

SCHEDULE 2

The Constitution of the Cayman Islands

PART I

BILL OF RIGHTS, FREEDOMS AND RESPONSIBILITIES

Guarantee of Rights, Freedoms and Responsibilities

Whereas all peoples have the right of self-determination and by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development and may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit and international law;

1.—(1) This Bill of Rights, Freedoms and Responsibilities is a cornerstone of democracy in the Cayman Islands.

(2) This Part of the Constitution—

- (a) recognises the distinct history, culture, Christian values and socio-economic framework of the Cayman Islands and it affirms the rule of law and the democratic values of human dignity, equality and freedom;
- (b) confirms or creates certain responsibilities of the government and corresponding rights of every person against the government; and
- (c) does not affect, directly or indirectly, rights against anyone other than the government except as expressly stated.

(3) In this Part “government” shall include public officials (as defined in section 28) and the Legislature, but shall not include the courts (except in respect of sections 5, 7, 19 and 23 to 27 inclusive).

Life

2.—(1) Everyone’s right to life shall be protected by law.

(2) No person shall intentionally be deprived of his or her life.

(3) A person shall not be regarded as having been deprived of his or her life in contravention of this section if he or she dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is absolutely necessary—

- (a) for the defence of any person from violence;
- (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 if he or she dies as a result of a lawful act of war.

Torture and inhuman treatment

3. No person shall be subjected to torture or inhuman or degrading treatment or punishment.

Slavery or forced or compulsory labour

4.—(1) No person shall be held in slavery or servitude.

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- (2) No person shall be required to perform forced or compulsory labour.
- (3) For the purposes of this section, forced or compulsory 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 or her duties as such or, in the case of conscientious objectors, labour that they are required to perform in place of such service;
 - (c) labour required of any person while he or she is lawfully detained that is reasonably necessary in the interests of hygiene or for the maintenance of the place in which he or she 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.

Personal liberty

- 5.—(1) No one shall be deprived by government of liberty and security of the person.
- (2) The right to liberty does not extend to the following measures taken in relation to a person in accordance with a procedure prescribed by law—
 - (a) in execution of the sentence or order of a court, whether in the Cayman Islands or elsewhere, in respect of a criminal offence under any law of which he or she has been convicted or in consequence of his or her unfitness to plead to a criminal charge;
 - (b) in execution of an order of a court punishing him or her for contempt of that court or of another court;
 - (c) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed on him or her by law; but no person shall be deprived of his or her liberty merely on the ground of inability to fulfil a contractual obligation;
 - (d) for the purpose of bringing him or her before a court in execution of the order of a court;
 - (e) on reasonable suspicion that he or she has committed, is committing or is about to commit a criminal offence under any law;
 - (f) in the case of a minor, under the order of a court or with the consent of his or her parent or guardian, for the purpose of his or her education or welfare;
 - (g) for the purpose of preventing the spread of an infectious or contagious disease;
 - (h) 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 or her care or treatment or the protection of the community;
 - (i) for the purpose of preventing the unlawful entry of that person into the Cayman Islands, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from the Cayman Islands, or for the purpose of restricting that person while he or she is being conveyed through the Cayman Islands in the course of his or her extradition or removal as a convicted person from one country to another;
 - (j) in execution of the order of a court detaining a person charged with a criminal offence in respect of whom a special verdict has been returned that he or she was guilty of the act or omission charged but was insane when he or she did the act or made the omission.
- (3) Any person who is arrested or detained has the right to remain silent and shall be informed promptly, in a language that he or she understands, of the reason for his or her arrest or detention.

(4) Any person who is arrested or detained shall have the right, at any stage and at his or her own expense, to retain and instruct without delay a legal practitioner of his or her own choice, and to hold private communication with him or her, and in the case of a minor he or she shall also be afforded a reasonable opportunity of communication with his or her parents or guardian; but when a person arrested or detained is unable to retain a legal practitioner of his or her own choice or be represented by a legal practitioner at the public expense in accordance with section 7(2)(d), he or she may be represented, and hold private communication with, such person as the court may approve.

