

SCHEDULE 2

The Constitution of the Turks and Caicos Islands

PART IV

THE LEGISLATURE

Constitution of legislature

40. There shall be a legislature for the Turks and Caicos Islands which shall consist of Her Majesty and a House of Assembly.

The House of Assembly

41.—(1) The House of Assembly shall consist of—

- (a) a Speaker, elected as provided in section 42;
- (b) fifteen elected members;
- (c) four appointed members; and
- (d) the Attorney General.

(2) A law made under section 59 may increase the number of elected members of the House of Assembly; but no such law shall come into force—

- (a) unless a bill providing for the electoral districts and their boundaries to take account of the additional elected members in accordance with section 58 has been passed; and
- (b) until the dissolution of the House of Assembly next following the enactment of such law.

The Speaker and Deputy Speaker

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

(2) The Speaker shall be elected from among the elected or appointed members of the House of Assembly who are not members of the Cabinet or from among persons who are not members of the House, and shall be elected by a majority of the votes of the elected and appointed members of the House; but 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 House of Assembly 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 House who are not members of the Cabinet, to be the Deputy Speaker, by a majority of the votes of the elected and appointed members of the House; and if the office of Deputy Speaker falls vacant for any reason other than a dissolution of the House, the House 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 House of Assembly;
- (b) if he or she informs the House of Assembly, by writing under his or her hand addressed to the House and received by the Clerk of the House, that he or she resigns his or her office;
- (c) (i) in any circumstances which, in the case of the Speaker, would cause him or her to vacate his or her seat if he or she were an appointed member; or

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- (ii) in the case of the Deputy Speaker, if he or she ceases to be a member of the House of Assembly;
- (d) if on the date of his or her election as Speaker or Deputy Speaker he or she 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, or if on any date after such election he or she or a firm in which he or she is a partner or a company of which he or she is a director or manager becomes a party to any such contract, or if he or she becomes a partner in a firm or a director or manager of a company which is a party to any such contract, and he or she does not, before the expiration of thirty days from the date in question, disclose to the House of Assembly or, if that is impracticable, to the Clerk of the House in writing, the nature of such contract and his or her interest, or the interest of such firm or company, in it and the House does not exempt him or her from vacating his or her office under this paragraph;
- (e) if he or she becomes a member of the Cabinet; 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 or her as Speaker or Deputy Speaker, as the case may be.

Elected members

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

(2) Subject to section 41(2), for the purposes of elections to the House of Assembly, the Islands shall be divided into fifteen electoral districts each of which shall return one member to the House.

Qualifications for elected membership

44. Subject to section 47, a person shall be qualified to be elected as a member of the House of Assembly if, and shall not be qualified to be so elected unless, he or she—

- (a) has attained the age of twenty-one years; and
- (b) is, on the date of his or her 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) is a Belonger.

Appointed members

45.—(1) Appointed members of the House of Assembly shall be appointed from among persons qualified under section 46, and so far as possible from among persons representing shades of opinion which would not otherwise be represented in the House, as follows—

- (a) one shall be appointed by the Governor, acting in his or her discretion;
- (b) two shall be appointed by the Governor, acting in accordance with the advice of the Premier;
- (c) one shall be appointed by the Governor, acting in accordance with the advice of the Leader of the Opposition.

(2) 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 House of Assembly.

Qualifications for appointed membership

46. Subject to section 47, a person shall not be qualified to be appointed as a member of the House of Assembly unless he or she 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

47.—(1) No person shall be qualified to be an elected member or an appointed member of the House of Assembly who—

- (a) is, by virtue of his or her 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 or her by such a court or substituted by competent authority for some other sentence imposed on him or her 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 and—
 - (i) in the case of an appointed member, has not disclosed to the Governor in writing the nature of such contract and his or her interest, or the interest of such firm or company, in it; 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 or her interest, or the interest of such firm or company, in it;
 - (g) is disqualified for membership of the House of Assembly by any law relating to offences of corruption or 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 or her 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)—
- (a) where a person is serving two or more sentences of imprisonment that are required to be served consecutively he or she shall, throughout the whole time during which he or she 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.

