

SCHEDULE 2
TO THE ORDER

Section 4

THE CONSTITUTION OF THE TURKS AND CAICOS ISLANDS

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THE CONSTITUTION OF THE TURKS AND CAICOS ISLANDS

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PART I THE GOVERNOR

The Governor.

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

(2) The Governor shall have such functions as may be conferred upon him by or under this Constitution or any other law and such other functions as Her Majesty may from time to time be pleased to assign to him and, subject to the provisions of this Constitution and, in the case of functions conferred upon him by or under any other law, subject to the provisions of that law, shall perform all such functions (including functions which are expressed by this Constitution to be exercisable in his discretion or which he is directed by this Constitution to exercise in his own judgment) according to such instructions, if any, as may be given to him by Her Majesty:

Provided that the question whether or not the Governor has in any matter complied with any such instructions shall not be inquired into by any court.

(3) A person appointed to the office of Governor shall, before assuming the functions of that office, make oaths of allegiance and for the due execution of that office in the forms set out in Schedule 1 to this Constitution.

Emoluments of Governor.

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

Acting Governor.

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

- (a) Chief Secretary; or
- (b) Attorney General; or
- (c) Financial Secretary,

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

(2) Before assuming the functions of the office of Governor, any such person shall make oaths of allegiance and for the due execution of that office in the forms set out in Schedule 1 to this Constitution.

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

(4) For the purposes of this section (and without prejudice to section 88(11) of this Constitution), the Governor shall not be regarded as absent from the Islands or as unable to perform the functions of his office at any time when there is a subsisting appointment of a deputy under section 4 of this Constitution.

Governor's deputy.

4.—(1) Whenever the Governor—

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

he may, by instrument in writing, appoint one of the persons holding one of the offices mentioned in paragraph (a), (b) or (c) of section 3(1) of this Constitution, in that order, or if no such person is available, such other person as he may designate, 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 as may be specified in that instrument.

(2) The power and authority of the Governor shall not be abridged, altered or in any way affected by the appointment of a deputy under this section and, subject to the provisions of this Constitution and of any other law by or under which any function which a deputy is authorised to perform is conferred, the deputy shall conform to and observe all instructions that may from time to time be given to him by Her Majesty through a Secretary of State or by the Governor:

Provided that the question whether or not the deputy has in any matter complied with any such instructions shall not be inquired into by any court.

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

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

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

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

Exercise of Governor's functions.

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

- (a) when acting under instructions given to him by Her Majesty through a Secretary of State;
- (b) when exercising any function conferred upon him by this Constitution or any other law which is expressed to be exercisable by him in his discretion or in his judgment or in accordance with the recommendation or advice of, or after consultation with, any person or authority other than the Executive Council; or
- (c) in any case which, in his judgment, involves a matter for which he is responsible under section 13 of this Constitution:

Provided that in exercising his powers in relation to matters to which paragraph (c) above applies, the Governor shall keep the Executive Council informed of any matter which, in his judgment, may involve the economic and financial interests of the Islands or the enactment of law, and, in the case of matters relating to defence or external affairs, the domestic interests of the Islands.

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(2) Notwithstanding subsection (1) of this section, the Governor shall not be obliged to consult the Executive Council if, in his judgment—

- (a) Her Majesty's service would sustain material prejudice;
- (b) the matter is too unimportant to require consultation; or
- (c) the urgency of the matter requires him to act before he can consult the Executive Council;

but in any case falling within paragraph (c) above he shall, as soon as practicable, communicate to the Executive Council the measures which he has adopted and the reasons therefor.

(3) In any case in which the Governor is required by this section to consult the Executive Council, he shall act in accordance with the advice given to him by the Executive Council unless in his judgment the interests of public order, public faith or good government require that he do otherwise: Provided that—

- (a) the Governor shall not act contrary to the advice given to him by the Executive Council without the prior approval of a Secretary of State, unless, in his judgment, the matter is of such urgency that it is necessary for him to act before obtaining such approval; and if he does so act he shall, as soon as practicable, report his action and the reasons therefor to a Secretary of State;
- (b) whenever the Governor proposes to act contrary to the advice given to him by the Executive Council he shall inform the Executive Council in writing of his reasons; and any member who wishes to do so may, within thirty days, submit his comments in writing to the Governor who shall forward them to a Secretary of State as soon as practicable.

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

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

PART II

THE EXECUTIVE

Executive authority.

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

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

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

The Executive Council.

7.—(1) There shall be an Executive Council for the Turks and Caicos Islands, which shall consist of—

- (a) the Governor;

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- (b) a Chief Minister appointed by the Governor in accordance with subsection (2) of this section;
- (c) four other Ministers appointed by the Governor, acting in accordance with the advice of the Chief Minister, from among the elected members of the Legislative Council; and
- (d) the Chief Secretary, the Attorney General and the Financial Secretary.

(2) The Governor, acting in his discretion, shall appoint as Chief Minister the leader of that political party represented in the Legislative Council which commands the support of a majority of the elected members of the Council or, if there is no party which commands such a majority, such one of the leaders of the parties represented in the Council as, in the judgment of the Governor, is most likely to command the support of a majority of the elected members of the Council.

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

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

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

Oaths.

8. The members of the Executive Council, other than the Governor, shall each, before entering upon the duties of his office as such member, make before the Governor oaths of allegiance and for the due execution of his office in the forms set out in Schedule 1 to this Constitution.

Tenure of office by Chief Minister.

9.—(1) The Governor shall revoke the appointment of the Chief Minister if a motion that the Legislative Council should declare a lack of confidence in the Government of the Islands receives the affirmative vote of a majority of the elected members thereof:

Provided that before so revoking the Chief Minister's appointment, the Governor shall consult the Chief Minister and if the Chief Minister so requests, the Governor, acting in his discretion, may dissolve the Legislative Council instead of revoking the appointment.

(2) The Chief Minister shall vacate his office if, after the polling in a general election and before the Legislative Council first meets thereafter, the Governor, acting in his discretion, informs him that he is about to appoint another person as Chief Minister.

Tenure of office by Ministers.

