#### **Composition of Parliament**

### **Establishment of Parliament**

**38.** There shall be a Parliament of The Bahamas which shall consist of Her Majesty, a Senate and a House of Assembly.

#### **PART 2**

#### **The Senate**

### **Composition of Senate**

**39.—(1)** The Senate shall consist of sixteen members (in this Constitution referred to as “Senators”) who shall be appointed by the Governor-General by instrument under the Public Seal in accordance with the provisions of this Article.

(2) Nine Senators shall be appointed by the Governor-General acting in accordance with the advice of the Prime Minister.

(3) Four Senators shall be appointed by the Governor-General acting in accordance with the advice of the Leader of the Opposition.

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(4) Three Senators shall be appointed by the Governor-General acting in accordance with the advice of the Prime Minister after consultation with the Leader of the Opposition.

(5) Whenever any person vacates his seat as a Senator for any reason other than a dissolution of Parliament, the Governor-General shall as soon as practicable appoint a person to fill the vacancy under the same provisions of this Article as those under which the person whose seat has become vacant was appointed.

#### **Purpose of appointment of certain Senators**

**40.** In the exercise of the functions conferred upon him by Article 39(4) of this Constitution, the purpose of the Prime Minister shall be to secure that the political balance of the Senate reflects that of the House of Assembly at the time.

#### **Qualifications for appointment as Senator**

**41.** Subject to the provisions of Article 42 of this Constitution, a person shall be qualified to be appointed as a Senator if, and shall not be qualified to be so appointed unless, he is a citizen of The Bahamas, of the age of thirty years or upwards and has ordinarily resided in The Bahamas for a period of not less than one year immediately before the date of his appointment.

#### **Disqualifications for appointment as Senator**

**42.—**(1) No person shall be qualified to be appointed as a Senator who—

- (a) is a citizen of a country other than The Bahamas having become such a citizen voluntarily;
- (b) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;
- (c) is disqualified for membership of the Senate by any law in force in The Bahamas enacted in pursuance of paragraph (2) of this Article;
- (d) is a member of the House of Assembly;
- (e) has been adjudged or otherwise declared bankrupt under any law in force in The Bahamas and has not been discharged;
- (f) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in The Bahamas;
- (g) is under sentence of death imposed on him by a court in The Bahamas, or is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;
- (h) is disqualified for membership of the House of Assembly by virtue of any law in force in The Bahamas by reason of his having been convicted of any offence relating to elections; or
- (i) is interested in any government contract and has not disclosed to the Governor-General the nature of such contract and of his interest therein.

(2) Parliament may by law provide that, subject to such exceptions and limitations (if any) as may be prescribed therein, a person shall be disqualified for membership of the Senate by virtue of—

- (a) his holding or acting in any office or appointment specified (either individually or by reference to a class of office or appointment) by such law;
- (b) his belonging to any armed force of The Bahamas or to any class of person so specified that is comprised in any such force; or

- (c) his belonging to any police force of The Bahamas or to any class of person so specified that is comprised in any such force.
- (3) For the purposes of sub-paragraph (1)(g) of this Article—
  - (a) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds twelve months, but if any one of such sentences exceeds that term they shall be regarded as one sentence; 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 office of Senators

- 43.**—(1) The seat of a Senator shall become vacant—
- (a) upon the next dissolution of Parliament after he has been appointed;
  - (b) if he resigns by writing under his hand addressed to the President of the Senate, or, if the office of President is vacant or the President is absent from The Bahamas, to the Vice-President;
  - (c) if, with his consent, he is nominated as a candidate for election to the House of Assembly;
  - (d) if he is absent from The Bahamas for a period exceeding forty days at any time when the Senate is sitting, without the leave of the President given in accordance with the provisions of paragraph (2) of this Article;
  - (e) if he ceases to be a citizen of The Bahamas;
  - (f) subject to the provisions of paragraph (3) of this Article, if any circumstances arise that, if he were not a Senator, would cause him to be disqualified for appointment as such by virtue of sub-paragraph (a), (b), (c), (e), (f), (g) or (h) of Article 42(1) of this Constitution or of any law enacted in pursuance of Article 42(2) of this Constitution;
  - (g) in the case of a Senator who was appointed as such in accordance with the advice of the Prime Minister or in accordance with the advice of the Leader of the Opposition or on the advice of the Prime Minister after consultation with the Leader of the Opposition, if the Governor-General, acting in accordance with the advice of the Prime Minister or in accordance with the advice of the Leader of the Opposition or on the advice of the Prime Minister after consultation with the Leader of the Opposition, as the case may be, by instrument under the Public Seal, declares the seat of that Senator to be vacant; or
  - (h) if he becomes interested in any government contract:
- Provided that—
- (i) if in the circumstances it appears to the Senate to be just so to do, the Senate may exempt any Senator from vacating his seat under the provisions of this sub-paragraph, if that Senator, before becoming interested in such contract as aforesaid or as soon as practicable after becoming so interested, discloses to the Senate the nature of such contract and his interest therein;
  - (ii) if proceedings are taken under a law made under Article 45 of this Constitution to determine whether a Senator has vacated his seat under the provisions of this sub-paragraph he shall be declared by the court not to have vacated his seat if he establishes to the satisfaction of the court that he, acting reasonably, was not aware that he was or had become interested in such contract; and
  - (iii) no proceedings under the preceding sub-paragraph shall be instituted by any person other than a Senator or Member of the House of Assembly.
- (2) The President of the Senate may grant leave to any Senator to be absent from The Bahamas for any period not exceeding six months at any one time.

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(3) If the circumstances such as are referred to in sub-paragraph (1)(f) of this Article arise because a Senator is under sentence of death or imprisonment, adjudged to be of unsound mind, declared bankrupt or convicted or reported guilty of a corrupt or illegal practice at elections and if it is open to the Senator to appeal against the decision (either with the leave of a court of other authority or without such leave), he shall forthwith cease to perform his functions as a senator but, subject to paragraph (4) of this Article, he shall not vacate his seat until the expiration of a period of thirty days thereafter;

Provided that the President of the Senate may, at the request of the said Senator, from time to time extend that period for further periods of thirty days to enable the Senator to pursue an appeal against the decision, so, however, 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 Senate.

(4) If, on the determination of any appeal, such circumstances continue to exist and no further appeal is open to the Senator, or if, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal of leave to appeal or for any other reason, it ceases to be open to the Senator to appeal, he shall forthwith vacate his seat.

(5) If at any time before the Senator vacates his seat such circumstances as aforesaid cease to exist, his seat shall not become vacant on the expiration of the period referred to in paragraph (3) of this Article and he may resume the performance of his functions as a Senator.

### **President and Vice-President**

**44.**—(1) When the Senate first meets after this Constitution comes into operation or after any general election and before it proceeds to the despatch of any other business, the Senate shall, in accordance with such procedure as may be prescribed by the rules of procedure of the Senate, elect a Senator to be President of the Senate; and, if the office of President falls vacant at any time, the Senate shall, as soon as practicable, proceed in like manner to fill the vacant office.

(2) When the Senate first meets after this Constitution comes into operation or after any general election and before it proceeds to the despatch of any other business except the election of the President, it shall elect a Senator to be Vice-President of the Senate; and if the office of Vice-President falls vacant at any time, the Senate shall, as soon as practicable, elect a Senator to that office.

(3) The Senate shall not elect a Senator who is a Minister or Parliamentary Secretary to be the President or Vice-President of the Senate.

(4) A person shall vacate the office of President or Vice-President of the Senate—

- (a) if he ceases to be a Senator;
- (b) if he is appointed to be a Minister or Parliamentary Secretary;
- (c) if he announces the resignation of his office to the Senate or if, by writing under his hand addressed, in the case of the President, to the Clerk of the Senate and, in the case of the Vice-President, to the President (or, if the office of President is vacant or the President is absent from The Bahamas, to the Clerk), he resigns that office; or
- (d) in the case of the Vice-President, if he is elected to be President.

(5) If, by virtue of Article 43(3) of this Constitution, the President or Vice-President is required to cease to perform his functions as a Senator he shall also cease to perform his functions as President or Vice-President, as the case may be, and those functions shall, until he vacates his seat in the Senate or resumes the performance of the functions of his office, be performed—

- (a) in the case of the President, by the Vice-President or, if the office of Vice-President is vacant or the Vice-President is required to cease to perform his functions as a Senator by virtue of Article 43(3) of this Constitution, by such Senator (not being a Minister or Parliamentary Secretary) as the Senate may elect for the purpose;

(b) in the case of the Vice-President, by such Senator (not being a Minister or Parliamentary Secretary) as the Senate may elect for the purpose.

(6) If the President or Vice-President resumes the performance of his functions as a Senator in accordance with the provisions of Article 43(5) of this Constitution, he shall also resume the performance of his functions as President or Vice-President, as the case may be.

### **Determination of questions as to membership**

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

- (a) any person has been validly appointed as a Senator; or
- (b) any Senator has vacated his seat or is required under Article 43(3) of this Constitution to cease to perform his functions as a Senator.

(2) Subject to the following provisions of this Article and to the provisions of Article 43(1) of this Constitution, Parliament may by law make provision with respect to—

- (a) the institution of proceedings for the determination of any question referred to in paragraph (1) of this Article; and
- (b) the powers, practice and procedure of the Supreme Court in relation to any such proceedings.

(3) Proceedings for the determination of any question referred to in paragraph (1) of this Article shall not be instituted except with the leave of a Justice of the Supreme Court.

(4) No appeal shall lie from the decision of a Justice of the Supreme Court granting or refusing leave to institute proceedings in accordance with paragraph (3) of this Article.

## **PART 3**

### **House of Assembly**

#### **Composition of House of Assembly**

**46.**—(1) The House of Assembly shall consist of thirty-eight members or such greater number of members as may be specified by an Order made by the Governor-General in accordance with the provisions of Article 70 of this Constitution.

(2) The members of the House shall be known as “Members of Parliament” and shall be persons who, being qualified for election as Members of Parliament in accordance with the provisions of this Constitution, have been so elected in the manner provided by any law in force in The Bahamas.

#### **Qualifications for membership of House of Assembly**

**47.** Subject to the provisions of Article 48 of this Constitution, 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—

- (a) is a citizen of The Bahamas of the age of twenty-one years or upwards; and
- (b) has ordinarily resided in The Bahamas for a period of not less than one year immediately before the date of his nomination for election.

#### **Disqualifications for election as members of House of Assembly**

**48.**—(1) No person shall be qualified to be elected as a member of the House of Assembly who—

- (a) is a citizen of a country other than The Bahamas having become such a citizen voluntarily;

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- (b) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or state;
  - (c) is disqualified for membership of the House of Assembly by any law enacted in pursuance of paragraph (2) of this Article;
  - (d) has been adjudged or otherwise declared bankrupt under any law in force in The Bahamas and has not been discharged;
  - (e) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in The Bahamas;
  - (f) is under sentence of death imposed on him by a court in The Bahamas, or is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;
  - (g) is disqualified for membership of the House of Assembly by any law in force in The Bahamas by reason of his 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 electoral register;
  - (h) is disqualified for membership of the House of Assembly by virtue of any law in force in The Bahamas by reason of his having been convicted of any offence relating to elections;
  - (i) is a Senator; or
  - (j) is interested in any government contract and has not disclosed the nature of such contract and of his interest therein by publishing a notice in the Gazette within one month before the day of election.
- (2) Parliament may by law provide that, subject to such exceptions and limitations (if any) as may be prescribed therein, a person shall be disqualified for membership of the House of Assembly by virtue of—
- (a) his holding or acting in any office or appointment specified (either individually or by reference to a class of office or appointment) by such law;
  - (b) his belonging to any armed force of The Bahamas or to any class of person so specified that is comprised in any such force; or
  - (c) his belonging to any police force or to any class of person that is comprised in any such force.
- (3) For the purposes of sub-paragraph (1)(f) of this Article—
- (a) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds twelve months, but if any one of such sentences exceeds that term they shall be regarded as one sentence; 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 office of members of House of Assembly**

- 49.**—(1) Every member of the House of Assembly shall vacate his seat in the House—
- (a) upon a dissolution of Parliament;
  - (b) if he resigns it by writing under his hand addressed to the Speaker or, if the office of Speaker is vacant or the Speaker is absent from The Bahamas, to the Deputy Speaker;

- (c) if he is absent from the sittings of the House for such period and in such circumstances as may be prescribed in the rules of procedure of the House;
- (d) if he ceases to be a citizen of The Bahamas;
- (e) subject to the provisions of paragraph (2) of this Article, if any circumstances arise that, if he were not a member of the House, would cause him to be disqualified for election as such by virtue of sub-paragraph (a), (b), (c), (d), (e), (f), (g) or (h) of Article 48(1) of this Constitution; or
- (f) if he becomes interested in any government contract:

Provided that—

- (i) if in the circumstances it appears to the House of Assembly to be just to do so, the House of Assembly may exempt any member of the House from vacating his seat under the provisions of this sub-paragraph, if that member, before becoming interested in such contract as aforesaid or as soon as practicable after becoming so interested, discloses to the House the nature of such contract and his interest therein;
- (ii) if proceedings are taken under a law made under Article 51 of this Constitution to determine whether a member of the House has vacated his seat under the provisions of this sub-paragraph he shall be declared by the court not to have vacated his seat if he establishes to the satisfaction of the court that he, acting reasonably, was not aware that he was or had become interested in such contract; and
- (iii) no proceedings under the preceding sub-paragraph shall be instituted by any person other than a Senator or member of the House of Assembly.

