
STATUTORY INSTRUMENTS

1973 No. 1080

The Bahamas Independence Order 1973

Citation, commencement and construction

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

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

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

- (a) (4) (a) For the purposes of the exercise by the Governor under subsection (3) of this section of the powers conferred by section 4(3) of this Order the Governor shall act in accordance with the advice of the Prime Minister.
- (b) For the purposes of the exercise by the Governor under the said subsection of the powers conferred by Article 39(4) of the Constitution the Governor shall act in accordance with the advice of the Prime Minister after consultation with the Leader of the Opposition.
- (c) For the purposes of this subsection references to the Prime Minister and Leader of the Opposition shall be construed as references to the persons performing the functions of those offices under the Bahamas Islands (Constitution) Order 1969(1) (in this Order referred to as “the existing Order”, and in relation to the exercise by virtue of this subsection of the powers conferred by Article 39(4) of the Constitution the provisions of Article 40 of the Constitution shall apply as they would apply in relation to the exercise of those powers by virtue of Article 39(4) of the Constitution.

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

Revocation

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

Establishment of Constitution

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

Existing laws

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

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

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

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

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

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

Parliament

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

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

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

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

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

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

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

Ministers and Parliamentary Secretaries

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

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

(3) Any person holding the office of Prime Minister or other Minister by virtue of subsection (1) or (2) of this section who immediately before the appointed day was charged with responsibility for any matter or department of government shall, as from the appointed day, be deemed to have been charged with responsibility for the corresponding business or administration of the corresponding department of the Government under Article 77 of the Constitution.

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

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

Leader of the Opposition

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

Existing officers

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

Supreme Court and Court of Appeal Judges

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

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

Pending appeals

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

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

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

11. A court of appeal for the Turks and Caicos Islands may, under arrangements between the Governments of that territory and the Government of The Bahamas, sit in The Bahamas and exercise there such jurisdiction and powers in respect of the Turks and Caicos Island as may be conferred upon it by any law for the time being in force in the Turks and Caicos Islands. Without prejudice to the generality of the foregoing, persons committed to custody in the Turks and Caicos Islands when present in The Bahamas in connection with any proceedings in a court of appeal for the Turks and Caicos Islands may be held in custody in The Bahamas and persons may be committed to custody in The Bahamas by order of such a court.

Remuneration of certain persons

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

Transitional provisions relating to existing Commissions

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

(2) Any matter which, immediately before the appointed day, is pending before an existing Commission or, as the case may be, before any person or authority on whom the power to deal with

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

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

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

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

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

Emergency Powers Order in Council 1939

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

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

Transfer of Crown Lands Fund for Development to Consolidated Fund

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

Transitional provisions relating to compensation etc

16. Any compensation, gratuity, grant or allowance paid or payable, whether before or after the appointed day, under any regulations made by the Governor under section 15 of the Bahama Islands

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

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

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(Constitution) Order in Council 1963(4) or under section 9 of the Bahama Islands (Constitution) Order 1969, which under those regulations as in force immediately prior to the appointed day was or would have been exempt from tax in the Bahama Islands, shall be exempt from tax to the same extent in The Bahamas after the appointed day.

Alteration of this Order

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

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

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

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

W. G. Agnew

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