10.—(1) Any Minister shall vacate his office—

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

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- (ii) in the case of any other Minister, having obtained written permission for such absence from the Governor, acting in accordance with the advice of the Chief Minister.
- (2) A Minister other than the Chief Minister shall also vacate his office if—
- (a) the Chief Minister vacates his office; or
 - (b) his appointment is revoked by the Governor, acting in accordance with the advice of the Chief Minister, by instrument under the public seal.

Performance of functions of Chief Minister in certain events.

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

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

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

Assignment of responsibilities to members of Executive Council.

12.—(1) Subject to subsections (2), (3) and (4) of this section, the Governor, acting after full consultation with and on the advice of the Chief Minister, may by directions in writing assign to any member of the Executive Council responsibility for the conduct (subject to the provisions of this Constitution and of any other law) of any business of the Government of the Islands, including responsibility for the administration of any department of government.

(2) In exercising his functions under subsection (1) of this section, the Governor shall act in accordance with the advice given to him by the Chief Minister unless he is instructed by a Secretary of State to do otherwise.

(3) A member of the Executive Council shall not be charged with responsibility under this section for any of the matters mentioned in section 13(1) of this Constitution.

(4) Responsibility for finance shall be assigned to the Financial Secretary.

(5) A member of the Executive Council charged with responsibility for any matter in pursuance of this section shall exercise his responsibility in accordance with the policies of the Government as determined by the Executive Council and in accordance with the principle of the collective responsibility of the members of the Executive Council for the policies and decisions of the Government.

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

Governor’s special responsibilities.

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

- (a) defence;
- (b) external affairs;
- (c) internal security, including the Police Force;

- (d) the appointment of any person to any public office, the suspension, termination of appointment, dismissal or retirement of any public officer, or the taking of any disciplinary action in respect of such an officer, the application to any public officer of the terms or conditions of employment of the public service for which financial provision has been made, or the organisation of the public service in so far as it does not involve new financial provision:

Provided that the Governor, acting in his discretion, may assign to a member of the Executive Council responsibility for the conduct on behalf of the Governor of any business in the Legislative Council with respect to any of the said matters.

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

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

Summoning of Executive Council.

14. The Executive Council shall be summoned by the Governor acting in his discretion:

Provided that the Governor shall summon the Council if requested to do so by four or more members.

Proceedings in, and quorum of, Executive Council.

15.—(1) The Governor shall, so far as is practicable, attend and preside at meetings of the Executive Council.

(2) In the absence of the Governor from any meeting of the Council, the Chief Secretary, the Attorney General or the Financial Secretary, in that order, shall preside at the meeting.

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

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

Attendance of other persons at meetings.

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

Powers of Attorney General.

17.—(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 any law in force in the Islands;

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- (b) to take over and continue any such criminal proceedings that have been instituted by any other person or authority; and
- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

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

(3) The powers conferred upon the Attorney General by subsection (1)(b) and (c) of this section 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 subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

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

(5) In the exercise of the powers conferred upon him by this section, section 30(2) and section 31(2) of this Constitution the Attorney General shall not be subject to the direction or control of any other person or authority.

PART III

THE LEGISLATURE

Constitution of legislature.

18. There shall be a legislature for the Turks and Caicos Islands which shall consist of Her Majesty and a Legislative Council.

The Legislative Council.

19. The Legislative Council shall consist of—

- (a) a Speaker, elected as provided in section 20 of this Constitution;
- (b) thirteen elected members;
- (c) three appointed members; and
- (d) the Chief Secretary, the Attorney General and the Financial Secretary.

The Speaker and Deputy Speaker.

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

(2) The Speaker shall be elected from among the elected or appointed members of the Legislative Council who are not members of the Executive Council or from among persons who are not members of the Legislative Council, and shall be elected by a majority of the votes of the elected and appointed members of the Legislative Council:

Provided that no person shall be elected as Speaker who is not qualified to be an appointed member or who would for any reason be disqualified from being an appointed member.

(3) When the Legislative Council first meets after a general election, and before it proceeds to the despatch of any other business except the election of a Speaker, it shall elect a member, from among the elected or appointed members of the Legislative Council who are not members of the Executive Council, to be the Deputy Speaker, by a majority of the votes of the elected and appointed members of the Legislative Council, and if the office of Deputy Speaker falls vacant for any reason other than a dissolution of the Council, the Council shall, as soon as convenient, elect another such member to that office.

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

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

Elected members.

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

(2) For the purposes of elections to the Legislative Council, the Islands shall be divided into the five electoral districts specified in Column 1 of Schedule 2 to this Constitution which shall comprise the islands or component parts specified in relation thereto in Column 2 of that Schedule, and each electoral district shall return to the Council the number of members specified in relation thereto in Column 3 of that Schedule.

Qualifications for elected membership.

22. Subject to section 25 of this Constitution, a person shall be qualified to be elected as a member of the Legislative Council if, and shall not be qualified to be so elected unless, he—

- (a) has attained the age of twenty-one years; and

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- (b) is, on the date of his nomination for election, resident in the Islands and has been so resident for not less than twelve months, in the aggregate, out of the two years immediately preceding that date; and
- (c) falls into one of the following categories, that is to say—
 - (i) he was born in the Islands; or
 - (ii) he was born outside the Islands of a father or mother either of whom was born in the Islands; or
 - (iii) he has, under the law in force in the Islands regulating immigration, the status of “Belonger”.

Appointed members.

23. Appointed members of the Legislative Council shall be appointed from among persons qualified under section 24 of this Constitution, and so far as possible from among persons representing shades of opinion which would not otherwise be represented in the Legislative Council, as follows—

- (a) one shall be appointed by the Governor acting in his discretion;
- (b) one shall be appointed by the Governor acting in accordance with the advice of the Chief Minister;
- (c) one shall be appointed by the Governor acting in accordance with the advice of the Leader of the Opposition:

Provided that no person shall be appointed under this section who has unsuccessfully stood as a candidate for election as an elected member at any election since the last dissolution of the Legislative Council.

Qualifications for appointed membership.

24. Subject to section 25 of this Constitution, a person shall not be qualified to be appointed as a member of the Legislative Council unless he has attained the age of twenty-one years and is qualified to be registered as an elector in the Islands.

Disqualifications for elected or appointed membership.