(2) If circumstances such as are referred to in sub-paragraph (1)(e) of this Article arise because any member of the House is under sentence of death or imprisonment, declared bankrupt, adjudged to be of unsound mind or convicted of an offence relating to elections and it is open to the member to appeal against the decision (either with the leave of a court or other authority or without such leave), he shall forthwith cease to perform his functions as a member of the House but, subject to paragraph (3) of this Article, he shall not vacate his seat until the expiration of a period of thirty days thereafter:

Provided that the Speaker may, at the request of the member, from time to time extend that period for further periods of thirty days to enable the member to pursue an appeal against the decision, so, however, 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.

(3) If, on the determination of any appeal, such circumstances continue to exist and no further appeal is open to the member, or if, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal of leave to appeal or for any other reason, it ceases to be open to the member to appeal, he shall forthwith vacate his seat.

(4) If at any time before the member vacates his seat such circumstances as aforesaid cease to exist, his seat shall not become vacant on the expiration of the period referred to in paragraph (2) of this Article and he may resume the performance of his functions as a member of the House.

### **Speaker and Deputy Speaker**

**50.**—(1) When the House of Assembly first meets after any general election and before it proceeds to the despatch of any other business, the House shall, in accordance with such procedure as may be prescribed by the rules of procedure of the House, elect from among the members who are not Ministers or Parliamentary Secretaries one member to be the Speaker of the Assembly and another member to be Deputy Speaker; and, if the office of Speaker or Deputy Speaker falls vacant at any time before the next dissolution of the House of Assembly, the House shall, as soon as practicable, proceed in like manner to fill the vacant office.

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(2) A person shall vacate the office of Speaker or Deputy Speaker—

(a) if he ceases to be a member of the House of Assembly:

Provided that the Speaker shall not vacate his office by reason only that he has ceased to be a member on a dissolution of Parliament, until the House of Assembly first meets after that dissolution;

(b) if he is appointed to be a Minister or Parliamentary Secretary;

(c) if he announces the resignation of his office to the House of Assembly or if, by writing under his hand addressed, in the case of the Speaker, to the Clerk of the House and, in the case of the Deputy Speaker, to the Speaker (or, if the office of Speaker is vacant or the Speaker is absent from The Bahamas, to the Clerk), he resigns that office; or

(d) in the case of the Deputy Speaker, if he is elected to be Speaker.

(3) If by reason of Article 49(2) of this Constitution the Speaker or Deputy Speaker is required to cease to perform his functions as a member of the House of Assembly, he shall also cease to perform his functions as Speaker or Deputy Speaker and those functions shall, until he vacates his seat in the House or resumes the performance of the functions of his office, be performed—

(a) in the case of the Speaker, by the Deputy Speaker or, if the office of Deputy Speaker is vacant or the Deputy Speaker is required to cease to perform his functions as a member of the House of Assembly by virtue of Article 49(2) of this Constitution, by such member (not being a Minister or Parliamentary Secretary) as the House may elect for the purpose;

(b) in the case of the Deputy Speaker, by such member (not being a Minister or Parliamentary Secretary) as the House may elect for the purpose.

(4) If the Speaker or Deputy Speaker resumes the performances of his functions as a member of the House in accordance with the provisions of Article 49(4) of this Constitution, he shall also resume the performance of his functions as Speaker, or Deputy Speaker, as the case may be.

### **Determination of questions as to membership**

**51.**—(1) An Election Court, consisting of two Justices of the Supreme Court appointed by the Chief Justice or, if for any reason two such Justices are not available, one such Justice and the Chief Magistrate or a Stipendiary and Circuit Magistrate appointed by the Chief Justice, shall have jurisdiction to hear and determine any question whether—

(a) any person has been validly elected as a member of the House of Assembly; or

(b) any member of the House of Assembly has vacated his seat or is required, under the provisions of Article 49(2) of this Constitution, to cease to perform his functions as a member.

(2) Subject to the following provisions of this Article and to the provisions of Article 49(1) of this Constitution, Parliament may make, or provide for the making of provision, with respect to—

(a) the institution of proceedings for the determination of any question referred to in paragraph (1) of this Article; and

(b) the powers, practice and procedure of an Election Court in relation to any such proceedings.

(3) The determination by an Election Court of any question referred to in paragraph (1) of this Article shall be final.

(4) Proceedings for the determination of any question referred to in paragraph (1) of this Article shall not be instituted except with the leave of a Justice of the Supreme Court.



(5) An appeal shall lie to the Court of Appeal on a point of law from the decision of a Justice of the Supreme Court granting or refusing leave to institute proceedings in accordance with this Article; but, subject as aforesaid, that decision shall be final.

## PART 4

### Powers and Procedure of Parliament

#### Power to make laws

**52.**—(1) Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of The Bahamas.

(2) Subject to the provisions of Articles 60, 61 and 62 of this Constitution, the power of Parliament to make laws shall be exercised by Bills passed by both Houses, either without amendment or with such amendments only as are agreed to by both Houses, and assented to by the Governor General in accordance with Article 63 of this Constitution.

#### Privileges of Parliament

**53.**—(1) Without prejudice to the generality of Article 52(1) of this Constitution and subject to the provisions of paragraph (2) of this Article, Parliament may by law determine the privileges, immunities and powers of the Senate and the House of Assembly and the members thereof.

(2) No process issued by any court in the exercise of its civil jurisdiction shall be served or executed within the precincts of the Senate or the House of Assembly while it is sitting, or through the President or the Speaker, the Clerk or any other officer of either House.

#### Alteration of this Constitution

**54.**—(1) Subject to the provisions of this Article, Parliament may, by an Act of Parliament passed by both Houses, alter any of the provisions of this Constitution or (in so far as it forms part of the law of The Bahamas) any of the provisions of The Bahamas Independence Act, 1973.

(2) In so far as it alters—

- (a) Articles 32, 33, 34, 35, 41, 42, 43, 47, 48, 49, 79, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 128, 129, 130, 131, 132, 133, 134, 135, or 136 of this Constitution; or
- (b) Articles 127 or 137 of this Constitution in their application to any of the provisions specified in sub-paragraph (a) of this paragraph,

a Bill for an Act of Parliament under this Article shall not be passed by Parliament unless:—

- (i) at the final voting thereon in each House it is supported by the votes of not less than two-thirds of all the members of each House, and
- (ii) the Bill, after its passage through both Houses, has been submitted to the electors qualified to vote for the election of members of the House of Assembly and, on a vote in such manner as Parliament may prescribe the majority of the electors voting have approved the Bill.

(3) In so far as it alters—

- (a) this Article;
- (b) Articles 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 38, 39, 40, 45, 46, 51, 52, 60, 61, 62, 65, 66, 67, 68, 69, 70, 71, 72, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, or 105 of this Constitution; or
- (c) Articles 106, 127 or 137 of this Constitution in their application to any of the provisions specified in sub-paragraphs (a) or (b) of this paragraph; or

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- (d) any of the provisions of The Bahamas Independence Act 1973, a Bill for an Act of Parliament under this Article shall not be passed by Parliament unless:—
  - (i) at the final voting thereon in each House it is supported by the votes of not less than three-quarters of all the members of each House, and
  - (ii) the Bill, after its passage through both House has been submitted to the electors qualified to vote for the election of members of the House of Assembly and, on a vote taken in such manner as Parliament may prescribe the majority of the electors voting have approved the Bill.
- (4) In this Article—
  - (a) references to any of the provisions of this Constitution or the Bahamas Independence Act 1973 include references to any law that amends or replaces that provision; and
  - (b) references to any of the alteration of any of the provisions of this Constitution or The Bahamas Independence Act 1973 include references to the amendment, modification or re-enactment with or without amendment or modification, of that provision, the suspension or repeal of that provision and the making of a different provision in lieu of that provision.
- (5) No Act of Parliament shall be construed as altering this Constitution unless it is stated in the Act that it is an Act for that purpose.

#### **Regulation of procedure in Parliament**

- 55.—(1) Subject to the provisions of this Constitution, each House may regulate its own procedure and for this purpose may make rules of procedure.
- (2) Each House may act notwithstanding any vacancy in its membership, and the presence or participation of any person not entitled to be present at or to participate in the proceedings of the House shall not invalidate those proceedings.

#### **Presiding in the Senate and House of Assembly**

- 56.—(1) The President of the Senate or, in his absence, the Vice-President or, if they are both absent, a Senator (not being a Minister or Parliamentary Secretary) elected by the Senate for that sitting shall preside at each sitting of the Senate.
- (2) The Speaker or, in his absence, the Deputy Speaker or, if they are both absent, a member (not being a Minister or Parliamentary Secretary) elected by the House for that sitting shall preside at each sitting of the House of Assembly.
- (3) References in this Article to circumstances in which the President, Vice-President, Speaker or Deputy Speaker is absent include references to circumstances in which the office of President, Vice-President, Speaker or Deputy Speaker is vacant.

#### **Quorum**

- 57.—(1) If at any time during a sitting of either House objection is taken by a member that there is not a quorum present and, after such interval as may be prescribed by the rules of procedure of that House, the person presiding ascertains that there is still not a quorum present, he shall thereupon adjourn the House.
- (2) For the purposes of this Article—
  - (a) a quorum of the Senate shall consist of six Senators including the person presiding; and
  - (b) a quorum of the House of Assembly shall consist of ten members including the person presiding, or of such greater number of members as may be specified by an Order made by the Governor-General in accordance with the provisions of Article 70 of this Constitution.

## **Voting**

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

- (2) The person presiding in either House shall not vote—
- (a) unless on any question the votes are equally divided, in which case he shall have and exercise a casting vote; or
  - (b) except in the case of the final vote on a Bill for an Act of Parliament under Article 54 of this Constitution in which case he shall have an original vote.

## **Introduction of Bills, etc**

**59.**—(1) Subject to the provisions of this Constitution and of the rules of procedure of the Senate or the House of Assembly, as the case may be, any member of either House may introduce any Bill or propose any motion for debate in, or may present any petition to, that House, and the same shall be debated and disposed of according to the rules of procedure of that House.

(2) A Bill other than a Money Bill may be introduced in either House, but a Money Bill shall not be introduced in the Senate.

(3) Except on the recommendation of the Cabinet signified by 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, makes provision for imposing or increasing any tax, for imposing any charge on the Consolidated Fund or any other public fund or altering any such charge otherwise than by reducing it or for compounding or remitting any debt due to The Bahamas; or
- (b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, is that provision shall be made for any of the purposes aforesaid.

(4) The Senate shall not—

- (a) proceed upon any Bill, other than a Bill sent from the House of Assembly, or any amendment to a Bill which, in the opinion of the person presiding, makes provision for imposing or increasing any tax, for imposing any charge on the Consolidated Fund or any other public fund or altering any such charge otherwise than by reducing it or for compounding or remitting any debt due to The Bahamas; or
- (b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, is that provision shall be made for any of the purposes aforesaid.

## **Restriction on powers of Senate as to Money Bills**

**60.**—(1) Subject to the provisions of this Constitution, if a Money Bill, having been passed by the House of Assembly and sent to the Senate at least one month before the end of the session, is not passed by the Senate without amendment within one month after it is sent to that House, the Bill shall, unless the House of Assembly otherwise resolves, be presented to the Governor-General for his assent notwithstanding that the Senate has not consented to the Bill.

(2) There shall be endorsed on every Money Bill when it is sent to the Senate the certificate of the Speaker signed by him that it is a Money Bill; and there shall be endorsed on any Money Bill that is presented to the Governor-General for assent in pursuance of paragraph (1) of this Article

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the certificate of the Speaker signed by him that it is a Money Bill and that the provisions of that paragraph have been complied with.

### **Restriction on powers of Senate as to Bills other than Money Bills**

**61.**—(1) If any Bill other than a Money Bill is passed by the House of Assembly in two successive sessions (whether or not Parliament is dissolved between those sessions) and, having been sent to the Senate in each of those sessions at least one month before the end of the session, is rejected by the Senate in each of those sessions, that Bill shall, on its rejection for the second time by the Senate, unless the House of Assembly otherwise resolves, be presented to the Governor-General for assent notwithstanding that the Senate has not consented to the Bill.

Provided that the foregoing provisions of this paragraph shall not have effect unless at least nine months have elapsed between the date on which the Bill is passed by the House of Assembly in the first session and the date on which it is passed by the House of Assembly in the second session.

(2) For the purposes of this Article a Bill that is sent to the Senate from the House of Assembly in any session shall be deemed to be the same Bill as a former Bill sent to the Senate in the preceding session if, when it is sent to the Senate, it is identical with the former Bill or contains only such alterations as are certified by the Speaker to be necessary owing to the time that has elapsed since the date of the former Bill or to represent any amendments which have been made by the Senate in the former Bill in the preceding session.

(3) The House of Assembly may, if it thinks fit, on the passage through the House of a Bill that is deemed to be the same Bill as a former Bill sent to the Senate in the preceding session, suggest any amendments without inserting the amendments in the Bill, and any such amendments shall be considered by the Senate, and, if agreed to by the Senate, shall be treated as amendments made by the Senate and agreed to by the House of Assembly; but the exercise of this power by the House of Assembly shall not effect the operation of this Article in the event of the rejection of the Bill in the Senate.

(4) There shall, be inserted in any Bill that is presented to the Governor-General for, assent in pursuance of this Article any amendments that are certified by the Speaker to have been made in the Bill by the Senate in the second session and agreed to by the Assembly.

(5) There shall be endorsed on any Bill that is presented to the Governor-General for assent in pursuance of this Article the certificate of the Speaker signed by him that the provisions of this Article have been complied with.