(5) Any person who is arrested or detained—

- (a) for the purpose of bringing him or her before a court in the execution of the order of a court; or
- (b) on reasonable suspicion of his or her having committed, or being about to commit, a criminal offence,

and who is not released, shall be brought promptly before a court; and if any person arrested or detained in such a case as is mentioned in subsection (2)(e) is not tried within a reasonable time he or she shall (without prejudice to any further proceedings that may be brought against him or her) be released either unconditionally or on reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he or she appears at a later date for trial or for proceedings preliminary to trial, and such conditions may include bail.

(6) Any person who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his or her detention shall be decided speedily by a court and his or her release ordered if the detention is not lawful, and he or she shall be entitled to compensation if unlawfully arrested or detained; but a judicial officer or an officer of a court or a police officer acting in pursuance of the order of a judicial officer shall not be personally liable to pay compensation under this subsection in respect of anything done by him or her in good faith in the discharge of the functions of his or her office, and any liability to pay any such compensation in respect of that thing shall be a liability of the Crown.

Treatment of prisoners

6.—(1) All persons deprived of their liberty (in this section referred to as “prisoners”) have the right to be treated with humanity and with respect for the inherent dignity of the human person.

(2) Save where the interests of defence, public safety, public order, public morality, public health or the administration of justice otherwise require, unconvicted prisoners shall be segregated from convicted prisoners; and every unconvicted prisoner shall be entitled to be treated in a manner appropriate as an unconvicted person.

(3) Juvenile prisoners shall be segregated from adult prisoners and every juvenile prisoner shall be treated in a manner appropriate to his or her age and legal status and, if he or she is an unconvicted prisoner and unless he or she is earlier released, shall have any criminal proceedings against him or her pursued with the greatest possible expedition.

Fair trial

7.—(1) Everyone has the right to a fair and public hearing in the determination of his or her legal rights and obligations by an independent and impartial court within a reasonable time.

(2) Everyone charged with a criminal offence has the following minimum rights—

- (a) to be presumed innocent until proved guilty according to law;
- (b) to be informed promptly, in a language which he or she understands and in detail, of the nature and cause of the accusation against him or her;
- (c) to have adequate time and the facilities for the preparation of his or her defence;

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- (d) to defend himself or herself in person or through legal assistance of his or her own choosing or, if he or she has not sufficient means to pay for legal assistance and the interests of justice so require, through a legal representative at public expense provided through an established public legal aid scheme as prescribed by law;
- (e) to examine or have examined witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;
- (f) to have the free assistance of an interpreter if he or she cannot understand or speak the language used in court;

and, except with his or her own consent, the trial shall not take place in his or her absence, unless he or she so behaves in the court as to render the continuance of the proceedings in his or her presence impracticable and the court has ordered him or her to be removed and the trial to proceed in his or her absence, or unless, having had reasonable notice of the hearing and of the nature of the offence charged, he or she 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 or her shall, if he or she 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 who shows that he or she 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 or she could have been convicted at the trial for that offence, save on the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(5) No person shall be tried for a criminal offence if he or she shows that he or she has been lawfully pardoned for that offence.

(6) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(7) Every person who has been convicted by a court of a criminal offence shall have the right to appeal to a superior court against his or her conviction or his or her sentence or both as may be prescribed by law; but—

- (a) nothing in any law shall be held to contravene this subsection—
 - (i) to the extent that it precludes an appeal by a person against his or her conviction of an offence if he or she pleaded guilty to that offence at his or her trial; or
 - (ii) to the extent that it makes reasonable provision with respect to the grounds on which any such appeal may be made or with respect to the practice and procedure to be observed in relation to the making, hearing and disposal of any such appeal; and
- (b) this subsection shall not apply in relation to the conviction of a person by a superior court, or in relation to his or her sentence on such conviction, if he or she was convicted by that court on an appeal against his or her acquittal by a lower court.