25.—(1) No person shall be qualified to be an elected member or an appointed member of the Legislative Council who—

- (a) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to any foreign power or state;
- (b) holds or is acting in any public office;
- (c) has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged;
- (d) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in the Islands;
- (e) at the date of election, is under sentence of death imposed on him by a court of law in any country, or is serving or has at any time within the period of five years immediately preceding that date been serving any part of a sentence of imprisonment (by whatever name called) of at least twelve months imposed on him 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;

- (f) is a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the Government of the Islands and,
 - (i) in the case of an appointed member, has not disclosed to the Governor in writing the nature of such contract and his interest, or the interest of such firm or company, therein; or
 - (ii) in the case of an elected member, has not, within the period of one month immediately preceding the date of election, published in the *Gazette* a notice setting out the nature of such contract and his interest, or the interest of such firm or company, therein;
 - (g) is disqualified for membership of the Legislative Council by any law relating to offences connected with elections; or
 - (h) in the case of an elected member, is disqualified for election by any law by reason of his holding or acting in any office the functions of which involve—
 - (i) any responsibility for, or in connection with, the conduct of any election; or
 - (ii) any responsibility for the compilation or revision of any register of electors.
- (2) For the purposes of subsection (1)(e) of this section—
- (a) where a person is serving two or more sentences of imprisonment that are required to be served consecutively he shall, throughout the whole time during which he so serves, be regarded as serving a sentence exceeding twelve months if (but not unless) any one of those sentences exceeds that term; and
 - (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

Tenure of seats of members of Legislative Council.

26.—(1) Subject to the provisions of this Constitution, an appointed member of the Legislative Council shall hold his seat therein during Her Majesty's pleasure.

(2) Every appointed or elected member of the Legislative Council shall vacate his seat therein at the next dissolution of the Council after his appointment or election.

(3) An appointed or elected member of the Legislative Council shall also vacate his seat therein—

- (a) if he resigns it by writing under his hand addressed to the Speaker;
 - (b) if, without the written permission of the Speaker, he is absent from three consecutive meetings of the Legislative Council;
 - (c) if he ceases to be ordinarily resident in the Islands;
 - (d) if he becomes a party to any contract with the Government of the Islands, or if any firm in which he is a partner or any company of which he is a director or manager becomes a party to any such contract, or if he becomes a partner in a firm or a director or manager of a company which is a party to any such contract, unless exempted by the Speaker from vacating his seat; or
 - (e) if any circumstances arise such that, if he were not a member of the Legislative Council, would cause him to be disqualified for appointment or election, as the case may be, by virtue of any provision of section 25(1) of this Constitution, other than paragraph (f).
- (4) (a) If circumstances such as are referred to in subsection (3)(e) of this section arise because a member is declared bankrupt, adjudged to be of unsound mind, under sentence of death or imprisonment or convicted or reported guilty of an offence relating to elections and it is open to the member to appeal against the decision (either with or without the leave of a court or other authority) he shall forthwith cease to perform his functions as a member

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of the Legislative Council, but, subject to paragraph (b) of this subsection, he shall not vacate his seat in the Council until the expiration of a period of thirty days thereafter:

Provided that the Governor, acting in his discretion, in the case of an appointed member, or the Speaker, in the case of an elected member, may at the request of the member, from time to time, extend that period to enable the member to pursue an appeal against the decision, save that extensions of time exceeding in the aggregate one hundred and fifty days shall not be given without the approval, signified by resolution, of the Legislative Council.

- (b) If, on the determination of any appeal, such circumstances as aforesaid continue to exist and no further appeal is open to the member, or if for any reason, including the refusal of leave to appeal or the expiration of any time limit for entering an appeal, it ceases to be open to the member to appeal, he shall forthwith vacate his seat.
- (c) 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 (a) of this subsection and he may resume the performance of his functions as a member.

Qualifications of electors and entitlement to vote.

27.—(1) Subject to subsection (2) of this section, a person shall be qualified to be registered as an elector for the purpose of the election of members of the Legislative Council if, and shall not be so qualified unless, on the qualifying date—

- (a) he has attained the age of eighteen years; and
- (b) he is resident in the Islands and has been so resident for not less than twelve months, in the aggregate, out of the two years immediately preceding the qualifying date; and
- (c) he falls into one of the following categories, that is to say—
 - (i) he was born in the Islands; or
 - (ii) he was born outside the Islands of a father or mother either of whom was born in the Islands; or
 - (iii) he has, under the law in force in the Islands regulating immigration, the status of “Belonger”.

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

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

(3) Section 25(2) of this Constitution shall apply for the purpose of subsection (2)(b) of this section as it applies for the purpose of section 25(1)(e).

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

(5) A person registered as an elector shall be entitled to vote at an election unless he is prohibited from so doing by reason of his conviction, prior to the election, of an election offence which disqualifies him from voting:

Provided that no person shall be entitled to vote in an electoral district if—

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

Leader of the Opposition.

28.—(1) Subject to the provisions of this section, the Governor may appoint a Leader of the Opposition.

(2) The Governor shall appoint as the Leader of the Opposition—

- (a) the member of the Legislative Council who, in the judgment of the Governor, is the leader of any opposition party whose numerical strength in the Council is greater than that of any other opposition party; or
- (b) if there is no such party, the member of the Legislative Council who in the judgment of the Governor is best able to command the support of the members of the Council in opposition to the Government.

(3) If at any time between the polling in a general election and the next following dissolution of the Legislative Council the Governor is satisfied that, if the office of the Leader of the Opposition were then vacant, he would appoint thereto a person other than the person then holding that office, the Governor shall revoke the appointment of the Leader of the Opposition.

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

- (a) if for any reason other than a dissolution of the Legislative Council the holder thereof ceases to be a member of the Council; or
- (b) if the holder thereof is appointed as the Chief Minister.

(5) In this section, “opposition party” means a group of members of the Legislative Council in opposition to the Government who are prepared to support one of their number as their leader.

(6) In the exercise of his functions under this section the Governor shall act in his discretion.

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

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

Determination as to validity of membership of elected members.

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

- (a) any person has been validly elected as a member of the Legislative Council; or
- (b) an elected member of the Council has vacated his seat therein or is required by virtue of section 26(4) of this Constitution to cease to perform his functions as such member.