(6) The Provisions of this Article shall not apply to a Bill which is required by Article 54 of this Constitution to be passed by both Houses.

### **Provisions relating to Articles 59, 60 and 61**

**62.**—(1) In Articles 59, 60 and 61 of this Constitution “Money Bill” means a public Bill which, in the opinion of the Speaker, contains only provisions dealing with all or any of the following matters, namely, the imposition, repeal, remission, alteration or regulation of taxation; the imposition, for the payment of debt or other financial purposes, of charges on the Consolidated Fund or any other public funds or on monies provided by Parliament or the variation or repeal of any such charges; the grant of money to the Crown or to any authority or person, or the variation or revocation of any such grant, the appropriation, receipt, custody, investment, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof, or the establishment, alteration, administration or abolition of any sinking fund provided in connection with any such loan; or subordinate matters incidental to any of the matters aforesaid; and in this paragraph the expressions “taxation”, “debt”, “public fund”, “public money”, and “loan” do not include any taxation imposed, debt incurred, fund or money provided or loan raised by any local authority or body for local purposes.

(2) For the purposes of Article 61 of this Constitution, a Bill shall be deemed to be rejected by the Senate if—

- (a) it is not passed by the Senate without amendment; or
- (b) it is passed by the Senate with any amendment which is not agreed to by the House of Assembly.

(3) Whenever the office of Speaker is vacant or the Speaker is for any reason unable to perform any function conferred upon him by paragraph (1) of this Article or by Articles 60 or 61 of this Constitution, that function may be performed by the Deputy Speaker.

(4) Any certificate of the Speaker or Deputy Speaker given under Article 60 or 61 of this Constitution shall be conclusive for all purposes and shall not be questioned in any court.

### **Assent to Bills**

**63.**—(1) A Bill shall not become law until the Governor-General has assented thereto in Her Majesty's name and on Her Majesty's behalf and has signed it in token of such assent.

(2) Subject to the provisions of Articles 60 and 61 of this Constitution, a Bill shall be presented to the Governor-General for assent if, and shall not be so presented unless, it has been passed by both Houses either without amendment or with such amendments only as are agreed to by both Houses.

(3) Any Bill to which Article 54(2) or (3) of this Constitution applies shall be presented to the Governor-General endorsed with certificates of the President of the Senate and the Speaker that it has been passed by the requisite majorities in accordance with whichever of those paragraphs applies to the Bill, and with a certificate of the Parliamentary Registrar that it has been approved by the majority of the electors voting on the Bill.

(4) When a Bill is presented to the Governor-General for assent he shall signify that he assents or that he withholds assent.

### **Oath of allegiance**

**64.** No member or either House shall take part in the proceedings thereof unless he has taken the oath of allegiance in such manner as is prescribed by any law in force in The Bahamas:

Provided that the election of a President of the Senate or the election of a Speaker of the House of Assembly may take place before the members of the Senate or the House of Assembly, as the case may be, have taken such oath.

## **PART 5**

### **Summoning, Prorogation and Dissolution**

#### **Sessions of Parliament**

**65.**—(1) Each session of Parliament shall be held at such place and commence at such time as the Governor-General may by proclamation appoint.

(2) The time appointed for the commencement of any session of Parliament shall be such that a period of twelve months does not intervene between the end of one session and the first sitting of Parliament in the next session.

#### **Prorogation and dissolution of Parliament**

**66.**—(1) The Governor-General, acting in accordance with the advice of the Prime Minister, may at any time by proclamation prorogue Parliament.

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(2) The Governor-General, acting in accordance with the advice of the Prime Minister, may at any time by proclamation dissolve Parliament:

Provided that if the office of Prime Minister is vacant and the Governor-General considers that there is no prospect of his being able within a reasonable time to appoint to that office a person who can command the confidence of a majority of the members of the House of Assembly, he shall dissolve Parliament.

(3) Subject to the provisions of paragraph (4) of this Article, Parliament, unless sooner dissolved, shall continue for five years from the date of its first sitting after any dissolution and shall then stand dissolved.

(4) At any time when The Bahamas is at war, Parliament may extend the period of five years specified in paragraph (3) of this Article for not more than twelve months at a time:

Provided that the life of Parliament shall not be extended under this paragraph for more than two years.

(5) If, between a dissolution of Parliament and the next ensuing general election of members to the House of Assembly, an emergency arises of such a nature that, in the opinion of the Prime Minister, it is necessary for the two Houses or either of them to be summoned before that general election can be held, the Governor-General, acting in accordance with the advice of the Prime Minister, may summon the two Houses of the Preceding Parliament, and that Parliament shall thereupon be deemed (except for the purposes of Article 67 of this Constitution) not to have been dissolved but shall be deemed (except as aforesaid) to be dissolved on the date on which the polls are held in the next ensuing general election.

### **General elections, bye-elections and appointment of Senators**

67.—(1) After every dissolution of Parliament the Governor-General shall issue writs for a general election of members of the House of Assembly returnable within ninety days from that dissolution.

(2) As soon as may be after every general election the Governor-General shall proceed under Article 39 of this Constitution to the appointment of Senators.

(3) Whenever any person vacates his seat as a member of the House of Assembly for any reason other than a dissolution of Parliament, the Governor-General shall issue a writ for the election of a member to fill the vacancy and such election shall be held within sixty days after the occurrence of the vacancy or, where the question whether a vacancy has occurred is determined under Article 51 of this Constitution, after that determination, unless Parliament is sooner dissolved or the date by which Parliament will be dissolved under the provisions of Article 66 of this Constitution is less than four months after the occurrence of the vacancy or, as the case may be, that determination.

## **PART 6**

### **Delimitation of Constituencies**

#### **Constituencies**

68. The Bahamas shall be divided into thirty-eight constituencies or such greater number as may be provided for by an Order made by the Governor-General in accordance with the provisions of Article 70 of this Constitutions and each such constituency shall return one member to the House of Assembly.

#### **Constituencies Commission**

69.—(1) There shall be a Constituencies Commission for The Bahamas (in this and the next following Article referred to as “the Commission”).

- (2) The Members of the Commission shall be—
- (a) the Speaker who shall be Chairman;
  - (b) a Justice of the Supreme Court who shall be Deputy Chairman and shall be appointed by the Governor-General acting on the recommendation of the Chief Justice;
  - (c) two members of the House of Assembly who shall be appointed by the Governor-General acting in accordance with the advice of the Prime Minister; and
  - (d) one member of the House of Assembly who shall be appointed by the Governor-General acting in accordance with the advice of the Leader of the Opposition.
- (3) The office of a member of the Commission shall become vacant—
- (a) if he ceases to be the Speaker, a Justice of the Supreme Court or a member of the House of Assembly, as the case may be; or
  - (b) in the case of a member appointed under sub-paragraph (2)(b), (c) or (d) of this Article, if his appointment is revoked by the Governor-General.
- (4) If the office of a member of the Commission, appointed under sub-paragraph (2)(b), (c) or (d) of this Article is vacant or any such member is for any reason unable to perform the functions of his office, the Governor-General may appoint a person qualified for appointment under the said sub-paragraph (b), (c) or (d), as the case may be, to act in the office of that member and any person so appointed may continue so to act until his appointment is revoked.
- (5) In revoking the appointment of a member of the Commission under sub-paragraph (3)(b) of this Article, and in making or revoking an appointment to act in the office of a member of the Commission under paragraph (4) of this Article, the Governor-General shall act in the same manner as he would act if he were making an appointment to the office of that member under paragraph (2) of this Article.
- (6) Any decision of the Commission shall require the concurrence of not less than three members of the Commission.
- (7) Subject to the provisions of paragraph (6) of this Article, the Commission may act notwithstanding a vacancy in its membership, and no proceedings of the Commission shall be invalidated by reason only that some persons not entitled to do so has taken part in them.

#### **Procedure for review of constituencies**

**70.**—(1) The Commission shall in accordance with the provisions of this Article, at intervals of not more than five years, review the number and boundaries of the constituencies into which The Bahamas is divided and shall submit to the Governor-General a single report either—

- (a) stating that in the opinion of the Commission, no change is required; or
- (b) recommending certain changes,

and the Governor-General shall cause such report to be laid before the House of Assembly forthwith.

(2) In carrying out a review for the purposes of this Article, the Commission shall be guided by the general consideration that the number of voters entitled to vote for the purposes of electing every member of the House of Assembly shall, so far as is reasonably practicable, be the same and the need to take account of special considerations such as the needs of sparsely populated areas, the practicability of elected members maintaining contact with electors in such areas, size, physical features, natural boundaries and geographical isolation.

(3) When the Commission intends to proceed under paragraph (1) of this Article, it shall, by notice in writing, inform the Prime Minister, who shall cause a copy of that notice to be published in the Gazette.

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(4) As soon as may be after the Commission has submitted a report recommending changes in the boundaries of any constituencies, the Prime Minister shall lay before the House of Assembly for its approval a draft of an Order by the Governor-General for giving effect, whether with or without modifications, to the recommendations contained in the report, and that draft may make provision for any matters (including variation of the quorum specified in Article 57 of this Constitution) which appear to the Prime Minister to be incidental to or consequential upon the other provisions of the draft.

(5) Where any draft Order laid under this Article would give effect to any such recommendations with modifications, the Prime Minister shall lay before the House of Assembly together with the draft a statement of the reasons for the modifications.

(6) If the motion for the approval of any draft Order laid under this Article is rejected by the House of Assembly, or is withdrawn by leave of the House, an amended draft shall be laid without undue delay by the Prime Minister before the House of Assembly.

(7) If any draft Order laid under this Article is approved by resolution of the House of Assembly, the Prime Minister shall submit it to the Governor-General who shall make an Order (which shall be published in the Gazette) in terms of the draft; and that Order shall come into force on such day as may be specified therein and, until revoked by a further Order made by the Governor-General in accordance with the provisions of this Article, shall have the force of law in The Bahamas:

Provided that the coming into force of any such Order shall not affect any election to the House of Assembly until a proclamation is made by the Governor-General appointing the date for the holding of a general election of members of the House of Assembly or affect the constitution of the House of Assembly then in being.

(8) Save as provided in the next following paragraph the question of the validity of any Order by the Governor-General purporting to be made under this Article and reciting that a draft thereof has been approved by resolution of the House of Assembly shall not be inquired into in any court of law.

(9) Parliament may by law provide for an appeal to the Supreme Court against a statement or recommendation submitted by the Commission in pursuance of sub-paragraph (1)(a) or (b) of this Article.

## CHAPTER VI

### THE EXECUTIVE

#### **Executive Authority**

71.—(1) The executive authority of The Bahamas is vested in Her Majesty.

(2) Subject to the provisions of this Constitution, the executive authority of The Bahamas may be exercised on behalf of Her Majesty by the Governor-General, either directly or through officers subordinate to him.

(3) Nothing in this Article shall prevent Parliament from conferring functions on persons or authorities other than the Governor-General.

#### **The Cabinet**

72.—(1) There shall be a Cabinet for The Bahamas which shall have the general direction and control of the government of The Bahamas and shall be collectively responsible therefor to Parliament.



(2) The Cabinet shall consist of the Prime Minister and not less than eight other Ministers (of whom one shall be the Attorney-General), as may be appointed in accordance with the provisions of Article 73 of this Constitution.

### **Appointment of Ministers**

**73.**—(1) Whenever there shall be occasion for the appointment of a Prime Minister, the Governor-General shall appoint as Prime Minister—

- (a) the member of the House of Assembly who is the leader of the party which commands the support of the majority of the members of that House, or
- (b) if it appears to him that that party does not have an undisputed leader in that House or that no party commands the support of the such a majority, the member of the House of Assembly who, in his judgment, is most likely to command the support of the majority of members of that House,

and who is willing to accept the office of Prime Minister.

(2) Subject to the provisions of paragraph (3) of this Article, the Ministers other than the Prime Minister shall be such persons as the Governor-General, acting in accordance with the advice of the Prime Minister, shall appoint from among the Senators and the members of the House of Assembly.

(3) If the Attorney-General is appointed from among the members of the House of Assembly, not more than three Ministers shall be appointed from among the Senators, and if the Attorney-General is appointed from among the Senators, not more than two other Ministers shall be appointed from among the Senators.

(4) If occasions arises for making an appointment to the office of Prime Minister while Parliament is dissolved, a person who was a member of the House of Assembly immediately before the dissolution may, notwithstanding any other provision of this Article, be appointed as Prime Minister.

(5) If occasion arises for making an appointment to the office of any other Minister while Parliament is dissolved, a person who, immediately before the dissolution, was a Senator or a member of the House of Assembly may, subject to the provisions of paragraph (3) of this Article, be appointed as a Minister.

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

**74.**—(1) If the House of Assembly passes a resolution, supported by the votes of a majority of all the members of the House, declaring that it has no confidence in the Prime Minister and the Prime Minister does not within seven days of the passing of such a resolution either resign or advise the Governor-General to dissolve Parliament, the Governor-General shall revoke the appointment of the Prime Minister.

(2) The Prime Minister shall also vacate his office—

- (a) if at any time between the holding of a general election and the first sitting of the House of Assembly thereafter he is informed by the Governor-General that the Governor-General in pursuance of Article 73(1) of this Constitution is about to re-appoint him as Prime Minister or to appoint another person as Prime Minister; or
- (b) if for any reason other than a dissolution of Parliament he ceases to be a member of the House of Assembly.