(8) When a person has, by a final decision of a court, been convicted of a criminal offence and, subsequently, on the ground that a newly-disclosed fact shows that there has been a miscarriage of justice his or her conviction has been quashed or he or she has been pardoned, he or she shall be compensated out of public funds for any punishment that he or she has suffered as a result of the conviction unless it is proved that the non-disclosure in time of that fact was wholly or partly his or her fault.

(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 (1) or (9) shall prevent the court from excluding from the proceedings persons other than the parties to them and their legal representatives to such extent as the court—

- (a) may be empowered by law 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 minors or the protection of commercial confidence or of the private lives of persons concerned in the proceedings; or
 - (b) may be empowered or required by law to do in the interests of defence, public safety, or public order.
- (11) Nothing in any law or done under its authority shall be held to contravene—
- (a) subsection (2)(a), to the extent that the law in question imposes on any person charged with a criminal offence the burden of proving particular facts;
 - (b) subsection (2)(e), 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 (4), 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 or her shall in sentencing him or her to any punishment take into account any punishment imposed on him or her under that disciplinary law.
- (12) In this section, “legal representative” means a person entitled to practise in the Cayman Islands as an attorney-at-law.

No punishment without law

8.—(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed; nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

(2) This section shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Private and family life

9.—(1) Government shall respect every person’s private and family life, his or her home and his or her correspondence.

(2) Except with his or her own consent or as permitted under subsection (3), no person shall be subjected to the search of his or her person or his or her property or the entry of persons on his or her premises.

(3) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—

- (a) in the interests of defence, public safety, public order, public morality, public health, town and country planning, or the development or utilisation of any other property in such a manner as to promote the public benefit;
- (b) for the purpose of protecting the rights and freedoms of other persons;
- (c) to enable an agent of the Government or a public body established by law to enter on the premises of any person in order to inspect those premises or anything on them 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 public body;

- (d) 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 on any premises by such order; or
- (e) to regulate the right to enter or remain in the Cayman Islands.

Conscience and religion

10.—(1) No person shall be hindered by government in the enjoyment of his or her freedom of conscience.

(2) Freedom of conscience includes freedom of thought and of religion or religious denomination; freedom to change his or her religion, religious denomination or belief; and freedom, either alone or in community with others, both in public and in private, to manifest and propagate his or her religion or belief in worship, teaching, practice, observance and day of worship.

(3) Except with his or her consent or, in the case of a minor, the consent of his or her parent or 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 that relates to a religion other than his or her own.

(4) 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 education; and this right includes the right of any school or community educational institution to impose requirements on employment, admission or curriculum-design necessary to maintain the religious ethos of that school or institution, subject to applicable employment laws in force.

(5) No person shall be compelled to take any oath which is contrary to his or her religion or belief or to take any oath in a manner which is contrary to his or her religion or belief.

(6) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—

- (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 intervention of adherents of any other religion or belief.

(7) If a court's determination of any question arising under this Part might affect the exercise by a religious organisation (itself or its members collectively) of the right to freedom of conscience as protected by this section, it must have particular regard to the importance of that right.

Expression

11.—(1) No person shall be hindered by government in the enjoyment of his or her freedom of expression, which includes freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his or her correspondence or other means of communication.

(2) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—

- (a) in the interests of defence, public safety, public order, public morality or public health;
- (b) 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, or regulating telecommunications, posts, broadcasting or other means of communication, or public shows or entertainments; or

- (c) for the imposition of restrictions on public officers in the interests of the proper performance of their functions.

Assembly and association

12.—(1) No person shall be hindered by government in the enjoyment of his or her freedom of peaceful assembly and association, that is to say, his or her 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 or her interests.

(2) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—

- (a) in the interests of defence, public safety, public order, public morality or public health;
- (b) for the purpose of protecting the rights and freedoms of other persons; or
- (c) for the imposition of restrictions on public officers in the interests of the proper performance of their functions.