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

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Penalty for unauthorised person sitting or voting.

31.—(1) Any person who sits or votes in the Legislative Council knowing, or having reasonable grounds for believing, that he is not entitled so to do shall be liable to a penalty not exceeding two hundred dollars for each day on which he so sits or votes.

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

Sessions of Legislative Council.

32.—(1) Subject to the provisions of this section, the sessions of the Legislative Council shall be held at such times and places as the Governor may appoint by proclamation published in the *Gazette*: Provided that there shall be at least one session in every year and a session shall be held within one month after any general election.

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

Prorogation and dissolution.

33.—(1) The Governor, acting in accordance with the advice of the Chief Minister, may at any time prorogue the Legislative Council by proclamation published in the *Gazette*.

(2) The Governor, acting after consultation with the Chief Minister, may at any time dissolve the Legislative Council by proclamation published in the *Gazette*.

(3) The Governor shall dissolve the Legislative Council at the expiration of four years from the date when the Council first meets after any general election (including the last general election before the commencement of this Constitution), unless it has been sooner dissolved.

General elections and filling vacant seats.

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

(2) Whenever an elected member of the Legislative Council vacates his seat, for any reason other than a dissolution of the Council, an election shall be held to fill the vacancy, on such date as the Governor shall appoint by proclamation published in the *Gazette*, within three months of the occurrence of the vacancy unless the Council is sooner dissolved or will be dissolved under section 33(3) of this Constitution within four months of the occurrence of the vacancy.

(3) Whenever an appointed member of the Legislative Council vacates his seat, for any reason other than a dissolution of the Council, the Governor shall, as soon as practicable, appoint a person to fill the vacancy under section 23 of this Constitution.

PART IV

POWERS AND PROCEDURE OF THE LEGISLATIVE COUNCIL

Power to make laws.

35. Subject to the provisions of this Constitution, the Governor with the advice and consent of the Legislative Council may make laws for the peace, order and good government of the Islands.

Standing Orders of Legislative Council.

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

(2) Standing Orders made under this section may provide for the establishment of committees of the Council (in addition to the Standing Committees to be established under section 37 of this Constitution) and for the proceedings and conduct of business before any such committees.

Standing Committees.

37.—(1) The Legislative Council shall establish at least two Standing Committees of the Council, each of which shall be charged with responsibility for monitoring the conduct of business of the Government for which responsibility has been assigned to a Minister or Ministers under section 12(1) of this Constitution.

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

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

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

(5) Each Standing Committee shall have power—

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

(6) The Legislative Council shall publish reports submitted to it under subsection (5)(c) of this section.

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

Oaths by members of Legislative Council.

38. No member of the Legislative Council shall be permitted to take part in the proceedings of the Council, other than proceedings necessary for the purposes of this section, until he has made and subscribed before the Council an oath of allegiance in the form set out in Schedule 1 to this Constitution:

Provided that the election of a Speaker and Deputy Speaker may take place before the members of the Council make such oath.

Presiding in Legislative Council.

39.—(1) The Speaker or, in his absence, the Deputy Speaker or, if they are both absent, an elected or appointed member of the Legislative Council (not being a member of the Executive

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Council) elected by the elected and appointed members of the Legislative Council, shall preside in the Legislative Council.

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

Voting.

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

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

Validity of proceedings.

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

Quorum.

42.—(1) A quorum of the Legislative Council shall be eight members not including the person presiding, of whom five are elected members.

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

Introduction of bills, etc.

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

(2) Except upon the recommendation of the Governor, signified by a member of the Executive Council, the Legislative Council shall not—

- (a) proceed upon any bill (including any amendment to a bill) which, in the opinion of the person presiding in the Council, makes provision for imposing or increasing any tax, for imposing or increasing any charge on the revenues or other funds of the Islands or for altering any such charge otherwise than by reducing it, or for compounding or remitting any debt due to the Islands; or
- (b) proceed upon any motion (including any amendment to a motion) the effect of which in the opinion of the person presiding in the Council is that provision would be made for any of the purposes aforesaid.

Governor's reserved power.

44.—(1) If the Governor considers that it is expedient—

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- (a) in the interests of public order, public faith or good government (which expressions shall, without prejudice to their generality, include the responsibility of the Islands as a territory within the Commonwealth and all matters pertaining to the creation or abolition of any public office or to the salary or other conditions of service of any public officer);
- (b) in the interests of any matter mentioned in section 13(1) of this Constitution; or
- (c) in order to secure detailed control of the finances of the Islands during such time as the Islands are receiving financial assistance from Her Majesty's Exchequer in the United Kingdom, for the purpose of balancing the annual budget or otherwise, upon condition that such control should be exercisable by Her Majesty's Government in the United Kingdom,

that any bill introduced, or any motion to which this section applies proposed, in the Legislative Council should have effect, then, if the Council fails to pass the bill or carry the motion within such time and in such form as the Governor thinks fit, and notwithstanding any provisions of this Constitution or any other law or any Standing Orders, the Governor may declare that such bill or motion shall have effect as if it had been passed or carried by the Council, either in the form in which it was introduced or proposed or with such amendments as the Governor thinks fit which have been moved or proposed in the Council or any committee thereof; and such bill or motion shall be deemed thereupon to have been so passed or carried, and the provisions of this Constitution and, in particular, the provisions relating to assent to bills and disallowance of laws, shall have effect accordingly.

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

- (a) the question whether the declaration should be made shall first be submitted in writing by the Governor to the Executive Council and if, upon the question being so submitted to it, the Executive Council advises him that the declaration should be made, the Governor may make the declaration;
- (b) if, when the question whether the declaration should be made is submitted to it as aforesaid, the Executive Council does not, within such time as the Governor thinks reasonable and expedient, advise him that the declaration should be made, then—
 - (i) the Governor may submit the said question to a Secretary of State and may make the declaration if, upon the question being so submitted to him, a Secretary of State authorises the Governor to make the declaration; or
 - (ii) the Governor may make the declaration without submitting the said question to a Secretary of State if, in the Governor's judgment, urgent necessity requires that the declaration be made without obtaining the authority of a Secretary of State; in which case he shall, at the time of making the declaration, certify in writing that urgent necessity requires that the declaration be made without obtaining such authority.