(3) A Minister other than the Prime Minister shall vacate his office—

- (a) when any person is appointed or re-appointed as Prime Minister;
- (b) if for any reason other than a dissolution of Parliament he ceases to be a member of the House from among the members of which he was appointed; or

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(c) if his appointment is revoked by the Governor-General acting in accordance with the advice of the Prime Minister.

(4) If at any time the Prime Minister is required under the provisions of paragraphs (2), (3) and (4) of Article 49 of this Constitution to cease to perform his functions as a member of the House of Assembly, he shall cease during such time to perform any of his functions as Prime Minister.

(5) If at any time a Minister other than the Prime Minister is required under the provisions of paragraphs (3), (4) and (5) of Article 43 or paragraphs (2), (3) and (4) of Article 49 of this Constitution to cease to perform his functions as a member of the House to which he belongs, he shall cease during such time to perform any of his functions as a Minister.

### **Performance of functions of Prime Minister during absence, illness or suspension**

75.—(1) Whenever the Prime Minister is absent from The Bahamas or is unable by reasons of illness or of the provisions of paragraph (4) of Article 74 of this Constitution to perform the functions conferred upon him by this Constitution, the Governor-General may authorise some other member of the Cabinet to perform those functions (other than the functions conferred by this Article) and that member may perform those functions until his authority is revoked by the Governor-General.

(2) The powers of the Governor-General under this Article shall be exercised by him in accordance with the advice of the Prime Minister:

Provided that if the Governor-General considers that it is impracticable to obtain the advice of the Prime Minister owing to his absence or illness, or if the Prime Minister is unable to tender advice by reason of the provisions of paragraph (4) of Article 74 of this Constitution, the Governor-General may exercise those powers without the advice of the Prime Minister.

### **Temporary Ministers**

76.—(1) Whenever a Minister other than the Prime Minister is unable, by reason of his illness, or absence from The Bahamas or absence from his duties on leave, to perform the functions of his office, the Governor-General may, in writing, authorise another Minister to perform those functions or appoint a person to be a temporary Minister:

Provided that if occasion arises for the making of an appointment between a dissolution of Parliament and the next following general election, the preceding provisions of this Article shall have effect for the purposes as if Parliament had not been dissolved.

(2) Subject to the provisions of Article 74 of this Constitution, a temporary Minister shall hold office until he is notified by the Governor-General in writing that the Minister on account of whose inability to perform the functions of his office he was appointed is again able to perform those functions or that Minister vacates his office.

(3) The powers conferred on the Governor-General by this Article shall be exercised by him in accordance with the advice of the Prime Minister.

### **Allocation of portfolios to Ministers**

77. The Governor-General, acting in accordance with the advice of the Prime Minister, may, by directions in writing, charge the Prime Minister or any other Minister with responsibility for any business of the Government of The Bahamas, including the administration of any department of Government:

Provided that a Minister appointed from among members of the House of Assembly shall be charged with responsibility for finance.

## Functions of Attorney-General

78.—(1) The Attorney-General shall have power in any case in which he considers it desirable so to do—

- (a) to institute and undertake criminal proceedings against any person before any court in respect of any offence against the law of The Bahamas;
- (b) to take over and continue any such criminal proceedings that may 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 any other person or authority.

(2) The powers of the Attorney-General under paragraph (1) of this Article may be exercised by him in person or through other persons acting under and in accordance with his general or special instructions.

(3) The powers conferred upon the Attorney-General by subparagraphs (1)(b) and (c) of this Article shall be vested in him to the exclusion of any other person or authority:

Provided that, where any other person or authority has instituted criminal proceedings, nothing in this Article 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) In the exercise of powers conferred upon him by this Article the Attorney-General shall not be subject to the direction or control of any other person or authority.

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

## Exercise of Governor-General's powers

79.—(1) The Governor-General shall, in the exercise of his functions, act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet, except in cases where by this Constitution or any other law he is required to act in accordance with the recommendation or advice, or with the concurrence of or after consultation with, any person or authority other than the Cabinet:

Provided that the Governor-General shall act in accordance with his own deliberate judgment in the performance of the following functions—

- (a) in the exercise of the power to appoint the Prime Minister conferred upon him by paragraphs (1) or (4) of Article 73 of this Constitution;
- (b) in the exercise of the powers conferred upon him by Article 75 of this Constitution (which relates to the performance of the functions of the Prime Minister during absence, illness or suspension) in the circumstances described in the proviso to paragraph (2) of that Article;
- (c) in the exercise of the power to appoint the Leader of the Opposition and to revoke any such appointment conferred upon him by Article 82 of this Constitution;
- (d) in the exercise of the powers conferred on him by Article 83(a) of this Constitution during any vacancy in the office of Leader of the Opposition;
- (e) in the exercise of the power to dissolve Parliament conferred upon him by the proviso to Article 66(2) of this Constitution;
- (f) in removing a Justice of the Supreme Court from office under Article 96(5) of this Constitution;
- (g) in removing a Justice of Appeal from office under Article 102(5) of this Constitution;

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(h) in the powers relating to appointment, removal and disciplinary control over members of his personal staff, conferred on him by Article 35 of this Constitution.

(2) Where the Governor-General is directed to exercise any function on the recommendation of any person or authority, he shall exercise that functions in accordance with such recommendation:

Provided that—

(a) before he acts in accordance therewith, he may, acting in accordance with his own deliberate judgment, once refer that recommendation back for reconsideration by the person or authority concerned; and

(b) if that person or authority, having reconsidered the original recommendation under sub-paragraph (a) of this Proviso, substitutes therefor a different recommendation, the provisions of this paragraph shall apply to that different recommendation as they apply to the original recommendation.

(3) Where the Governor-General is directed to exercise any function after consultation with any person or authority he shall not be obliged to exercise that function in accordance with the advice or recommendation of that person or authority.

(4) Where the Governor-General is directed to exercise any function on the recommendation or advice of, or with the concurrence of, or after consultation with, any person or authority, the question whether he has so exercised that function shall not be enquired into in any court.

(5) Where the Governor-General is directed to exercise any function on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, the following steps shall be taken—

(a) the Prime Minister shall first consult the Leader of the Opposition and thereafter tender his recommendation to the Governor-General;

(b) the Governor-General shall then inform the Leader of the Opposition of that recommendation and if the Leader of the Opposition concurs therein the Governor-General shall act in accordance with the recommendation;

(c) if the Leader of the Opposition does not concur in the recommendation the Governor-General shall so inform the Prime Minister and refer the recommendation back to him;

(d) the Prime Minister shall then advise the Governor-General and the Governor-General shall act in accordance with that advice.

(6) Any reference in this Constitution to the functions of the Governor-General shall be construed as a reference to his powers and duties in the exercise of the executive authority of The Bahamas and to any other powers and duties conferred or imposed on him as Governor-General by or under this Constitution or any other law.

### **Governor-General to be informed concerning matters of Government**

**80.** The Prime Minister shall keep the Governor-General fully informed concerning the general conduct of the government of The Bahamas and shall furnish the Governor-General with such information as he may request with respect to any particular matter relating to the government of The Bahamas.

### **Parliamentary Secretaries**

**81.—(1)** The Governor-General, acting in accordance with the advice of the Prime Minister, may appoint Parliamentary Secretaries from among the Senators and the members of the House of Assembly to assist Minister, in the Performance of their duties:

Provided that, if occasion arises for making an appointment while Parliament is dissolved, a person who was a Senator or a member of the House of Assembly immediately before the dissolution may be appointed as a Parliamentary Secretary.

- (2) The office of a Parliamentary Secretary shall become vacant—
  - (a) if for any reason other than a dissolution of Parliament he ceases to be a member of the House from among the members of which he was appointed;
  - (b) upon the appointment or re-appointment of any person as Prime Minister; or
  - (c) if the Governor-General, acting in accordance with the advice of the Prime Minister, so directs.

### **Leader of the Opposition**

**82.**—(1) There shall be a Leader of the Opposition who shall be appointed by the Governor-General.

(2) Whenever there shall be occasion for the appointment of a Leader of the Opposition, the Governor-General shall appoint the member of the House of Assembly who, in his judgment, is best able to command the support of the majority of the members of the House in opposition to the Government; or if there is no such person, the member of the House who, in his judgment, commands the support of the largest single group of members in opposition to the Government; who are prepared to support one leader:

Provided that this paragraph shall have effect in relation to any period between a dissolution of Parliament and the day on which the next election of members of the House of Assembly is held as if Parliament had not been dissolved.

- (3) The Leader of the Opposition shall vacate his office if—
  - (a) after an election of members of the House of Assembly following any dissolution of Parliament he is informed by the Governor-General that the Governor-General is about to appoint another person as Leader of the Opposition;
  - (b) for any reason other than a dissolution of Parliament he ceases to be a member of the House of Assembly;
  - (c) under the provisions of paragraphs (2), (3) and (4) of Article 49 of this Constitution he is required to cease to perform his functions as a member of the House of Assembly; or
  - (d) his appointment is revoked under the provisions of paragraph (4) of this Article.

(4) If in the judgment of the Governor-General the Leader of the Opposition is no longer the member of the House of Assembly best able to command the support of the majority of members of the House in opposition to the Government or the member of the House who commands the support of the largest single group of members in opposition to the Government who are prepared to support one leader, the Governor-General shall revoke the appointment of the Leader of the Opposition.

- (5) Paragraph (4) of this Article shall not have effect while Parliament is dissolved.

### **Certain vacancies in office of Leader of the Opposition**

**83.** During any period in which there is a vacancy in the office of Leader of the Opposition by reason of the fact that no person is both qualified in accordance with this Constitution for, and willing to accept appointment to that office, the Governor-General shall—

- (a) act in accordance with his own deliberate judgment in the exercise of any function in respect of which it is provided in this Constitution that the Governor-General shall act in accordance with the advice of the Leader of the Opposition; and

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- (b) act on the recommendation of the Prime Minister in the exercise of any function in respect of which it is provided in this Constitution that the Governor-General shall act on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

#### **Oaths to be taken by Ministers, etc**

**84.** A Minister or Parliamentary Secretary shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by Parliament.

#### **Leave of absence for Ministers, etc**

**85.** The Governor-General, acting in accordance with the advice of the Prime Ministers, may grant leave of absence from his duties to any Minister or Parliamentary Secretary.

#### **Summoning of and presiding in Cabinet**

**86.—(1)** The Cabinet shall not be summoned except by the authority of the Prime Minister.

(2) The Prime Minister shall, so far as is practicable, attend and preside at all the meetings of the Cabinet and in his absence such other Minister shall preside as the Prime Minister shall appoint.

#### **Quorum**

**87.—(1)** No business shall be transacted at any meeting of the Cabinet if there are present at the meeting less than a majority of the members for the time being of the Cabinet.

(2) Subject to paragraph (1) of this Article, the Cabinet shall not be disqualified for the transaction of business by reasons of any vacancy in the membership of the Cabinet (including any vacancy not filled when the Cabinet is first constituted or is 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 so to do took part in those proceedings.

#### **Permanent Secretaries**

**88.** Where any Minister has been charged with responsibility for any department of Government, he shall exercise general direction and control over that department; and, subject to such direction and control, the department shall be under the supervision of a public officer (in this Constitution referred to as a Permanent Secretary) appointed for the purpose:

Provided that two or more Government departments may be placed under the supervision of one Permanent Secretary.

#### **Constitution of offices, etc**

**89.** Subject to the provisions of this Constitution and of any Act of Parliament, the Governor-General may constitute offices for The Bahamas, make appointments to any such office and terminate any such appointment.

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

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

- (a) grant to any person convicted of any offence against the law of The Bahamas a pardon, either free or subject to lawful conditions;

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- (b) grant to any person a respite, either indefinite or for a specified period, from the execution of any punishment imposed on that person 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 any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.

(2) The powers of the Governor-General under paragraph (1) of this Article shall be exercised by him in accordance with the advice of a Minister designated by him, acting in accordance with the advice of the Prime Minister.

### **Advisory Committee on Prerogative of Mercy**

**91.** There shall be an Advisory Committee on the Prerogative of Mercy which shall consist of—

- (a) the Minister referred to in paragraph (2) of Article 90 of this Constitution, who shall be Chairman;
- (b) the Attorney-General; and
- (c) not less than three or more than five other members appointed by the Governor-General.

### **Functions of Advisory Committee**

**92.**—(1) Where an offender has been sentenced to death by any court for an offence against the law of The Bahamas, the Minister shall cause a written report of the case from the trial Justice of the Supreme Court, together with such other information derived from the record of the case or elsewhere as the Minister may require, to be taken into consideration at a meeting of the Advisory Committee.

(2) The Minister may consult with the Advisory Committee before tendering any advice to the Governor-General under paragraph (2) of Article 90 of this Constitution in any case not falling within paragraph (1) of this Article.

(3) The Minister shall not be obliged in any case to act in accordance with the advice of the Advisory Committee.

(4) The Advisory Committee may regulate its own procedure.

(5) In this Article “the Minister” means the Minister referred to in paragraph (2) of Article 90 of this Constitution.

## **CHAPTER VII**

### **THE JUDICATURE**

#### **PART I**

#### **The Supreme Court**

### **Establishment of Supreme Court**

**93.**—(1) There shall be a Supreme Court for The Bahamas which shall have such jurisdiction and powers as may be conferred upon it by this Constitution or any other law.

(2) The Justices of the Supreme Court shall be the Chief Justice and such number of other Justices as may be prescribed by Parliament.

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(3) No office of Justice of the Supreme Court shall be abolished while there is a substantive holder thereof.

(4) The Supreme Court shall be a Superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court.