Movement

13.—(1) No person shall be hindered by government in the enjoyment of his or her freedom of movement, that is to say, the right to move freely throughout the Cayman Islands, the right to reside in any part of the Cayman Islands, the right to enter the Cayman Islands, the right to leave the Cayman Islands and immunity from expulsion from the Cayman Islands.

(2) Nothing in any law or done under its authority shall be held to contravene 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 Cayman Islands or on the right to leave the Cayman Islands of persons generally or any class of persons that are reasonably justifiable in a democratic society—
 - (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;
- (b) for the removal of a person from the Cayman 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 Cayman Islands of which he or she has been convicted;
- (c) for the imposition of restrictions on the movement or residence within the Cayman Islands or the right to leave the Cayman 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 any person who is not a Caymanian or a permanent resident; but—
 - (i) no restriction may be imposed by virtue only of this paragraph on the right of any such person, so long as he or she is lawfully present in the Cayman Islands, to move freely throughout the Cayman Islands and to reside anywhere in the Cayman Islands;
 - (ii) no restriction may be imposed by virtue only of this paragraph on the right of any such person to leave the Cayman Islands; and
 - (iii) no such person shall be liable, by virtue only of this paragraph, to be expelled from the Cayman Islands unless the requirements specified in subsection (3) are satisfied;

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- (e) for the imposition of restrictions on the acquisition or use by any person of land or other property in the Cayman Islands;
 - (f) for the imposition of restrictions, by order of a court, on the movement or residence within the Cayman Islands of any person or on any person's right to leave the Cayman Islands either in consequence of his or her having been found guilty of a criminal offence under the law of the Cayman Islands or for the purpose of ensuring a fair trial or that he or she appears before a court at a later date for trial or for proceedings relating to his or her extradition or lawful removal from the Cayman Islands; or
 - (g) for the imposition of restrictions on the right of any person to leave the Cayman Islands that are reasonably justifiable in a democratic society in order to secure the fulfilment of any obligation imposed on that person by law.
- (3) The requirements to be satisfied for the purposes of subsection (2)(d)(iii) are as follows—
- (a) the decision to expel that person is taken by an authority, in a manner and on grounds prescribed by law;
 - (b) that person has the right to submit reasons against his or her expulsion to a competent authority prescribed by law;
 - (c) that person has the right, save where a court has recommended his or her deportation, to have his or her case reviewed by a competent authority prescribed by law; and
 - (d) that person has the right to be represented for the purposes of paragraphs (b) and (c) before the competent authority or some other person or authority designated by the competent authority;

but paragraphs (b), (c) and (d) shall not apply where the interests of defence, public safety or public order so require.

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

(5) In this section "permanent resident" has the meaning ascribed to it in the laws of the Cayman Islands for the time being in force.

Marriage

14.—(1) Government shall respect the right of every unmarried man and woman of marriageable age (as determined by law) freely to marry a person of the opposite sex and found a family.

(2) No person shall be compelled to marry without his or her free and full consent.

(3) Nothing in any law or done under its authority shall be held to contravene subsection (1) to the extent that the law makes provision that is reasonably justifiable in a democratic society—

- (a) in the interests of public order, public morality or public health;
- (b) for regulating, in the public interest, the procedures and modalities of marriage; or
- (c) for protecting the rights and freedoms of others.

(4) Spouses shall be entitled to equal rights and shall be subject to equal responsibilities as between themselves and as regards their children both during and after marriage, but this equality of rights and responsibilities shall be subject to such arrangements or measures as may be agreed, or as may be ordered by a court, in the interests of their children.

Property

15.—(1) Government shall not interfere in the peaceful enjoyment of any person's property and shall not compulsorily take possession of any person's property, or compulsorily acquire an interest in or right over any person's property of any description, except in accordance with law and where—

- (a) the interference, 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 interference, 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 Grand Court, whether direct or on appeal from any other authority, for the determination of his or her interest or right, the legality of the interference with, taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he or she is entitled, and for the purpose of obtaining prompt payment of that compensation; and
 - (iii) giving to any party to proceedings in the Grand 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 in any law or done under its authority shall be held to contravene subsection (1)—
- (a) to the extent that the law in question makes provision for the interference with, 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 taking of a sample for the purposes of any law;
 - (v) where the property consists of an animal, on 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 on it 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 of law or, as the case may be, the thing done under its authority 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 of possession or acquisition of any of the following property (including an interest in or right over property), that is to say—
 - (i) enemy property;

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- (ii) property of a person who has died, a person of unsound mind or a minor, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest in it;
- (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 in any law or done under its authority shall be held to contravene subsection (1) to the extent that the law in question makes provision for the interference with or 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.