- (a) (3) (a) Whenever the Governor, in accordance with subsection (2)(b) of this section, submits to a Secretary of State the question whether a declaration should be made, or makes a declaration without submitting the said question to a Secretary of State, he shall inform the Executive Council in writing of his reasons for so doing.
- (b) Whenever the Governor makes a declaration under this section, other than a declaration made with the authority of a Secretary of State, he shall forthwith report to a Secretary of State the making of, and the reasons for, the declaration and, in the case of a declaration made in accordance with subsection (2)(b)(ii) of this section, the grounds of urgency.

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

(5) Any declaration made under this section that relates to a motion may be revoked by a Secretary of State, and the Governor shall cause notice of such revocation to be published in the *Gazette*; and

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from the date of such publication any motion which has effect by virtue of the declaration shall cease to have effect, and section 16(1) of the Interpretation Act 1978(1) shall apply to the revocation as it applies to the repeal of an Act of Parliament.

(6) This section applies to any motion—

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

(7) The powers conferred upon the Governor by subsections (1) and (2) of this section shall be exercised by him in his discretion.

Assent to bills.

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

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

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

Provided that the Governor shall reserve for the signification of Her Majesty's pleasure—

- (a) any bill which is in any way repugnant to, or inconsistent with, the provisions of this Constitution; and
- (b) any bill which determines or regulates the privileges, immunities or powers of the Legislative Council or of its members,

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

Return of bills by Governor.

46. The Governor may return to the Legislative Council any bill presented to him for his assent, transmitting therewith any amendments which he may recommend, and the Council shall deal with such recommendation.

Disallowance of laws.

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

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

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

(1) 1978 c. 30.

Privileges, etc. of Legislative Council.

48. A law made under section 35 of this Constitution may determine and regulate the privileges and powers of the Legislative Council and the members thereof, but no such privileges, immunities or powers shall exceed those of the Commons House of Parliament of the United Kingdom or of the members thereof.

PART V

THE JUDICATURE

The Supreme Court

Constitution of Supreme Court.

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

(2) The judges of the Supreme Court shall be a Chief Justice and such number of other judges (if any) as may be prescribed by law:

Provided that the office of a judge shall not, without his consent, be abolished during his continuance in office.

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

(4) The qualifications for appointment as a judge of the Supreme Court shall be such as may be prescribed by law:

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

(5) It shall be lawful for a person qualified for appointment as a judge of the Supreme Court to be so appointed (regardless of his age) for such term as may be specified in the instrument of appointment, and section 50 of this Constitution shall have effect in relation to any person so appointed as if he would attain the retiring age applicable to that office on the day on which the specified term expires.

Tenure of office of judges of Supreme Court.

50.—(1) Subject to the provisions of this section, a judge of the Supreme Court shall vacate his office when he attains the age of sixty-five years:

Provided that—

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

(2) A judge 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 subsection (3) of this section.

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(3) A judge of the Supreme Court shall be removed from office by the Governor by instrument under the public seal if the question of the removal of that judge from office has, at the request of the Governor made in pursuance of subsection (4) of this section, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833⁽²⁾ or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or misbehaviour.

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

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

(5) The provisions of the Commissions of Inquiry Ordinance⁽³⁾ as in force on the date of commencement of this Constitution shall, subject to the provisions of this section, apply as nearly as may be in relation to tribunals appointed under subsection (4) of this section or, as the context may require, to the members thereof as they apply in relation to Commissions or Commissioners appointed under that Ordinance.

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

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

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

Acting judges of Supreme Court.

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

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

(2) 1833 c. 41.

(3) Ordinance No. 7 of 1986.

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

(4) Any person appointed under this section to act as a judge of the Supreme Court shall, unless he is removed from office under section 50 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, acting in his discretion:

Provided that a person whose appointment so to act has expired or been revoked may, with the permission of the Governor, acting in his discretion, continue so to act for such period as may be necessary to enable him to deliver judgment or to do any other thing in relation to any proceeding commenced before him previously thereto.

Oaths to be taken by judges of Supreme Court.

52. Before assuming the functions of his office, every judge of the Supreme Court shall make and subscribe before the Governor, or some other person authorised in that behalf by the Governor, acting in his discretion, oaths of allegiance and for the due execution of his office in the forms set out in Schedule 1 to this Constitution.

The Court of Appeal

Constitution of Court of Appeal.

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

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

(3) The judges of the Court of Appeal shall be a President and two Justices of Appeal, or such other number of Justices of Appeal, not being less than two, as may be prescribed by law:

Provided that the office of a Justice of Appeal shall not, without his consent, be abolished during his continuance in office.

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

(5) A person shall be qualified to be appointed as a judge of the Court of Appeal if, and shall not be qualified to be so appointed unless, he holds or has held high judicial office.

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

Tenure of office of judges of Court of Appeal.

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

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

(3) A judge of the Court of Appeal shall be removed from office by the Governor by instrument under the public seal if the question of the removal of that judge from office has, at the request of the Governor made in pursuance of subsection (4) of this section, been referred by Her Majesty to

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the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833 or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or misbehaviour.

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

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

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

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

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

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

Acting judges of Court of Appeal.

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

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

(3) Any person appointed under this section to act as a judge of the Court of Appeal shall, unless he is removed from office under section 54 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, acting in his discretion:

Provided that a person whose appointment so to act has expired or been revoked may, with the permission of the Governor, acting in his discretion, continue so to act for such period as

may be necessary to enable him to deliver judgment or to do any other thing in relation to any proceeding commenced before him previously thereto.

Oaths to be taken by judges of Court of Appeal.

56. Before assuming the functions of his office, every judge of the Court of Appeal shall make and subscribe before the Governor, or some other person authorised in that behalf by the Governor, acting in his discretion, oaths of allegiance and for the due execution of his office in the forms set out in Schedule 1 to this Constitution.

PART VI

THE PUBLIC SERVICE

Public Service Commission

Public Service Commission.