### **Appointment of Justices of Supreme Court**

**94.**—(1) The Chief Justice shall be appointed by the Governor-General by instrument under the Public Seal on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

(2) The other Justices of the Supreme Court shall be appointed by the Governor-General by instrument under the Public Seal acting on the advice of the Judicial and Legal Service Commission.

(3) The qualifications for appointment as a Justice of the Supreme Court shall be such as may be prescribed by any law for the time being in force:

Provided that a person who has been appointed as a Justice of the Supreme Court may continue in office notwithstanding any subsequent variations in the qualifications so prescribed.

### **Acting Justices**

**95.**—(1) If the Office of Chief Justice is vacant or if the Chief Justice is for any reason unable to perform the functions of his office, then, until a person has been appointed to that office and assumed its functions, or, as the case may be, until the Chief Justice has resumed those functions, they shall be performed by such other person, qualified under paragraph (3) of Article 94 of this Constitution for appointment as a Justice, as the Governor-General, acting in accordance with the advice of the Prime Minister may appoint for that purpose by instrument under the Public Seal.

(2) If the office of a Justice of the Supreme Court is vacant, or if any such Justice is appointed to act as Chief Justice or as a Justice of Appeal, or is for any reason unable to perform the functions of his office, the Governor-General, acting on the advice of the Judicial and Legal Service Commission, may by instrument under the Public Seal appoint a person qualified under paragraph (3) of Article 94 of this Constitution for appointment as a Justice to act as a Justice of the Supreme Court, and any person so appointed shall, subject to the provisions of paragraph (5) of Article 96 of this Constitution, continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the Governor-General acting on the advice of the Judicial and Legal Service Commission.

(3) Any person appointed to act as a Justice under the provisions of this Article may, notwithstanding that the period of his appointment has expired or his appointment has been revoked, sit as a Justice for the purpose of delivering judgment or doing any other thing in relation to proceedings which were commenced before him while he was so acting.

### **Tenure of office of Justices of Supreme Court**

**96.**—(1) Subject to the provisions of paragraphs (4) to (7) (inclusive) of this Article, a Justice of the Supreme Court shall hold office until he attains the age of sixty-five years:

Provided that the Governor-General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, may permit a Justice who attains the age of sixty-five years to continue in office until he has attained such later age, not exceeding sixty-seven years, as may (before the Justice has attained the age of sixty-five years) have been agreed between them.

(2) Notwithstanding that he has attained the age at which he is required by or under the provisions of this Article to vacate his office, a person holding the office of Justice of the Supreme Court may, with the permission of the Governor-General, acting in accordance with the advice of the Prime Minister, continue in office for such period after attaining that age as may be necessary to enable



him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

(3) Nothing done by a Justice of the Supreme Court shall be invalid by reason only that he has attained the age at which he is required by this Article to vacate his office.

(4) A Justice of the Supreme Court may be removed from office only for inability to discharge the functions of his 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 the provisions of paragraph (5) of this Article.

(5) A Justice of the Supreme Court shall be removed from office by the Governor-General by instrument under the Public Seal if the question of the removal of that Justice from office has, at the request of the Governor-General, made in pursuance of paragraph (6) of this Article, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council and the Judicial Committee has advised Her Majesty that the Justice ought to be removed from office for inability as aforesaid or for misbehaviour.

(6) If the Prime Minister (in the case of the Chief Justice) or the Chief Justice after consultation with the Prime Minister (in the case of any other Justice) represents to the Governor-General that the question of removing a Justice of the Supreme Court from office for inability as aforesaid or for misbehaviour ought to be investigated, then—

- (a) the Governor-General shall appoint a tribunal, which shall consist of a Chairman and not less than two other members, selected by the Governor-General acting in accordance with the advice of the Prime Minister (in the case of the Chief Justice) or of the Chief Justice (in the case of any other Justice) from among persons who hold or have held high judicial office;
- (b) that tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to the Governor-General whether he should request that the question of the removal of that Justice should be referred by Her Majesty to the Judicial Committee; and
- (c) if the tribunal so recommends, the Governor-General shall request that the question should be referred accordingly.

(7) The provisions of the Commissions of Inquiry Act(6) as in force immediately before the appointed day shall, subject to the provisions of this Article, apply as nearly as may be in relation to tribunals appointed under paragraph (6) of this Article or, as the context may require, to the members thereof as they apply in relation to the Commissions or Commissioners appointed under that Act, and for that purpose shall have effect as if they formed part of this Constitution.

(8) If the question of removing a Justice of the Supreme Court from office has been referred to a tribunal appointed under paragraph (6) of this Article, the Governor-General, acting in accordance with the advice of the Prime Minister (in the case of the Chief Justice) or of the Chief Justice after the Chief Justice has consulted with the Prime Minister (in the case of any other Justice), may suspend the Justice from performing the functions of his office.

(9) Any such suspension may at any time be revoked by the Governor General, acting in accordance with the advice of the Prime Minister or the Chief Justice (as the case may be), and shall in any case cease to have effect—

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

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(6) Statute Law of the Bahama Islands, Revised Edition 1965. Cap. 180.

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(10) The provisions of this Article shall be without prejudice to the provisions of paragraph (2) of Article 95 of this Constitution.

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

97. A Justice of the Supreme Court shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and a judicial oath in such form as is prescribed by any law in force in The Bahamas.

## **PART 2**

### **Court of Appeal**

#### **Establishment of Court of Appeal**

98.—(1) There shall be a Court of Appeal for The Bahamas which shall have such jurisdiction and powers as may be conferred upon it by this Constitution or any other law.

(2) The Justices of Appeal of the Court of Appeal shall be—

- (a) a President;
- (b) the Chief Justice by virtue of his office as head of the Judiciary but who, however, shall not sit in the Court of Appeal, unless he has been invited so to sit by the President of the Court; and
- (c) such number of other Justices of Appeal as may be prescribed by Parliament.

(3) No office of Justice of Appeal shall be abolished while there is a substantive holder thereof.

(4) The Court of Appeal shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court.

#### **Justices of the Court of Appeal**

99.—(1) The President of the Court of Appeal and other Justices of Appeal shall be appointed by the Governor-General by instrument under the Public Seal on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

(2) The qualifications for appointment as a Justice of Appeal shall be such as may be prescribed by any law for the time being in force;

Provided that—

- (i) a person shall not be qualified for appointment as a Justice of Appeal unless he holds or has held high judicial office; and
- (ii) a person who has been appointed as a Justice of Appeal may continue in office notwithstanding any subsequent variations in the qualifications so prescribed.

#### **Other arrangements for appeals**

100.—(1) Notwithstanding anything contained in this Part of this Chapter, Parliament may make provisions—

- (a) for implementing arrangements made between the Government of The Bahamas and the Government or Governments of any other part or parts of the Commonwealth relating to the establishment of a court of appeal to be shared by The Bahamas with that part or those parts of the Commonwealth, and for the hearing and determination by such a court of appeal of appeals from decisions of any court in The Bahamas; or

(b) for the hearing and determination of appeals from decisions of any court in The Bahamas by a Court established for any other part of the Commonwealth.

(2) A law enacted in pursuance of paragraph (1) of this Article may provide that the jurisdiction conferred on any such court as is referred to in that paragraphs shall be to the exclusion, in whole or in part, of the jurisdiction of the Court of Appeal established by this Part of this Chapter; and during any period when jurisdiction is so conferred to the exclusion of the whole jurisdiction of the said Court of Appeal, Parliament may suspend the provisions of this Part establishing that Court.

(3) In paragraph (1) of this Article the expression “any court in The Bahamas” includes the Court of Appeal established by this Part of this Chapter.

### **Acting Justices of Court of Appeal**

**101.**—(1) If the office of President of the Court of Appeal is vacant or if the President of the Court of Appeal is for any reason unable to perform the functions of his office, then, until a person has been appointed to that office and assumed its functions or, as the case may be, until the President of the Court of Appeal has resumed those functions, they shall be performed by such other person, qualified under paragraph (2) of Article 99 of this Constitution for appointment as a Justice of Appeal, as the Governor-General, acting in accordance with the advice of the Prime Minister, may appoint for that purpose by instrument under the Public Seal.

(2) If the office of a Justice of Appeal (other than the President) is vacant, or if any such Justice is appointed to act as President of the Court of Appeal, or is for any reason unable to perform the functions of his office, the Governor-General, acting on the advice of the Judicial and Legal Service Commission, may by instrument under the Public Seal appoint a person qualified under paragraph (2) of Article 99 of this Constitution for appointment as a Justice of Appeal to act as a Justice of Appeal, and any person so appointed shall, subject to the provisions of paragraph (5) of Article 102 of this Constitution, continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the Governor-General acting on the advice of the Judicial and Legal Service Commission.

(3) Any person appointed to act as a Justice of Appeal under the provisions of this Article may, notwithstanding that the period of his appointment has expired or his appointment has been revoked, sit as a Justice for the purpose of delivering judgment or doing any other thing in relation to proceedings which were commenced before him while he was so acting.

### **Tenure of office of Justices of Appeal**

**102.**—(1) Subject to the provisions of paragraph (4) to (7) (inclusive) of this Article, a Justice of Appeal shall hold office until he attains the age of sixty-eight years:

Provided that the Governor-General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, may permit a Justice of Appeal who attains the age of sixty-eight years to continue in office until he has attained such later age, not exceeding seventy years, as may (before the Justice of Appeal has attained the age of sixty-eight years) have been agreed between them.

(2) Notwithstanding that he has attained the age at which he is required by or under the provisions of this Article to vacate his office, a person holding the office of Justice of Appeal may, with the permission of the Governor-General, acting in accordance with the advice of the Prime Minister, continue in office for such period after attaining that age as may be necessary to enable him to deliver judgment or to do any other thing in relating to proceedings that were commenced before him before he attained that age.

(3) Nothing done by a Justice of Appeal shall be invalid by reason only that he has attained the age at which he is required by this Article to vacate his office.

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(4) A Justice of Appeal may be removed from office only for inability to discharge the functions of his 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 the provisions of paragraph (5) of this Article.

(5) A Justice of Appeal shall be removed from office by the Governor-General by instrument under the Public Seal if the question of the removal of that Justice of Appeal from the office has, at the request of the Governor-General made in pursuance of paragraph (6) of this Article, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council and the Judicial Committee has advised Her Majesty that the Justice of Appeal ought to be removed from office for inability as aforesaid or for misbehaviour.

(6) If the Prime Minister (in the case of the President of the Court of Appeal) or the President of the Court of Appeal or the Chief Justice after consultation with the Prime Minister (in the case of any other Justice of Appeal) represents to the Governor-General that the question of removing a Justice of Appeal from office for inability as aforesaid or for misbehaviour ought to be investigated, then—

- (a) the Governor-General shall appoint a tribunal, which shall consist of a Chairman and not less than two other members, selected by the Governor-General acting in accordance with the advice of the Prime Minister (in the case of the President of the Court of Appeal) or of the President of the Court of Appeal (in the case of any other Justice of Appeal) from among persons who hold or have held high judicial office;
- (b) that tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to the Governor-General whether he should request that the question of the removal of that Justice of Appeal should be referred by Her Majesty to the Judicial Committee; and
- (c) if the tribunal so recommends, the Governor-General shall request that the question should be referred accordingly.

(7) The provisions of the Commissions of Inquiry Act(7) as in force immediately before the appointed day shall, subject to the provisions of this Article, apply as nearly as may be in relation to tribunals appointed under paragraph (6) of this Article or, as the context may require, to the members thereof as they apply in relation to Commissions or Commissioners appointed under that Act, and for that purpose shall have effect as if they formed part of this Constitution.

(8) If the question of removing a Justice of Appeal from office has been referred to a tribunal appointed under paragraph (6) of this Article, the Governor-General acting in accordance with the advice of the Prime Minister (in the case of the President of the Court of Appeal) or of the President of the Court of Appeal after the President of the Court of Appeal has consulted with the Prime Minister (in the case of any other Justice of Appeal), may suspend the Justice of Appeal from performing the functions of his office.

(9) Any such suspension may at any time be revoked by the Governor-General, acting in accordance with the advice of the Prime Minister or the President of the Court of Appeal (as the case may be), and shall in any case cease to have effect if—

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

(10) The provisions of this Article shall be without prejudice to the provisions of paragraph (2) of Article 101 of this Constitution.

(11) The provisions of this Article and of Article 103 of this Constitution shall not apply to the Chief Justice.

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(7) Statute Law of the Bahama Islands, Revised Edition 1965, Cap. 180.

### **Oaths to be taken by Justices of Appeal**

**103.** A Justice of Appeal shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and a judicial oath in such form as is prescribed by any law in force in The Bahamas.

## **PART 3**

### **Appeals to Court of Appeal and Her Majesty in Council**

#### **Appeals relating to fundamental rights and freedoms**

**104.—(1)** An appeal to the Court of Appeal shall lie as of right from final decisions of the Supreme Court given in exercise of the jurisdiction conferred on the Supreme Court by Article 28 of this Constitution (which relates to the enforcement of fundamental rights and freedoms).

(2) An appeal shall lie as of right to the Judicial Committee of Her Majesty's Privy Council or to such other court as may be prescribed by Parliament under Article 105(3) of this Constitution from any decision given by the Court of Appeal in any such case.

#### **Appeals to Her Majesty in Council in other cases**

**105.—(1)** Parliament may provide for an appeal to lie from decisions of the Court of Appeal established by Part 2 of this Chapter to the Judicial Committee of Her Majesty's Privy Council or to such other court as may be prescribed by Parliament under this Article, either as of right or with the leave of the said Court of Appeal, in such cases other than those referred to in Article 104(2) of this Constitution as may be prescribed by Parliament.