Non-discrimination

16.—(1) Subject to subsections (3), (4), (5) and (6), government shall not treat any person in a discriminatory manner in respect of the rights under this Part of the Constitution.

(2) In this section, “discriminatory” means affording different and unjustifiable treatment to different persons on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, age, mental or physical disability, property, birth or other status.

(3) No law or decision of any public official shall contravene this section if it has an objective and reasonable justification and is reasonably proportionate to its aim in the interests of defence, public safety, public order, public morality or public health.

(4) Subsection (1) shall not apply to any law so far as that law makes provision—

- (a) for the appropriation of revenues or other funds of the Cayman Islands or for the imposition of taxation (including the levying of fees for the grants 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 Cayman Islands of persons who are not Caymanian;
- (c) for the application, in the case of persons of any such description of grounds as is mentioned in subsection (2) (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 of grounds as is mentioned in subsection (2) 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 objectively and reasonably justifiable in a democratic society and there is a reasonable proportionality between the means employed and the purpose sought to be realised.

(5) Nothing in any law shall be held to contravene subsection (1) to the extent that it requires a person to be a Caymanian, or to possess any other qualification (not being a qualification specifically relating to any such description of grounds as is mentioned in subsection (2)) 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 (1) 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 (3), (4) or (5).

(7) Subsection (1) is without prejudice to any restriction on the rights and freedoms guaranteed by section 9, 10, 11, 12, 13 or 14 if that restriction would, in accordance with that section, be a restriction authorised for the purposes of that section on the ground that—

- (a) the provision by or under which it is imposed is reasonably required in the interests of a matter, or for the purpose, specified in that section; and
- (b) the provision and the restriction imposed under it are reasonably justifiable in a democratic society.

Protection of children

17.—(1) In addition to the provisions of this Part which afford protection to children, the Legislature shall enact laws to provide every child and young person under the age of eighteen (referred to in this section as a “child”) with such facilities as would aid their growth and development, and to ensure that every child has the right—

- (a) to a name from birth;
- (b) to family care or parental care, or to appropriate alternative care when removed from the family environment;
- (c) to basic nutrition, shelter, basic health care services and social services;
- (d) to be protected from maltreatment, neglect, abuse or degradation;
- (e) to be protected from exploitative labour practices;
- (f) not to be required or permitted to perform work or provide services that—
 - (i) are inappropriate for a child of that age; or
 - (ii) place at risk the child’s well-being, education, physical or mental health or spiritual, moral or social development;
- (g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 5 and 22, the child may be detained only for the shortest appropriate period of time, and shall be treated in a manner and kept in conditions that take account of his or her age;
- (h) to have a legal practitioner assigned to the child by the Government, and at public expense, in civil proceedings affecting the child, if substantial injustice would result; and
- (i) not to be used directly in armed conflict, and to be protected in times of armed conflict.

(2) In implementing subsection (1), the Legislature shall proceed on the basis that a child’s best interests are of paramount importance in every matter concerning the child.

Protection of the environment

18.—(1) Government shall, in all its decisions, have due regard to the need to foster and protect an environment that is not harmful to the health or well-being of present and future generations, while promoting justifiable economic and social development.

(2) To this end government should adopt reasonable legislative and other measures to protect the heritage and wildlife and the land and sea biodiversity of the Cayman Islands that—

- (a) limit pollution and ecological degradation;
- (b) promote conservation and biodiversity; and

- (c) secure ecologically sustainable development and use of natural resources.