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

(2) Of the members of the Public Service Commission, the Chairman shall be appointed by the Governor acting in his discretion, one member shall be appointed by the Governor acting after consultation with the Chief Minister, and one member shall be appointed by the Governor acting after consultation with the Leader of the Opposition.

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

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

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

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

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

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

(7) If the office of a member of the Public Service Commission other than the Chairman is vacant or the holder thereof is acting as the Chairman or is for any other reason unable to perform the functions of his office, the Governor, acting in the manner prescribed by subsection (2) of this section for the appointment of that member, may appoint a person who is qualified for appointment as a member of the Commission to act as a member of the Commission; and any person so appointed

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shall, subject to subsection (5) of this section, continue so to act until he is notified by the Governor, acting in his discretion, that the circumstances giving rise to the appointment have ceased to exist.

Appointment, etc, of public officers.

58.—(1) Subject to the provisions of this Constitution, power to make appointments to public offices, and to remove or exercise disciplinary control over persons holding or acting in such offices, is vested in the Governor acting in accordance with the recommendation of the Public Service Commission.

(2) Whenever the Governor proposes to exercise any power under subsection (1) of this section otherwise than in accordance with the recommendation received from the Public Service Commission, he shall first refer that recommendation back to the Commission, once, for reconsideration and shall hold further consultations on the matter with the Commission, but shall thereafter exercise the power in his discretion.

(3) If the Governor, having consulted the Public Service Commission in the exercise of any power in accordance with subsection (1) of this section, receives no recommendation from the Commission within such time as the Governor, acting in his discretion, considers reasonable, he may exercise the power in his discretion forthwith.

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

(5) This section shall not apply to—

- (a) any office to which section 59 of this Constitution applies;
- (b) the offices of judge of the Supreme Court and judge of the Court of Appeal;
- (c) any office in the Police Force.

Particular offices.

59.—(1) Power to make appointments to the offices to which this section applies and to remove or exercise disciplinary control over persons holding or acting in such offices is vested in the Governor, acting in his discretion.

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

Additional functions of Public Service Commission.

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

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

Regulations regarding Public Service Commission.

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

- (a) the organisation of the work of the Commission and the manner in which it performs its functions;
- (b) consultation by the Commission with persons or authorities other than members of the Commission.

Pensions

Applicability of pensions law.

62.—(1) Subject to section 64 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, gratuity or other like allowance (in this section and in sections 63 and 64 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 day or any later law not less favourable to the person concerned.

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

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

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

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

Pensions, etc, charged on revenues of Islands.

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

Grant and withholding of pensions, etc.

64.—(1) The power to grant any award under any pensions law in force in the Islands (other than an award to which, under that law, the person to whom it is payable is entitled as of right) and, in accordance with any provisions in that 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, acting in his discretion.

(2) In this section “pensions 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 in respect of the services of that person in a public office, and includes any instrument made under any such law.

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PART VII

THE COMPLAINTS COMMISSIONER

The Complaints Commissioner.

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

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

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

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

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

- (a) at the expiration of the period specified in the instrument by which he was appointed;
- (b) if he resigns his office by writing under his hand addressed to the Governor;
- (c) if he becomes an elected or appointed member of the Legislative Council or the holder of any office in any political party; or
- (d) if the Governor, acting in his discretion, directs that he shall be removed from office for inability to discharge the functions thereof (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, or for contravention of subsection (5) of this section.

(5) Subject to such exceptions as the Governor, acting in his discretion, may authorise by directions in writing, the Complaints Commissioner shall not hold any other office of emolument either in the public service or otherwise nor engage in any occupation for reward other than the duties of his office.

Functions of Complaints Commissioner.

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

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

PART VIII

FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Fundamental rights and freedoms of the individual.

67. Whereas every person in the Islands is entitled to the fundamental rights and freedoms of the individual, that is to say, 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 Part 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.

68.—(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 section 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.

Protection from inhuman treatment.

69.—(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 section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in the Islands immediately before the commencement of this Constitution.

Protection from slavery and forced labour.

70.—(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 section, “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 that that person is required by law to perform in place of such service;
- (c) labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place in which he is detained; or
- (d) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

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Protection from arbitrary arrest or detention.

71.—(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 Islands 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;
- (b) in execution of the order of a court punishing him for contempt of that court or of another court or tribunal;
- (c) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed upon him by law;
- (d) for the purpose of bringing him before a court in execution of the order of a court;
- (e) upon reasonable suspicion that he has committed, is committing or is about to commit a criminal offence;
- (f) in the case of a person who has not attained the age of twenty-one years, under the order of a court or with the consent of his parent or guardian, for the purpose of his education or welfare;
- (g) for the purpose of preventing the spread of an infectious or contagious disease or in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;
- (h) for the purpose of preventing the unlawful entry of that person into the Islands or for the purpose of effecting the expulsion, extradition or other lawful removal from the Islands of that person or the taking of proceedings relating thereto.

(2) Any person who is arrested or detained shall be informed as soon as is reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained in such a case as is mentioned in subsection (1)(d) or (e) of this section 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 subsection (1)(e) of this section 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.

Provisions to secure protection of law.

72.—(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, where so provided by any law, by a legal representative at the public expense;
- (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, or unless, having had reasonable notice of the hearing and of the nature of the offence charged, he is voluntarily absent from the proceedings.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him 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 under section 84 of this Constitution.

(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 determined fairly within a reasonable time.

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

(10) Nothing in subsection (9) of this section 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 commercial confidence or the private lives of persons concerned in the proceedings; or
- (b) may be empowered or required by law so to do in the interests of defence, public safety or public order.

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

- (a) subsection (2)(a) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;
- (b) subsection (2)(e) of this section to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;
- (c) subsection (5) of this section 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, save 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.

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

Protection for privacy of home and other property.

73.—(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 section to the extent that the law in question makes provision—

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

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

Protection of freedom of conscience.

74.—(1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section 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 twenty-one 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 community or denomination shall be prevented from or hindered in providing religious instruction for persons of that community or denomination in the course of any education provided by that community or denomination whether or not that community or denomination is in receipt of any government subsidy, grant or other form of financial assistance designed to meet, in whole or in part, the cost of such 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 section to the extent that the law in question makes provision which is reasonably required—

- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion or belief without the unsolicited interference of persons professing any other religion or belief, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of expression.