(2) Nothing in this Constitution shall affect any right of Her Majesty to grant special leave to appeal from decisions such as are referred to in paragraph (1) of this Article.

(3) Parliament may by law provide for the functions required in this Chapter to be exercised by the Judicial Committee of Her Majesty's Privy Council to be exercised by any other court established for the purpose in substitution for the Judicial Committee.

#### **Interpretation of “Court of Appeal”**

**106.** References in this Part to “the Court of Appeal” include references to a shared court of appeal established under Article 100(1) of this Constitution when exercising jurisdiction in respect of The Bahamas.

## **CHAPTER VIII**

### **THE PUBLIC SERVICE**

#### **PART I**

##### **The Public Service Commission**

#### **Establishment and composition of Public Service Commission**

**107.—(1)** There shall be a Public Service Commission for The Bahamas which shall consist of a Chairman and not less than two nor more than four other members, who shall be appointed by the Governor-General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, by instrument under the Public Seal.

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(2) No person shall be qualified to be appointed as a member of the Public Service Commission if he is a member of either House or a public officer.

(3) Subject to the provisions of Article 126 of this Constitution the office of a member of the Public Service Commission shall become vacant—

(a) at the expiration of three years from the date of his appointment or such earlier time as may be specified in the instrument by which he was appointed;

(b) if he becomes a member of either House or a public officer.

(4) If the office of Chairman of the Public Service Commission is vacant or the holder thereof is for any reason unable to perform the functions of his office then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, they shall be performed by such one of the other members of the Commission as may for the time being be designated in that behalf by the Governor-General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

(5) If the office of a member of the Public Service Commission other than the Chairman is vacant or the holder thereof is for any reason unable to perform the functions of his office, the Governor-General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, may appoint a person who is qualified for appointment as a member of the Commission to act in the office of that member; and any person so appointed shall, subject to the provisions of sub-paragraph (3)(b) of this Article and Article 126 of this Constitution, continue so to act until a person has been appointed to the office in which he is acting and has assumed the functions thereof or, as the case may be, the holder thereof resumes those functions or until his appointment so to act is revoked by the Governor-General, acting as aforesaid.

(6) A former member of the Public Service Commission shall not, within a period of five years commencing with the date on which he last held or acted in that office, be eligible for appointment to any office power to make appointments to which is vested by this Constitution in the Governor-General acting on the recommendation or in accordance with the advice of the Public Service Commission.

## PART 2

### Appointments etc. of Public Officers

#### **Appointments, etc. of public officers**

**108.** Subject to the provisions of this Constitution power to make appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in such offices is hereby vested in the Governor-General, acting in accordance with the advice of the Public Service Commission.

#### **Appointments of Permanent Secretaries and certain other public officers**

**109.**—(1) Notwithstanding anything contained in the preceding Article of this Chapter—

(a) power to make appointments to the office of Permanent Secretary or Head of a Department of Government (or to be the holder of any such other office of similar status as the Governor-General may, acting in accordance with the advice of the Prime Minister, specify by notice in the Gazette) is hereby vested in the Governor-General acting on the recommendation of the Public Service Commission after the Commission has consulted the Prime Minister;

(b) power to make appointments to the office of Permanent Secretary on transfer from another such office carrying the same salary is hereby vested in the Governor-General acting on the advice of the Prime Minister.

(2) In this Article “Permanent Secretary” includes the Secretary of the Cabinet and the Financial Secretary.

### **Delegation of Governor-General's powers**

**110.** The Governor-General acting in accordance with the advice of the Public Service Commission, may by directions given by instruments under the Public Seal delegate, to such extent and subject to such conditions as may be specified in those directions, the powers vested in him by Article 108 of this Constitution (other than powers to make appointments to the offices referred to in Article 109 of this Constitution and to remove or exercise disciplinary control over persons holding or acting in such offices) to such public officers as may be so specified.

### **Appointments, etc. of principal representatives of The Bahamas abroad**

**111.—**(1) Power to appoint persons to hold or act in the offices to which this Article applies (including power to make appointments on promotion and transfer and to confirm appointments) and to remove persons so appointed from any such office shall vest in the Governor-General, acting in accordance with the advice of the Prime Minister.

(2) Before tendering any advice for the purposes of this Article in relation to any person who holds or acts in any public office other than an office to which this Article applies, the Prime Minister shall consult the Service Commission which is responsible for advising in respect of appointments to the office which the person concerned holds or in which he is acting.

(3) The offices to which this Article applies are the offices of Ambassador, High Commissioner or any other principal representative of The Bahamas in any other country or accredited to any international organisation.

### **Appointments on transfer in respect of certain offices**

**112.—**(1) Power to make appointments on transfer to the offices to which this Article applies shall vest in the Prime Minister.

(2) The offices to which this Article applies are—

- (a) offices, the holders of which are required to reside outside The Bahamas for the proper discharge of their functions;
- (b) such offices in the Ministry responsible for the conduct of the external affairs of The Bahamas as may, from time to time, be designated by the Prime Minister.

### **Appointment of Secretary to the Cabinet**

**113.—**(1) There shall be a Secretary to the Cabinet whose office shall be a public office.

(2) Power to appoint any person to the office of Secretary to the Cabinet and to remove such person from that office shall vest in the Governor-General acting in accordance with the advice of the Prime Minister.

(3) Before tendering advice for the purposes of this Article, the Prime Minister shall consult the Public Service Commission.

(4) The Secretary to the Cabinet shall have charge of the Cabinet Office and shall be responsible, in accordance with such instructions as may be given to him by the Prime Minister, for the supervision of any department of the Government for which the Prime Minister has responsibility.

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## PART 3

### The Public Service Board of Appeal

#### **Public Service Board of Appeal**

**114.**—(1) There shall be a Public Service Board of Appeal for The Bahamas which shall consist of the following members, who shall be appointed by instrument under the Public Seal—

- (a) one member appointed by the Governor-General acting in accordance with the advice of the Chief Justice from among persons who hold or have held high judicial office or are qualified to hold high judicial office, who shall be Chairman;
- (b) one member appointed by the Governor-General acting in accordance with the advice of the Prime Minister; and
- (c) one member appointed by the Governor-General acting in accordance with the advice of the appropriate representative body.

(2) A person shall not be qualified for appointment as a member of the Board if he is a member of either House.

(3) Subject to the provisions of this Article and of Article 126 of this Constitution, the office of a member of the Board shall become vacant—

- (a) at the expiration of three years from the date of his appointment;
- (b) if he becomes a member of either House.

(4) If at any time any member of the Board is for any reason unable to exercise the functions of his office, the Governor-General may appoint a person who is qualified to be appointed as a member of the Board to act as a member, and any person so appointed shall, subject to the provisions of subparagraph (3)(b) of this Article and Article 126 of this Constitution, continue to act until the office in which he is acting has been filled or, as the case may be, until the holder thereof has resumed his functions or until his appointment to act has been revoked by the Governor-General.

(5) The Board shall, in the exercise of its functions under this Constitution, not be subject to the direction or control of any other person or authority.

(6) In this Article “the appropriate representative body” means such body representing the interests of public officers as the Governor-General may, by Order, designate.

#### **Appeals in discipline cases**

**115.**—(1) Subject to the provisions of this Article, an appeal shall lie to the Public Service Board of Appeal at the instance of the officer in respect of whom the decision is made from any decision of the Governor-General, acting in accordance with the advice of the Public Service Commission, that any public officer shall be removed from office or that any penalty should be imposed on him by way of disciplinary control.

(2) Upon an appeal under paragraph (1) of this Article the Board may affirm or set aside the decision appealed from or may make any other decision which the authority or person from whom the appeal lies could have made.

(3) Every decision of the Board shall require the concurrence of a majority of all its members.

(4) Subject to the provisions of paragraph (3) of this Article, the Board may by regulations make provisions for—

- (a) the procedure of the Board;
- (b) the procedure in appeals under this Article;



(c) excepting from the provisions of paragraph (1) of this Article decisions in respect of public officers holding offices whose emoluments do not exceed such sum as may be prescribed or such decisions to exercise disciplinary control, other than decisions to remove from office, as may be prescribed.

(5) Regulations made under this Article may, with the consent of the Prime Minister, confer powers or impose duties on any public officer or any authority of the Government of The Bahamas for the purpose of the exercise of the functions of the Board.

(6) The Board may, subject to the provisions of this Article and to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member.

#### PART 4

#### The Judicial and Legal Service Commission

#### **Establishment and composition of the Judicial and Legal Service Commission**

**116.**—(1) There shall be a Judicial and Legal Service Commission for The Bahamas.

(2) The members of the Judicial and Legal Service Commission shall be—

- (a) the Chief Justice, who shall be Chairman;
- (b) such other Justice of the Supreme Court or Justice of Appeal as may be designated by the Governor-General, acting on the recommendation of the Chief Justice, by instrument under the Public Seal;
- (c) the Chairman of the Public Service Commission; and
- (d) two persons appointed by the Governor-General by instrument under the Public Seal, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

(3) Subject to the provisions of Article 126 of this Constitution, the office of a member of the Judicial and Legal Service Commission referred to in sub-paragraph (2)(d) of this Article shall become vacant—

- (a) at the expiration of three years from the date of his appointment or such earlier time as may be specified in the instrument by which he was appointed;
- (b) if he becomes a member of either House.

(4) A person shall not be qualified to be appointed as a member of the Commission under subparagraph (2)(d) of this Article unless he holds or is qualified to hold or has held high judicial office; and a person shall be disqualified for appointment as such if he is a member of either House.

(5) If the office of Chairman of the Judicial and Legal Service Commission is vacant or the holder thereof is for any reason unable to perform the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, they shall be performed by such one of the other members of the Commission as may for the time being be designated in that behalf by the Governor-General, acting on the recommendation of the Chief Justice, or, if he is for any reason incapacitated from making a recommendation, of the other Justice of the Supreme Court or Justice of Appeal who is a member of the Commission.

(6) If at any time one of the members of the Commission referred to in sub-paragraphs (2)(b), (c) or (d) of this Article is for any reason unable to exercise the functions of this office, the Governor-General, in the case of the Chairman of the Public Service Commission, may appoint another member of the Public Service Commission to act as a member, and in the case of a member referred to in sub-paragraphs (2)(b) or (d) of this Article may, acting on the same recommendation as for the appointment of that member, appoint a person who is qualified to be appointed as a member of the Commission to act as a member. Any person so appointed shall, subject to the provisions of sub-

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paragraphs (3)(b) of this Article and Article 126 of this Constitution, continue to act until the office in which he is acting has been filled or, as the case may be, until the holder thereof has resumed his functions or until his appointment to act has been revoked by the Governor-General, acting as aforesaid.

### **Appointments, etc. of judicial and legal officers**

**117.**—(1) Subject to the provisions of this Constitution, power to make appointments to public offices to which this Article applies and to remove and to exercise disciplinary control over persons holding or acting in such offices is hereby vested in the Governor-General acting in accordance with the advice of the Judicial and Legal Service Commission.

(2) This Article applies to such public offices for appointment to which persons are required to possess legal qualifications as may be prescribed by Parliament.

## **PART 5**

### **The Police Service Commission**

#### **Establishment and composition of the Police Service Commission**

**118.**—(1) There shall be a Police Service Commission for the Bahamas which shall consist of a Chairman and two other members appointed by the Governor-General acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, by instrument under the Public Seal.

(2) No person shall be qualified to be appointed as a member of the Police Service Commission if he is a member of either House or a public officer.

(3) Subject to the provisions of Article 126 of this Constitution, the office of a member of the Police Service Commission shall become vacant—

- (a) at the expiration of three years from the date of his appointment or at such earlier time as may be specified in the instrument by which he was appointed;
- (b) if he becomes a member of either House or a public officer.

(4) If the office of Chairman of the Police Service Commission is vacant or the holder thereof is for any reason unable to perform the functions of his office, then, until a person has been appointed to and has assumed the functions of that officer or until the person holding that office has resumed those functions, as the case may be, they shall be performed by such one of the other members of the Commission as may for the time being be designated in that behalf by the Governor-General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

(5) If the office of a member of the Police Service Commission other than the Chairman is vacant or the holder thereof is for any reason unable to perform the functions thereof, the Governor-General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, may appoint a person who is qualified for appointment as a member of the Commission to act in the office of the member and any person so appointed shall, subject to the provisions of sub-paragraph (3)(b) of this Article and Article 126 of this Constitution, continue so to act until a person has been appointed to the office in which he is acting and has assumed the functions thereof or, as the case may be, the holder thereof resumes those functions or until his appointment so to act is revoked by the Governor-General, acting as aforesaid.

#### **Appointment of Commissioner of Police and other officers of the Police Force**

**119.**—(1) Power to make appointments to the officers of Commissioner of Police and Deputy Commissioner of Police shall be vested in the Governor-General acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

(2) Save as provided under paragraph (1) of this Article power to make appointments to offices in the Police Force of or above the rank of Assistant Commissioner of Police is vested in the Governor-General acting on the recommendation of the Prime Minister after consultation with the Police Service Commission.

(3) Save as provided in the preceding paragraphs of this Article, power to make appointments to offices in the Police Force of or above the rank of Inspector is vested in the Governor-General, acting on the advice of the Police Service Commission.

(4) There shall be in the Police Force such number of Police Promotion Boards, each consisting of officers in the Police Force above the rank of Inspector, as may be prescribed by regulations made under this paragraph.

(5) Power to make appointments to offices in the Police Force below the rank of Inspector shall be vested in the Commissioner of Police acting after consultation with a Police Promotion Board.

