

## SCHEDULE 2

### The Constitution of the Turks and Caicos Islands

## PART V

### THE JUDICATURE

#### The Supreme Court

#### Constitution of Supreme Court

77.—(1) There shall be a Supreme Court for the Turks and Caicos Islands which shall have such jurisdiction and powers as may be conferred on 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 as may be determined by the Governor, acting after consultation with the Chief Justice; but the office of a judge shall not, without the consent of that judge, be abolished during his or her continuance in office.

(3) The judges of the Supreme Court shall be persons qualified for appointment under subsection (4) and shall be appointed by the Governor, acting in accordance with section 87, by instrument under the public seal.

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

- (a) a barrister or solicitor of the United Kingdom, of any other part of the Commonwealth, or of Ireland;
- (b) a member of the Faculty of Advocates or a Writer to the Signet of Scotland; or
- (c) an attorney of the Supreme Court admitted under the Legal Profession Ordinance<sup>(1)</sup> or under any law for the time being in force in the Islands making like provision,

and of at least ten years' standing as such.

(5) It shall be lawful for a person qualified for appointment as a judge of the Supreme Court to be appointed (regardless of his or her age) for such term as may be specified in the instrument of appointment, and section 85 shall have effect in relation to any person so appointed as if he or she would attain the retiring age applicable to that office on the day on which the specified term expires.

#### Acting judges of Supreme Court

78.—(1) If the office of Chief Justice is vacant, or the holder of that office is for any reason unable to perform the functions of that office, then, until some other person has been appointed to, and has assumed the functions of, that office, or until the holder of that office has resumed those functions, as the case may be, such one of the other judges of the Supreme Court or such other person qualified for appointment as a judge of the Supreme Court as the Governor, acting in accordance with section 87, 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 the Chief Justice or is for any reason unable to perform the functions of his or her office, the Governor, acting in accordance with section 87, may appoint a person qualified for appointment as a judge of the Supreme Court to act as such a judge.

(3) A person may be appointed under subsection (1) or (2) notwithstanding that he or she has attained the age of 65 years.

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(1) Ordinance No. 5 of 1997.

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(4) Any person appointed under this section to act as a judge of the Supreme Court shall, unless he or she is removed from office under section 85, continue to act for the period of his or her appointment or, if no such period is specified, until his or her appointment is revoked by the Governor, acting in his or her discretion; but a person whose appointment so to act has expired or been revoked may, with the permission of the Governor, acting in his or her discretion, continue so to act for such period as may be necessary to enable him or her to deliver judgment or to do any other thing in relation to any proceeding previously commenced before him or her.

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

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

## **The Court of Appeal**

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

80.—(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 on 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 determined by the Governor, acting after consultation with the President of the Court; but the office of a Justice of Appeal shall not, without the consent of that Justice of Appeal, be abolished during his or her continuance in office.

(4) The judges of the Court of Appeal shall be appointed by the Governor, acting in accordance with section 87, by instrument under the public seal, for such period as may be specified in their respective instruments of appointment.

(5) A person shall be qualified to be appointed as a judge of the Court of Appeal if, and shall not be qualified to be so appointed unless, he or she holds or has held high judicial office and is qualified for appointment as a judge of the Supreme Court under section 77(4).

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

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

81.—(1) If the office of the President of the Court of Appeal is vacant, or if the holder of that office is for any reason unable to perform the functions of that office, then, until some other person has been appointed to, and has assumed the functions of, that office, or until the holder of that office has resumed those functions, as the case may be, such one of the Justices of Appeal or such other person qualified for appointment as a judge of the Court of Appeal as the Governor, acting in accordance with section 87, may appoint for that purpose shall act in the office of President.

(2) If the office of a Justice of Appeal is vacant, or if any Justice of Appeal is acting as the President or is for any reason unable to perform the functions of his or her office, the Governor, acting in accordance with section 87, may appoint a person possessing such legal qualifications and experience as he or she, after consultation with the President of the Court, may deem appropriate to act as a Justice of Appeal.

(3) Any person appointed under this section to act as a judge of the Court of Appeal shall, unless he or she is removed under section 85, continue to act for the period of his or her appointment or, if no such period is specified, until his or her appointment is revoked by the Governor, acting in his or her discretion; but a person whose appointment so to act has expired or been revoked may, with the permission of the Governor, acting in his or her discretion, continue so to act for such period as may be necessary to enable him or her to deliver judgment or to do any other thing in relation to any proceeding previously commenced before him or her.

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

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

### **Judicial independence**

#### **Independence of the judiciary**

**83.—**(1) The judges and magistrates appointed to preside or sit in any court of the Turks and Caicos Islands shall exercise their judicial functions independently from the legislative and executive branches of government.

(2) The Legislature and the Cabinet shall uphold the rule of law and judicial independence, and shall ensure that adequate funds are provided to support the judicial administration in the Islands.