75.—(1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes freedom to hold opinions and 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 section to the extent that the law in question makes provision—

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

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

Protection of freedom of assembly and association.

76.—(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.

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

(a) that is reasonably required—

(i) in the interests of defence, public safety, public order, public morality or public health;

(ii) for the purpose of protecting the rights and freedoms of other persons; or

(b) that imposes restrictions upon public officers, 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.

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

Protection of freedom of movement.

77.—(1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of movement, that is to say, the right to move freely throughout the Islands, the right to reside in any part thereof, the right to enter the Islands 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 section to the extent that the law in question makes provision—

(a) for the imposition of restrictions on the movement or residence within the Islands or on the right to leave the Islands of persons generally or any class of persons that are reasonably required—

(i) in the interests of defence, public safety, public order, public morality or public health; or

(ii) for the purpose of protecting the rights and freedoms of other persons, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

(b) for the removal of a person from the Islands to be tried or punished in some other country for a criminal offence under the law of that country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law of the Islands of which he has been convicted;

(c) for the imposition of restrictions on the movement or residence within the Islands or the right to leave the Islands of public officers that are reasonably required for the purpose of ensuring the proper performance of their functions;

(d) for the imposition of restrictions on the movement or residence within the Islands of any person who does not belong to the Islands or the exclusion or expulsion therefrom of any such person;

(e) for the imposition of restrictions on the acquisition or use by any person of land or other property in the Islands;

(f) for the imposition of restrictions, by order of a court, on the movement or residence within the Islands of any person or on any person’s right to leave the Islands either in consequence of his having been found guilty of a criminal offence under the law of the Islands or for the purpose of ensuring a fair trial or that he appears before a court at a later date for trial of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or lawful removal from the Islands; or

(g) for the imposition of restrictions on the right of any person to leave the Islands that are reasonably required in order to secure the fulfilment of any obligation imposed by law,

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

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

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

(5) For the purposes of this section, a person shall be deemed to belong to the Islands if he has, under the law in force in the Islands regulating immigration, the status of “Belonger”.

Protection from discrimination on grounds of race, etc.

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

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

(3) In this section, “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions 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) Subsection (1) of this section shall not apply to any law so far as that law makes provision—

- (a) for the appropriation of revenues or other funds of the Islands or for the imposition of taxation (including the levying of fees for the grant of licences);
- (b) with respect to the entry into or exclusion from, or the employment, engaging in any business or profession, movement or residence within, the Islands of persons who do not belong to the Islands for the purposes of section 77 of this Constitution;
- (c) for the application, in the case of persons of any such description as is mentioned in subsection (3) of this section (or of persons connected with such persons) of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law applicable to persons of that description; or
- (d) whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it requires a person to belong to the Islands for the purposes of section 77 of this Constitution or to possess any other qualification (not being a qualification specifically relating to race, place of origin, political opinions, colour or creed) in order to be eligible for appointment to any office in the public service or in a disciplined force or any office in the service of a local government authority or of a body corporate established directly by any law for public purposes.

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

(7) Subject to subsection (8) of this section, 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,

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shops, hotels, restaurants, eating-houses, licensed premises, places of entertainment or places of resort.

(8) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 73, 74, 75, 76 and 77 of this Constitution, being such a restriction as is authorised by section 73(2)(a), 74(5), 75(2), 76(2) or 77(2) (a) as the case may be.

(9) Nothing in subsection (2) of this section 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.

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

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

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

- (a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest or right—
 - (i) in satisfaction of any tax, rate or due;
 - (ii) by way of penalty for breach of any law or forfeiture in consequence of a breach of any law;
 - (iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
 - (iv) by way of the taking of a sample for the purposes of any law;
 - (v) where the property consists of an animal upon its being found trespassing or straying;
 - (vi) in the execution of judgments or orders of a court;
 - (vii) by reason of its being in a dilapidated or dangerous state or injurious to the health of human beings, animals or plants;

- (viii) in consequence of any law with respect to prescription or the limitation of actions; or
- (ix) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry, or, in the case of land, for the purposes of carrying out thereon work of reclamation, drainage, soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has, without reasonable and lawful excuse, refused or failed to carry out),

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

- (b) to the extent that the law in question makes provision for the taking possession or acquisition of any of the following property (including an interest in or right over property), that is to say:—
 - (i) enemy property;
 - (ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of twenty-one years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;
 - (iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or
 - (iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

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

Provisions for periods of public emergency.

80.—(1) Nothing contained in or done under the authority of any regulation made under the Emergency Powers Orders in Council 1939 to 1973⁽⁴⁾ or the Emergency Powers Ordinance⁽⁵⁾ shall be held to be inconsistent with or in contravention of section 71, section 72 other than subsections (4) and (6) thereof or any provision of sections 73 to 78 (inclusive) of this Constitution to the extent that the regulation in question makes in relation to any period of public emergency provision, or authorises the doing during any such period of anything, that is reasonably justifiable in the circumstances of any situation arising or existing during that period for the purpose of dealing with that situation.

(2) Where any person who is lawfully detained in pursuance of such a regulation as is referred to in subsection (1) of this section so requests at any time during the period of that detention (but if he has already made such a request during that period not earlier than six months after he last made such a request during that period), his case shall within one month of making the request be

⁽⁴⁾ See S.I.1952/2031 (1952 I, p.620). The relevant amending instruments are S.I. 1956/731, 1963/88, 1633, 1964/267, 1199, 1965/131, 1968/724, 1973/759.

⁽⁵⁾ Ordinance No. 2 of 1962.

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reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice.

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

Enforcement of fundamental rights.

81.—(1) If any person alleges that any of the foregoing provisions of this Part has been, is being or is likely to be contravened in relation to him, 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 subsection (1) of this section; and
- (b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section,

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the foregoing provisions of this Part to the protection of which the person concerned is entitled:

Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.

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

(4) An appeal shall lie as of right to the Court of Appeal from any final determination of any application or question by the Supreme Court under this section, and an appeal shall lie as of right to Her Majesty in Council from the final determination by the Court of Appeal of the appeal in any such case:

Provided that no appeal shall lie from a determination by the Supreme Court under this section dismissing an application on the ground that it is frivolous or vexatious.