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Tenure of seats of members of House of Assembly

48.—(1) Subject to this Constitution, an appointed member of the House of Assembly shall hold his or her seat in the House during Her Majesty's pleasure.

(2) Every appointed or elected member of the House of Assembly shall vacate his or her seat in the House at the next dissolution of the House after his or her appointment or election.

(3) An appointed or elected member of the House of Assembly shall also vacate his or her seat in the House—

- (a) if he or she resigns it by writing under his or her hand addressed to the Speaker;
 - (b) if, without the written permission of the Speaker, he or she is absent from three consecutive meetings of the House;
 - (c) if he or she ceases to be ordinarily resident in the Islands;
 - (d) if he or she becomes a party to any contract with the Government, or if any firm in which he or she is a partner or any company of which he or she is a director or manager becomes a party to any such contract, or if he or she 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 or her seat; or
 - (e) if any circumstances arise such that, if he or she were not a member of the House, would cause him or her to be disqualified for appointment or election, as the case may be, by virtue of any provision of section 47(1), other than paragraph (f).
- (a) (4) (a) If circumstances such as are referred to in subsection (3)(e) 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 of corruption or 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) that member shall forthwith cease to perform his or her functions as a member of the House of Assembly, but, subject to paragraph (c), he or she shall not vacate his or her seat in the House until the expiration of a period of thirty days thereafter.
- (b) The Governor, acting in his or her 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 the period of thirty days 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 House of Assembly.
 - (c) 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 or she shall forthwith vacate his or her seat.
 - (d) If at any time before the member vacates his or her seat such circumstances as aforesaid cease to exist, his or her seat shall not become vacant on the expiration of the period referred to in paragraph (a) and he or she may resume the performance of his or her functions as a member.

Qualifications of electors and entitlement to vote

49.—(1) Subject to subsection (2), a person shall be qualified to be registered as an elector for the purpose of the election of members of the House of Assembly if, and shall not be so qualified unless—

- (a) he or she was lawfully registered as such an elector on the date of commencement of this Constitution; or
 - (b) on the qualifying date—
 - (i) he or she has attained the age of eighteen years; and
 - (ii) he or she 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
 - (iii) he or she is a 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 or her by such a court or substituted by competent authority for some other sentence imposed on him or her 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 47(2) shall apply for the purpose of subsection (2)(b) of this section as it applies for the purpose of section 47(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 House of Assembly, are to be ascertained.
- (5) A person registered as an elector shall be entitled to vote at an election unless he or she is prohibited from so doing by reason of his or her conviction, prior to the election, of an election offence which disqualifies him or her from voting; but no person shall be entitled to vote in an electoral district if—
- (a) he or she is not registered as an elector in that district; or
 - (b) he or she has voted in another electoral district.

Leader of the Opposition

50.—(1) The Governor shall appoint as the Leader of the Opposition the elected member of the House of Assembly who demonstrates to the Governor in writing that he or she commands the support of the majority of the elected members of the House in opposition to the Government.

(2) If at any time between the polling in a general election and the next following dissolution of the House of Assembly the Governor, acting in his or her discretion, is satisfied that, if the office of the Leader of the Opposition were then vacant, he or she would appoint to that office a person other than the person then holding that office, the Governor shall revoke the appointment of the Leader of the Opposition.

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

- (a) if for any reason other than a dissolution of the House of Assembly the holder of that office ceases to be a member of the House; or
- (b) the holder of that office is appointed as a Minister.

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

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

Determination as to validity of membership of elected members

52.—(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 House of Assembly; or
- (b) an elected member of the House has vacated his or her seat in the House or is required by virtue of section 48(4) to cease to perform his or her functions as such member.

(2) An application to the Supreme Court for the determination of any question under subsection (1) 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 House of Assembly.

Penalty for unauthorised person sitting or voting

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

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

Sessions of House of Assembly

54.—(1) The sessions of the House of Assembly shall be held at such times and places as the Governor may appoint by proclamation published in the *Gazette*; but 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 House of Assembly is in session, the Speaker may call meetings of the House from time to time and, if no meeting has been called sooner, shall call a meeting within three months of the previous meeting or at any time when requested to do so by the Governor or by seven or more members of the House.