(6) Power to make postings and appointments on transfer within the Police Force of officers in that Force shall be vested in the Commissioner of Police.

### **Removal of the Commissioner and Deputy Commissioner of Police**

**120.**—(1) The Commissioner of Police and Deputy Commissioner of Police may be removed from office by the Governor-General but shall not be removed except in accordance with the provisions of paragraph (2) of this Article.

(2) The Commissioner of Police or Deputy Commissioner of Police shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under paragraph (3) of this Article and the tribunal has recommended to the Governor-General that he ought to be removed from office.

(3) If the Prime Minister represents to the Governor-General that the question of removing the Commissioner of Police or Deputy Commissioner of Police from office ought to be investigated, then—

- (a) the Governor-General acting in accordance with the advice of the Prime Minister shall suspend the Commissioner of Police or Deputy Commissioner of Police from performing the functions of his office, as the case may be;
- (b) the Governor-General shall appoint a tribunal, which shall consist of a chairman and not less than two other members, selected by the Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission, from among persons who hold or have held or are eligible to hold high judicial office; and
- (c) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General whether the Commissioner of Police or Deputy Commissioner of Police ought to be removed from office.

(4) If the question of removing the Commissioner of Police or Deputy Commissioner of Police from office has been referred to a tribunal under paragraph (3) of this Article, the Governor-General shall revoke any such suspension if the tribunal recommends to the Governor-General that the Commissioner of Police or Deputy Commissioner of Police should not be removed from office.

### **Removal and discipline of members of the Force**

**121.**—(1) Save as provided under Article 120 of this Constitution, power to remove and to exercise disciplinary control over persons holding or acting in the offices of or above the rank of Assistant Commissioner in the Police Force is vested in the Governor-General acting in accordance with the advice of the Police Service Commission after consultation with the Prime Minister.

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(2) Save as provided in Article 120 of this Constitution and paragraphs (1) and (3) of this Article, power to remove and exercise disciplinary control over persons holding or acting in offices in the Police Force is vested in the Governor-General acting in accordance with the advice of the Police Service Commission.

(3) The following powers are vested in the Commissioner of Police—

- (a) in respect of officers of or above the rank of Assistant Superintendent, the power to administer reprimands;
- (b) in respect of Inspectors, the power to exercise disciplinary control other than removal or reduction in rank; and
- (c) in respect of officers below the rank of Inspector, the power to exercise disciplinary control including the power of removal.

(4) The Commissioner of Police may, by directions in writing, and subject to such conditions as he thinks fit, delegate to any officer of the Police Force of or above the rank of Inspector any of his powers under sub-paragraph (3)(c) of this Article other than the power of removal; but an appeal from any award of punishment by such officer shall lie to the Commissioner.

(5) Parliament may by law provide that an appeal shall lie to the Governor-General from a decision of the Commissioner of Police to remove or exercise disciplinary control over persons holding or acting in offices in the Police Force in such cases as may be prescribed by such law, and in determining any such appeal the Governor-General shall act in accordance with the advice of the Police Service Commission.

## PART 6

### Pensions

#### **Protection of pension rights**

**122.**—(1) Subject to the provisions of Articles 123 and 124 of this Constitution, the law applicable to the grant and payment to any officer, or to his widow, children, dependants or personal representatives, of any pension, compensation, gratuity or other like allowance (in this Article and Articles 123 and 124 of this Constitution 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 date or any later law that is not less favourable to that person.

(2) In paragraph (1) of this Article “the relevant date” means —

- (a) in relation to an award granted before 10th July 1973, the date on which the award was granted;
- (b) in relation to an award granted or to be granted on or after 10th July 1973 to or in respect of any person who was a public officer before that date, 9th July 1973;
- (c) in relation to an award granted or to be granted to or in respect of any person who becomes a public officer on or after 10th July 1973, the date on which he becomes a public officer.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law specified by him in exercising the option shall, for the purposes of this Article, be deemed to be more favourable to him than the other law or laws.

(4) Awards granted under any law in respect of service in a public office (not being awards that are a charge upon some other public fund of The Bahamas) are hereby charged on the Consolidated Fund.

(5) For the purposes of this Article and of Articles 123 and 124 of this Constitution, service as a Justice of the Supreme Court or Justice of Appeal shall be deemed to be service in the Public service.

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

**123.**—(1) The power to grant any award under any pensions law for the time being in force in The Bahamas (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 behalf 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-General.

(2) The power vested in the Governor-General by paragraph (1) of this Article shall be exercised by him on the recommendation of the appropriate Service Commission.

(3) The appropriate Service Commission shall not recommend to the Governor-General that any award for which a person who holds or has held the office of a Justice of the Supreme Court or Justice of Appeal or Auditor-General is eligible shall not be granted, or that any award payable to him shall be withheld, reduced in amount or suspended, on the ground that he has been guilty of misbehaviour unless he has been removed from office by reason of such misbehaviour.

(4) In this Article and in Article 124 of this Constitution “the appropriate Service Commission” means —

- (a) in the case of an award that may be granted or is payable to a person who, having been a public officer, was immediately before the date on which he ceased to hold public office serving—
  - (i) as a Justice of the Supreme Court or Justice of Appeal;
  - (ii) in any public office to which the provisions of Article 117 of this Constitution applied on that date.the Judicial and Legal Service Commission;
- (b) in the case of an award that may be granted or is payable to a person who, having been a public officer, was immediately before the date on which he ceased to hold public office, serving as a member of the Police Force, the Police Service Commission;
- (c) in any other case the Public Service Commission.

(5) In this Article “pension law” means any law relating to the grant to any person or to the widow, children, dependants or personal representatives of that person, of an award of any pension, compensation, gratuity or other like allowance in respect of the service of that person in a public office and includes any instrument made under any such law.

### **Appeals in respect of certain decisions affecting pensions benefits**

**124.**—(1) The provisions of this Article shall have effect for the purpose of enabling an officer or his personal representatives to appeal against any of the following decisions, that is to say:—

- (a) a decision of the appropriate Service Commission embodying a recommendation in respect of an officer, under Article 123(2) of this Constitution, not to grant, or to withhold, reduce in amount or suspend, an award;
- (b) a decision of any authority to remove an officer from office if the consequence of the removal is that an award cannot be granted in respect of the officer's service in a public office; or
- (c) a decision of any authority to take some other disciplinary action in relation to such an officer if the consequence of the action is or in the opinion of the authority might be, to reduce the amount of any award that may be granted in respect of the officer's service in a public office.

(2) Where any such decision as is referred to in paragraph (1) of this Articles is taken by any Commission or authority, the Commission or authority shall cause to be delivered to the officer

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concerned, or to his personal representatives, a written notice of that decision stating the time, not being less than twenty-eight days from the date on which the notice is delivered, within which he, or his personal representatives, may apply to the Commission or authority for the case to be referred to the Public Service Board of Appeal.

- (3) The Board shall inquire into the facts of the case, and for that purpose—
  - (a) shall, if the applicant so requests in writing, hear the applicant either in person or by a legal representative of his choice, according to the terms of the request, and shall consider any representations that he wishes to make in writing;
  - (b) may hear any other person who, in the opinion of the Board, is able to give the Board information on the case; and
  - (c) shall have access to, and shall consider, all documents that were available to the Commission or authority concerned and shall also consider any further document relating to the case that may be produced by or on behalf of the applicant or the Commission or authority.
- (4) When the Board has completed its consideration of the case, then—
  - (a) if the decision that is the subject of reference to the Board is such a decision as is mentioned in sub-paragraph (1)(a) of this Article, the Board shall advise the appropriate Service Commission or authority whether the decision should be affirmed, reversed or modified and the Commission or authority shall act in accordance with that advice; and
  - (b) if the decision that is the subject of the reference to the Board is such a decision as is referred to in sub-paragraph (1)(b) or (c) of this Article, the Board shall not have power to advise the Commission or authority concerned to affirm, reverse or modify the decision but—
    - (i) where the officer has been removed from office the Board may direct that there shall be granted all or any part of the award that, under any law, might have been granted in respect of his service in a public office if he had retired voluntarily at the date of his removal and may direct that any law with respect to awards shall in any other respect that the Board may specify have effect as if he had so retired; and
    - (ii) where some other disciplinary action has been taken in relation to the officer the Board may direct that, on the grant of any award under any law in respect of the officer's service in a public office, that award shall be increased by such amount or shall be calculated in such manner as the Board may specify in order to offset all or any part of the reduction in the amount of that award that, in the opinion of the Board, would or might otherwise be a consequence of the disciplinary action,and any direction given by the Board under this sub-paragraph shall be complied with notwithstanding the provisions of any other law.
- (5) If the appeal relates to a case in which the officer exercises his right of appeal to the Board under Article 115(1) of this Constitution, the Board shall first consider his appeal under that Article and only if it decides to affirm the decision or to make some other decision the consequence of which would be to affect the officer's award, shall the Board proceed to consider the officer's appeal under this Article.
- (6) For the purposes of this Article—
  - (a) “legal representative” means a person entitled to practice in The Bahamas as a Counsel and Attorney of the Supreme Court; and
  - (b) a notice shall be deemed to have been delivered to an officer one week after it has been posted if, in the case of an officer on pension and resident outside. The Bahamas whose residential address cannot be ascertained, it has been posted addressed to him at the address to which his pension is being paid.

## PART 7

### Miscellaneous

#### **Procedure of Commissions**

**125.**—(1) In relation to any Commission established by this Chapter, the Governor-General, acting in accordance with the advice of the Commission, may by regulation or otherwise regulate its procedure and, subject to the consent of the Prime Minister, confer powers and impose duties on any public officer or any authority of the Government for the purpose of the discharge of the functions of the Commission.

(2) At any meeting of any Commission established by this Chapter a quorum shall be constituted if a majority of the members are present; and, if a quorum is present, the Commission shall not be disqualified for the transaction of business by reason of any vacancy among its members or the absence of any member, and any proceedings of the Commission shall be valid notwithstanding that some person who was not entitled so to do took part therein.

(3) Any question proposed for decision at any meeting of any Commission established by this Chapter shall be determined by a majority of the votes of the members thereof present and voting, and if on any such question the votes are equally divided the member presiding shall have and exercise a casting vote.

(4) Any question whether—

- (a) any Commission established by this Chapter has validly performed any function vested in it by or under this Chapter;
- (b) any person has validly performed any function delegated to him; or
- (c) any member of such a Commission or any other person or authority has validly performed any other function in relation to the work of the Commission,

shall not be enquired into in any court.

#### **Removal from office of certain persons**

**126.**—(1) A member of a Commission established under this Chapter may be removed from office only for inability to exercise the functions of his 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 the provisions of this Article.

(2) A member of a Commission shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under paragraph (3) of this Article and the tribunal has recommended to the Governor-General that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(3) If the Governor-General, acting in accordance with the advice of the prescribed authority, considers that the question of removing a member of a Commission under this Article ought to be investigated, then—

- (a) the Governor-General, acting in accordance with the advice of the prescribed authority shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the Chief Justice, or where the question concerns the Chairman of the Judicial and Legal Service Commission by the President of the Court of Appeal, from among persons who hold or have held or are qualified to hold office as a Justice of the Supreme Court; and
- (b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to him whether the member ought to be removed under this Article.

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(4) If the question of removing a member of a Commission has been referred to a tribunal under this Article, the Governor-General, acting in accordance with the advice of the prescribed authority, may suspend that member from the exercise of the functions of his office and any such suspension may be at any time revoked by the Governor-General, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that that member should not be removed.

(5) In this Article—

“Commission” includes the Public Service Board of Appeal;

“the prescribed authority” means—

- (a) in relation to the Public Service Commission or the Judicial and Legal Service Commission, the Prime Minister when the question concerns the Chairman of either of those Commissions, and the Chairman of the Commission concerned when the question concerns any other member of either of those Commissions; and
- (b) in relation to the Public Service Board of Appeal or the Police Service Commission, the Prime Minister.

## **Public Service**

**127.** In this Constitution references to the public service shall not be construed as including service in—

- (a) the office of Governor-General, Prime Minister or other Minister, Parliamentary Secretary, Leader of the Opposition, President and Vice-President of the Senate, Senator, Speaker and Deputy Speaker of the House of Assembly, or member of the House of Assembly;
- (b) the office of a member of the Public Service Commission, the Public Service Board of Appeal, the Judicial and Legal Service Commission or the Police Service Commission;
- (c) the staff of the Department of Tourism or of any other department or agency of the Government established for special purposes by any law which specifies that offices therein shall not be public offices for the purposes of this Constitution;
- (d) the office of a member of any board, committees or other similar body (whether incorporated or not) established by any law in force in The Bahamas; or
- (e) except as otherwise provided in this Constitution the office of a Justice of the Supreme Court, a Justice of Appeal or any office on the personal staff of the Governor-General.

# CHAPTER IX

## FINANCE

### **Consolidated Fund**

**128.** There shall be in and for The Bahamas a Consolidated Fund, into which, subject to the provisions of any law for the time being in force in The Bahamas, shall be paid all revenues of The Bahamas.

### **Estimates**

**129.—(1)** The Minister of Finance shall, before the end of each financial year, cause to be prepared annual estimates of revenue and expenditure for public services during the succeeding financial year, which shall be laid before the House of Assembly.



(2) The estimates of expenditure shall show separately the sums required to meet statutory expenditure (as defined in Article 130(7) of this Constitution) and the sums required to meet other expenditure proposed to be paid out of the Consolidated Fund.