#### **Remuneration, terms and conditions of judges and magistrates**

**84.—**(1) The remuneration and allowances of each judge of the Supreme Court, each judge of the Court of Appeal and each magistrate shall be determined by the Governor, are hereby charged on and shall be paid out of the Consolidated Fund, and shall not be diminished during his or her continuance in office.

(2) The terms and conditions of service of each judge of the Supreme Court, each judge of the Court of Appeal and each magistrate shall be determined by the Governor, and shall not be altered to his or her disadvantage during his or her continuance in office.

(3) The powers conferred on the Governor by this section shall be exercised by the Governor in accordance with the advice of the Judicial Service Commission, unless the Governor is instructed by Her Majesty through a Secretary of State to do otherwise.

#### **Tenure of office of judges and magistrates**

**85.—**(1) Subject to this section, a judge of the Supreme Court shall vacate his or her office when he or she attains the age of 65 years; but—

- (a) the Governor may permit a judge who attains the age of 65 years to continue in office until he or she has attained such later age, not exceeding the age of 70 years, as may have been agreed between the Governor and that judge; and
- (b) a judge who has attained the age at which he or she would otherwise vacate office under this subsection may continue in office for such period as may be necessary to enable him or her to deliver judgment or do any other thing in relation to any proceeding commenced before him or her before he or she attained that age.

(2) Subject to this section, a judge of the Court of Appeal shall vacate his or her office on the expiration of the period of his or her appointment to that office.

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(3) Subject to this section, a magistrate shall vacate his or her office when he or she attains such age as may be prescribed by law.

(4) In the following subsections “judge” means a judge of the Supreme Court, an acting judge of the Supreme Court, a judge of the Court of Appeal or an acting judge of the Court of Appeal.

(5) A judge or a magistrate may be removed from office only for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with subsection (6).

(6) A judge or a magistrate shall be removed from office by the Governor by instrument under the public seal if the question of the removal of that judge or magistrate from office has, at the request of the Governor made in pursuance of subsection (7), been referred by Her Majesty to the Judicial Committee of Her Majesty’s Privy Council under section 4 of the Judicial Committee Act 1833<sup>(2)</sup> or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge or magistrate ought to be removed from office for inability as aforesaid or for misbehaviour.

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

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

(8) The provisions of the Commissions of Inquiry Ordinance<sup>(3)</sup> as in force on the date of commencement of this Constitution shall, subject to this section, apply as nearly as may be in relation to tribunals appointed under subsection (7) or, as the context may require, to their members as they apply in relation to Commissions or Commissioners appointed under that Ordinance.

(9) If the question of removing a judge or magistrate from office has been referred to a tribunal under subsection (7) the Governor may suspend the judge or magistrate from performing the functions of his or her office, and any such suspension may at any time be revoked by the Governor, and shall in any case cease to have effect—

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

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

#### Judicial Service Commission

#### Judicial Service Commission

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

(2) 1833 c.41.

(3) Ordinance No. 7 of 1986.

- (2) Of the members of the Judicial Service Commission—
- (a) the Chairman shall be appointed by the Governor, acting in his or her discretion;
  - (b) the other two members shall be appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition, from among persons who hold or have held high judicial office.
- (3) The members of the Judicial Service Commission shall be appointed by instrument under the public seal for such period, not being less than one year nor more than four years, as may be specified in their respective instruments of appointment.
- (4) The office of a member of the Judicial Service Commission shall become vacant—
- (a) at the expiration of the period specified in the instrument by which he or she was appointed;
  - (b) if he or she resigns his or her office by writing under his or her hand addressed to the Governor; or
  - (c) if the Governor, acting in his or her discretion, directs that he or she shall be removed from office for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.
- (5) If the office of a member of the Judicial Service Commission becomes vacant or if such a member is for any reason unable to perform the functions of that office, the Governor, acting in the manner prescribed by subsection (2) for the appointment of that member, may appoint another suitably qualified person to act as a member of the Commission; and any person so appointed shall, subject to subsection (4), continue so to act until he or she is notified by the Governor, acting in his or her discretion, that the circumstances giving rise to the appointment have ceased to exist.
- (6) Any decision of the Judicial Service Commission shall require the concurrence of at least two members of the Commission.
- (7) The Judicial Service Commission may make regulations governing its operation and procedure.
- (8) In the exercise of their functions the Judicial Service Commission and its members shall not be subject to the direction or control of any other person or authority.

### **Functions of Judicial Service Commission**

#### **87.—(1) Power—**

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

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

(2) In subsection (1), “registrar” and “deputy registrar” mean registrar or deputy registrar of any court in the Islands.

(3) The Judicial Service Commission, acting after consultation with the Chief Justice, shall—

- (a) draw up and publish a code of conduct for the judiciary, which shall include power for the Chief Justice to exercise disciplinary control over the other judges of the Supreme Court and magistrates and power for the President of the Court of Appeal to exercise disciplinary control over the Justices of Appeal; and

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(b) draw up and publish a procedure for dealing with complaints relating to the judiciary;  
and the Commission shall have such other functions as may be conferred on it by Ordinance.

(4) This section is without prejudice to section 85.