

## SCHEDULE TO THE ORDER

### THE CONSTITUTION OF THE COMMONWEALTH OF THE BAHAMAS

## 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

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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
- (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.

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## 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, of 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;
- (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—

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- (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
- (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;
- (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.

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(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.