Prorogation and dissolution

55.—(1) The Governor, acting in accordance with the advice of the Premier, may at any time prorogue the House of Assembly by proclamation published in the *Gazette*.

(2) The Governor, acting after consultation with the Premier, may at any time dissolve the House of Assembly by proclamation published in the *Gazette*.

(3) The Governor shall dissolve the House of Assembly at the expiration of four years from the date when the House first meets after any general election, unless it has been sooner dissolved.

General elections and filling vacant seats

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

(2) Whenever an elected member of the House of Assembly vacates his or her seat, for any reason other than a dissolution of the House, an election shall be held to fill the vacancy, on such

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date as the Governor shall appoint by proclamation published in the *Gazette*, within three months of the occurrence of the vacancy unless the House is sooner dissolved or will be dissolved under section 55(3) within four months of the occurrence of the vacancy.

(3) Whenever an appointed member of the House of Assembly vacates his or her seat, for any reason other than a dissolution of the House, the Governor shall, as soon as practicable, appoint a person to fill the vacancy under section 45.

Electoral District Boundary Commission

57.—(1) An Electoral District Boundary Commission (in this section and in section 58 referred to as a “Commission”) shall be appointed from time to time at such time as the Governor, after consultation with the Premier and the Leader of the Opposition, may determine; but a Commission shall be appointed not later than four years after the last Commission submitted its report under section 58.

(2) A Commission shall consist of—

- (a) a Chairman, being a person who holds or has held high judicial office or high legal office, appointed by the Governor, acting in his or her discretion;
- (b) a member appointed by the Governor, acting in accordance with the advice of the Premier;
- (c) a member appointed by the Governor, acting in accordance with the advice of the Leader of the Opposition.

(3) A person shall not be qualified to be appointed as a member of a Commission if he or she is a member of the House of Assembly or a public officer other than the holder of a judicial office.

(4) The Chairman or other member of a Commission shall vacate his or her office—

- (a) on the day following the submission of the report of the Commission under section 58;
- (b) if any circumstances arise that, if he or she were not a member, would cause him or her to be disqualified for appointment as such; 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) A Commission may regulate its own procedure and, with the consent of the Governor acting in his or her discretion, may confer powers and impose duties on any public officer or on any authority of the Government for the purpose of the discharge of its functions.

(6) A Commission may act notwithstanding any vacancy in its membership (including any vacancy not filled when appointments of members are first made) and its proceedings shall be valid notwithstanding that some person who was not entitled to do so took part in them; but any decision of a Commission shall require the concurrence of not less than two members of the Commission.

(7) In the exercise of its functions under this Constitution, a Commission shall not be subject to the direction or control of any other person or authority.

Review and alteration of electoral district boundaries

58.—(1) A Commission shall, as soon as practicable after its appointment, review the electoral district boundaries into which the Islands are divided and, taking into account the changes or proposed changes, if any, in the number of electoral districts, shall submit a report to the Governor and the House of Assembly containing its recommendations for any changes in the number and boundaries of the electoral districts.

(2) In determining its recommendations under this section, a Commission shall seek to ensure that electoral districts contain, so far as is reasonably practicable, approximately equal numbers of

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persons qualified to be registered as electors under section 49; but a Commission may depart from this principle to such extent as it considers expedient in order to take into account—

- (a) the density of population and, in particular, the need to ensure adequate representation of sparsely populated areas;
- (b) the means of communication;
- (c) geographical features.

(3) As soon as may be after a Commission has submitted a report under this section, the Governor shall cause a bill to be introduced into the House of Assembly for giving effect, whether with or without modifications, to the recommendations contained in the report; and such a bill—

- (a) may contain provisions for any matters which are incidental to or consequential upon its principal provisions; and
- (b) shall include a provision for the coming into force of the measure when enacted for the determination of the electoral districts to which it relates upon the next dissolution of the House of Assembly after enactment.

(4) Where any bill introduced under this section proposes to give effect to the recommendations of a Commission with modifications, there shall be laid before the House of Assembly at the same time a statement of the reasons for the modifications.