(5) A law made under section 35 of this Constitution may confer upon the Supreme Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by this section.

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

- (a) of the Supreme Court in relation to the jurisdiction and powers conferred upon it by or under this section;
- (b) of the Supreme Court or the Court of Appeal in relation to appeals under this section from determinations of the Supreme Court or the Court of Appeal; and
- (c) of other courts in relation to references to the Supreme Court under subsection (3) of this section; including provision with respect to the time within which any application, reference or appeal shall or may be made or brought.

Interpretation of Part VIII.

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

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

“court” means any court of law having jurisdiction in the Islands, including Her Majesty in Council, but excepting, save in sections 68 and 70 of this Constitution, a court constituted by or under disciplinary law;

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

“disciplined force” means—

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

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

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

- (a) Her Majesty is at war; or
- (b) there is in force in the Islands a proclamation of emergency under the Emergency Powers Orders in Council 1939 to 1973 or under the Emergency Powers Ordinance.

(2) In relation to any person who is a member of a disciplined force raised under the law of the Islands, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of the provisions of this Part other than sections 68, 69 and 70.

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

PART IX

MISCELLANEOUS

Grants of land, etc.

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

Powers of pardon, etc.

84.—(1) The Governor may, in Her Majesty’s name and on Her behalf—

- (a) grant to any person convicted of any offence against any law in force in the Islands, a pardon, either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period, from the execution of any punishment imposed on him for such an offence;
- (c) substitute a less severe form of punishment for that imposed by any sentence for such an offence; or

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(d) remit the whole or any part of any sentence passed for such an offence or of any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.

(2) In the exercise of his powers under this section the Governor shall act in his discretion but shall first consult the Executive Council unless in any particular case, not falling within subsection (3) of this section, the matter is in his judgment too urgent to permit such consultation.

(3) Where any person has been sentenced to death for an offence (otherwise than by a court-martial) the Governor shall cause a written report of the case from the trial judge, together with such other information derived from the record of the case or elsewhere as he may require, to be taken into consideration at a meeting of the Executive Council:

Provided that if it is impracticable to obtain such a report, the Governor may act without such a report, but in that case shall, if practicable, cause to be taken into consideration a report furnished by the registrar of the court after consulting counsel for the prosecution and defence in the case.

Public offices and appointments.

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

Discipline of public service.

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

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

Registration of interests.

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

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

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

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

(5) A law made under section 35 of this Constitution shall make provision for giving effect to this section.

Interpretation.

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

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“appointed member” means a member of the Legislative Council appointed under section 23 of this Constitution;

“Chief Minister” means the person appointed as such under section 7(2) of this Constitution;

“Court of Appeal” means the Court of Appeal established by section 53 of this Constitution;

“elected member” means a member of the Legislative Council elected in pursuance of section 21 of this Constitution;

“functions” includes powers and duties;

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

“Governor” means the person for the time being appointed as Governor of the Islands, and includes any person performing the functions of the Governor in pursuance of section 3 of this Constitution and, to the extent to which a deputy appointed under section 4 of this Constitution is authorised to act, that deputy;

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

“the Islands” means the Turks and Caicos Islands;

“law” includes any subsidiary instrument;

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

“member” in relation to the Legislative Council includes the Speaker or other person presiding over the Council;

“Minister” means a person appointed as Chief Minister or other Minister under section 7 of this Constitution;

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

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

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

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

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

“Standing Orders” means the Standing Orders of the Legislative Council made under section 36 of this Constitution;

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

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

- (a) is in receipt of any remuneration or allowance as a member of the Legislative Council or the Public Service Commission;
- (b) is in receipt of a pension or other like allowance in respect of service under the Crown; or

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- (c) is on leave of absence pending relinquishment of a public office; and a provision in any law that a person shall not be disqualified for appointment or election as a member of the Legislative Council by reason of his holding or acting in any public office or class of public office specified therein shall have effect as if it were included in this Constitution.
- (3) Any person who has vacated his seat in the Legislative Council or has vacated any office constituted by or under this Constitution may, if qualified, again be appointed or elected as a member of that body or to that office, as the case may be, from time to time.
- (4) Except where the context otherwise requires, a reference in this Constitution to the holder of an office by the term designating his office shall be construed as a reference to any person for the time being lawfully performing the functions of that office.
- (5) Where the holder of any office constituted by or under this Constitution is on leave of absence pending the relinquishment of that office, the person or authority having power to make appointments to that office may appoint another person thereto; and where two or more persons concurrently hold the same office by virtue of an appointment made in pursuance of this subsection, the person last appointed shall, in respect of any function conferred on the holder of that office, be deemed to be the sole holder thereof.
- (6) Where by this Constitution any person is directed, or power is conferred on any person or authority to appoint a person, to act in an office if the holder 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.
- (7) In this Constitution, unless it is otherwise provided or the context otherwise requires—
- (a) any reference to power to make appointments to any public office shall be construed as including a reference to power to make appointments on promotion and transfer, appointments on contract and appointments to act in an office during any period when it is vacant or the holder thereof is absent from the Islands or is for any other reason unable to perform the functions thereof;
- (b) any reference to power to remove a public officer from office shall be construed as including a reference to any power conferred by any law to require or permit that officer to retire from the public service and to any power or right to terminate a contract on which a person is employed as a public officer and to determine whether any such contract shall or shall not be renewed.
- (8) Any power conferred by this Constitution to make any subsidiary instrument or to give any instructions or directions or make any designation shall be construed as including a power exercisable in like manner to amend or revoke any such instrument, instructions, directions or designation.
- (9) Where a person is required by this Constitution to make an oath he shall, if he so desires, be permitted to comply with that requirement by making an affirmation in the form provided for in Schedule 1 to this Constitution.
- (10) For the purposes of this Constitution, the resignation of a member of the Legislative Council or the holder of any office constituted by this Constitution that is required to be addressed to any person shall, unless otherwise expressly provided, be deemed to have effect from the time at which it is received by that person.
- (11) For the purposes of this Constitution, a person shall not be regarded as absent from the Islands or as unable to perform the functions of his office by reason only that he is in passage from one part of the Islands to another.