### **Authority for Public Expenditure**

**130.**—(1) The Minister of Finance shall, in respect of each financial year, at the earliest convenient moment before the commencement of that financial year, introduce in the House of Assembly an Appropriation Bill containing, under appropriate heads for the several services required, the estimated aggregate sums which are proposed to be expended (otherwise than by way of statutory expenditure) during that financial year.

(2) Subject to paragraphs (4) and (6) of this Article, the sums set out in the Appropriation Act in respect of a financial year shall represent the limit and extent of the public expenditure for that financial year.

(3) Where any sum is set out in the Appropriation Act in respect of a financial year and at the end of that year there is an unexpended balance of that sum, the unexpended balance shall lapse.

(4) The Minister of Finance may, in case of necessity, from time to time cause to be prepared supplementary estimates of expenditure which shall be laid before and voted on by the House of Assembly.

(5) In respect of all supplementary expenditure voted on by the House of Assembly in pursuance of paragraph (4) of this Article, the Minister of Finance may, at any time before the end of the Financial year, introduce into the House of Assembly a Supplementary Appropriation Bill containing, under appropriate heads, the aggregate sums so voted and shall, as soon as possible after the end of each financial year, introduce into the House of Assembly a final Appropriation Bill containing any such sums which have not yet been included in any Appropriation Bill.

(6) That part of any estimate of expenditure laid before the House of Assembly which shows statutory expenditure shall not be voted on by the House, and such expenditure shall, without further authority of Parliament, be paid out of the Consolidated Fund.

(7) For the purposes of this Article and Article 129 of this Constitution—

- (a) “financial year” means any period of twelve months beginning on 1st January in any year or such other date as Parliament may prescribe; and
- (b) “statutory expenditure” means expenditure charged on the Consolidated Fund or on the general revenues and assets of The Bahamas by any provision of this Constitution or of any other law for the time being in force in The Bahamas.

### **Withdrawal of money from the Consolidated Fund**

**131.** No sum shall be paid out of the Consolidated Fund except upon the authority of a warrant under the hand of the Minister of Finance or under the hand of some person authorised by him in writing; and sums so issued shall be disposed of for meeting public expenditure authorised under Article 130 of this Constitution or, in the case of statutory expenditure, for the purposes appointed by law.

### **Withdrawal of money in advance of Appropriation Act**

**132.** Where at any time for any justifiable reason, the Appropriation Bill in respect of any financial year has not come into operation by the beginning of that financial year, the Minister of Finance may, to such an extent and subject to such conditions as may be prescribed, or if no conditions have been prescribed on a resolution to that effect passed by the House of Assembly, issued a warrant for the payment out of the Consolidated Fund or other public funds of The Bahamas of such sums as he may consider necessary for the continuance of the public service, but a statement

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of the sums so authorised shall, as soon as practicable, be laid before and voted on by the House of Assembly and the aggregate sums so voted shall be included, under the appropriate heads, in the next Appropriation Bill immediately following.

### **Contingencies Fund**

**133.**—(1) Parliament may by law provide for the establishment of a Contingencies Fund and may authorise the Minister of Finance to make advances from that Fund if he is satisfied that there is an unforeseen need for expenditure for which no provision or no sufficient provision has been made by an Appropriation Act.

(2) Where any advances are made by virtue of an authorisation conferred under paragraph (1) of this Article, a supplementary estimate of the sums required to replace the amount so advanced shall, as soon as practicable, be laid before and voted on by the House of Assembly and the sums so voted shall be included in a Supplementary appropriation Bill or a Final Appropriation Bill.

### **Public Debt**

**134.** The Public Debt of The Bahamas, including the interest on that debt, sinking fund payments and redemption monies in respect of that debt and the costs, charges and expenses incidental to the management of that debt, is hereby charged on the Consolidated Fund.

### **Remuneration of Governor-General and certain other officers**

**135.**—(1) There shall be paid to the holders of the offices to which this Article applies such salaries and allowances as may be prescribed by or under any law.

(2) The salaries payable to the holders of the offices to which this Article applies are hereby charged on the Consolidated Fund.

(3) The salary and allowances payable to the holder of any office to which this Article applies and his other terms of service shall not be altered to his disadvantage after his appointment, and, for the purposes of this paragraph, in so far as the terms of service of any person depend upon the option of that person, the terms for which he opts shall be taken to be more advantageous to him than any other terms for which he might have opted.

(4) This Article applies to the offices of Governor-General, Justice of the Supreme Court, Justice of Appeal, Auditor-General and member of any Commission established by Chapter VIII of this Constitution or of the Public Service Board of Appeal.

### **Establishment of office and functions of Auditor-General**

**136.**—(1) There shall be an Auditor-General whose office shall be a public office.

(2) The Auditor-General shall be appointed by the Governor-General, by instrument under the Public Seal, acting on the recommendation of the Public Service Commission made after the Commission has consulted the Prime Minister.

(3) The accounts of the Supreme Court, the Senate, the House of Assembly, all departments and offices of the Government (but excluding the Department of the Auditor-General), the Public Service Commission, the Judicial and Legal Service Commission, the Police Service Commission and all Magistrates' Courts shall, at least once in every year, be audited and reported on by the Auditor-General who, with his subordinate staff, shall at all times be entitled to have access to all books, records, returns and reports relating to such accounts.

(4) The Auditor-General shall submit his reports made under paragraph (3) of this Article without undue delay to the Speaker (or, if the office of Speaker is vacant or the Speaker is for any reason

unable to perform the functions of his office, to the Deputy Speaker) who shall cause them to be laid before the House of Assembly without undue delay.

(5) In the exercise of his functions under the provisions of paragraphs (3) and (4) of this Article, the Auditor-General shall not be subject to the direction or control of any other person or authority.

(6) The accounts of the department of the Auditor-General shall be audited and reported on by the Minister of Finance and the provisions of paragraphs (3) and (4) of this Article shall apply in relation to the exercise by that Minister of those functions as they apply in relation to audits and reports made by the Auditor-General.

(7) Nothing in this Article shall prevent the performance by the Auditor-General of—

- (a) such other functions in relation to the accounts of the Government and the accounts of other public authorities and other bodies administering public funds in The Bahamas as may be prescribed by or under any law for the time being in force in The Bahamas; or
- (b) such other functions in relation to the supervision and control of expenditure from public funds in The Bahamas as may be so prescribed.

(8) The Auditor-General may be removed from office only for inability to discharge the functions thereof (whether arising from infirmity of mind or body or any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of paragraph (9) of this Article.

(9) The Auditor-General shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under paragraph (10) of this Article and the tribunal has recommended to the Governor-General that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(10) If the Prime Minister represents to the Governor-General that the question of removing the Auditor-General from office for inability as aforesaid or for misbehaviour ought to be investigated, then—

- (a) the Governor-General shall appoint a tribunal, which shall consist of a chairman and not less than two other members, selected by the Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission, from among persons who hold or have held or are eligible to hold high judicial office; and
- (b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to the Governor-General whether the Auditor-General ought to be removed from office for inability as aforesaid or for misbehaviour.

(11) If the question of removing the Auditor-General from office has been referred to a tribunal under paragraph (9) of this Article, the Governor-General, acting in accordance with the advice of the Public Service Commission, may suspend the Auditor-General from performing the functions of his office and any such suspension may at any time be revoked by the Governor-General, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that the Auditor-General should not be removed from office.

## CHAPTER X INTERPRETATION

### Interpretation

**137.**—(1) In this Constitution, unless it is otherwise provided or required by the context—

“Act” or “Act of Parliament” means any law made by Parliament;

“The Bahamas” means The Commonwealth of The Bahamas;

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“the Commonwealth” means, save as otherwise prescribed, The Bahamas, the United Kingdom, Canada, Australia, New Zealand, India, Sri Lanka, Ghana, Malaysia, Nigeria, Cyprus, Sierra Leone, Tanzania, Jamaica, Trinidad and Tobago, Uganda, Kenya, Malawi, Malta, Zambia, The Gambia, Singapore, Guyana, Lesotho, Botswana, Barbados, Mauritius, Swaziland, Tonga, Fiji, Western Samoa, Nauru, Bangladesh and any dependency of any such country;

“election” means an election of a member or members of the House of Assembly;

“the Gazette” means the Official Gazette of The Bahamas;

“House” means either the Senate or the House of Assembly or both, as the context may require;

“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 a court having jurisdiction in appeals from any such court;

“law” includes any instrument having the force of law and any un-written rule of law, and “lawful” and “lawfully” shall be construed accordingly;

“Minister” includes a temporary Minister appointed under Article 76 of this Constitution, except in relation to Articles 72, 73, 76 and 86 of this Constitution;

“Minister of Finance” means the Minister, by whatever title styled, responsible for Government finance;

“oath” includes affirmation;

“Parliament” means the Parliament of The Bahamas;

“the Police Force” means the Police Force established in and for The Bahamas and maintained under the provisions of the Police Act 1965(8) or any law amending or replacing that Act;

“prescribed” means provided by or under an Act of Parliament;

“public office” means, subject to the provisions of paragraph (6) of this Article and Article 127 of this Constitution, any office of emolument in the public service;

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

“the public service” means, subject to the provisions of Article 127 of this Constitution, the service of the Crown in a civil capacity in respect of the Government of The Bahamas;

“session” means, in relation to a House, the sittings of that House commencing when it first meets after this Constitution comes into operation or after any general election or prorogation of Parliament and terminating when Parliament is prorogued or is dissolved without having been prorogued;

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

(2) For the purposes of this Constitution the territory of The Bahamas shall comprise all the areas that were comprised therein immediately before 10th July 1973 together with such other areas as Parliament may declare to form part thereof.

(3) For the purposes of Articles 42, 43, 48 and 49 of this Constitution—

(a) “government contract” means, subject to such exceptions as Parliament may prescribe, any contract made with the Government of The Bahamas or with a department of that Government or with an officer of that Government contracting as such; and

(b) a person shall be deemed to be interested in a government contract if—

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(8) Statute Law of the Bahamas Islands, No. 29 of 1965.

- (i) subject to such exceptions as Parliament may prescribe, he is a party to such a contract or a partner in a firm or director or manager of a company which is a party to such a contract; or
  - (ii) he is otherwise interested in such a contract in such manner as Parliament may prescribe.
- (4) In this Constitution, unless it is otherwise provided or required by the context—
- (a) any reference to the date on which this Constitution comes into operation shall be construed as a reference to the appointed day referred to in section 1(2) of the Order in Council to which this Constitution is scheduled;
  - (b) any reference to a law (which term shall, without prejudice to the definition in paragraph (1) of this Article, include an Act) shall be construed as including a reference to a law made at any time before this Constitution comes into operation;
  - (c) any reference to power to make appointments to any office shall be construed as including a reference to power to make appointments on promotion and transfer to that office and to power to appoint a person to act in that office during any period during which it is vacant or the holder thereof is unable (whether by reason of absence or of infirmity of body or mind or any other cause) to perform the functions of that office;
  - (d) any reference to the holder of an office by a term designating or describing his office shall be construed as including a reference to any person for the time being acting in that office or, to the extent of his authority, otherwise authorised to perform the functions of that office.
- (5) Where by this Constitution any person is directed, or power is conferred on any person or authority to appoint a person, to act in or otherwise to perform the functions of an office if the holder thereof 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.
- (6) For the purposes of this Constitution, a person shall not be considered to hold a public office by reason only that he is in receipt of a pension or other like allowance in respect of public service.
- (7) References in this Constitution to the power to remove a public officer from his office shall, subject to the provisions of this Constitution, be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service.
- (8) Save as otherwise provided in this Constitution, any provision of this Constitution that vests in any person or authority power to remove any public officer (other than a public officer mentioned in paragraph (9) of this Article) from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified therein.
- (9) If any circumstances arise that, under the provisions of this Constitution, require the Governor to remove a Justice of the Supreme Court or a Justice of Appeal or the Commissioner of Police, the Deputy Commissioner of Police or the Auditor-General from office for inability to discharge the functions of his office, such removal may be carried out either by dismissing that officer or by requiring him to retire.
- (10) Where any power is conferred by this Constitution to make any proclamation, order, rules or regulations or to give any direction, the power shall be construed as including a power exercisable in like manner to amend or revoke any such proclamation, order, rules, regulations or direction.
- (11) Any person appointed to an office under any provision in this Constitution may resign that office. Except as otherwise provided in this Constitution such resignation shall be made in writing to

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the person in whom under this Constitution the power is vested to make appointments to the office concerned.

(12) Where two or more persons are holding the same office by reason of an appointment made in pursuance of paragraph (4) of this Article, then—

- (a) for the purposes of any function conferred upon the holder of that office; and
- (b) for the purposes of any reference in this Constitution to the absence, illness or inability to perform the functions of his office or the holder of that office,

the person last appointed to the office shall be deemed to be the sole holder of the office.

(13) The Interpretation Act of The Bahamas<sup>(9)</sup> and all amendments thereto as in force on 10th July 1973 shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation thereto as it applies for the purpose of interpreting and in relation to Acts of Parliament of The Bahamas.

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#### EXPLANATORY NOTE

By virtue of the Bahamas Independence Act 1973, The Bahamas will attain fully responsible status within the Commonwealth on 10th July 1973. This Order makes provision for a Constitution for The Bahamas to come into effect on that day, including provision for the legislature, the executive government, the judicature and the public service. The Constitution also contains provisions relating to citizenship of The Bahamas and fundamental rights and freedoms of the individual.

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<sup>(9)</sup> Statute Law of the Bahamas Islands, Revised Edition 1965, C. 180.