Lawful administrative action

19.—(1) All decisions and acts of public officials must be lawful, rational, proportionate and procedurally fair.

(2) Every person whose interests have been adversely affected by such a decision or act has the right to request and be given written reasons for that decision or act.

Education

20.—(1) This section is without prejudice to section 10.

(2) Government shall seek reasonably to achieve the progressive realisation, within available resources, of providing every child with primary and secondary education which shall, subject to subsection (3), be free.

(3) Every person who is the parent or legal guardian of a child shall be entitled to have his or her child (of whatever age) educated, at his or her own expense unless a law otherwise provides, in a private school (that is to say, a school other than one established by a public authority) and, in such a school, to ensure the religious and moral education of his or her child in accordance with his or her own convictions.

(4) Nothing contained in any law or done under its authority shall be held to contravene subsection (3) to the extent that it is reasonably justifiable in a democratic society and to the extent that the law makes provision requiring private schools, as a condition of their being allowed to operate and on terms no more onerous than are applicable to schools established by a public authority, to satisfy—

- (a) such minimum educational standards (including standards relating to the qualifications of teaching staff and other staff) as may be prescribed by or under any law; and
- (b) such minimum standards imposed in the interests of public order, public morality or public health as may be so prescribed.

Public emergencies

21.—(1) A period of public emergency may be declared by the Governor, by proclamation published in the manner provided in subsection (2), when—

- (a) the well-being or security of the Cayman Islands is threatened by war, invasion, general insurrection, public disorder, natural disaster or other public emergency; and
- (b) the declaration is considered necessary by the Governor to maintain or restore peace and order.

(2) A proclamation shall be taken to be published if it is published in a Government Notice or in a newspaper published in the Cayman Islands, or if it is posted in prominent public places or announced on the radio.

(3) Without prejudice to the power of the Legislature to make laws under this Constitution, during a period of public emergency the Governor may make such regulations for the Cayman Islands as appear to him or her to be necessary or expedient for securing the public safety, the defence of the Cayman Islands or the maintenance of public order, or for maintaining supplies and services essential to the life of the community.

(4) Regulations made under subsection (3) shall—

- (a) have effect only prospectively;

- (b) have effect, subject to this section, notwithstanding the provisions of any other law in force in the Cayman Islands or any rule of law having effect in the Islands;
- (c) unless previously revoked, expire at the end of the period of public emergency during which they were made unless provision for their continuance in force (with or without modification) is made by the Legislature.

(5) Nothing in any law or done under its authority shall be held to be inconsistent with or in contravention of section 5, section 7 or any provision of sections 9 to 16 (inclusive) to the extent that the law in question authorises the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in the Cayman Islands during that period.

(6) Before exercising any function under subsection (1) or (3) or under any law enacted by the Legislature to like effect, the Governor shall consult the Cabinet or, if that is not practicable in the circumstances, the Premier; but if in the judgement of the Governor it is impracticable for him or her to consult either the Cabinet or the Premier, the function shall be exercised by the Governor acting in his or her discretion.

(7) Where the Governor has consulted the Cabinet or the Premier under subsection (6), the Governor shall not be obliged to act in accordance with any advice given to him or her.

(8) Where any proclamation of emergency has been made by the Governor under subsection (1), a copy of the proclamation shall as soon as practicable be laid before and debated in the Legislative Assembly; and if the Assembly is not due to meet within five days of the making of that proclamation it shall meet within that period or as soon as practicable thereafter.

(9) A proclamation of emergency shall, unless it is sooner revoked by the Governor, cease to be in force at the expiration of a period of fourteen days beginning on the date on which it was made or such longer period as may be provided under subsection (10), but without prejudice to the making of another proclamation of emergency at or before the end of that period.

(10) If at any time while a proclamation of emergency is in force (including any time while it is in force by virtue of this subsection) a resolution is passed by the Legislative Assembly approving its continuation in force for a further period not exceeding three months, beginning on the date on which it would otherwise expire, the proclamation shall, if not sooner revoked, continue in force for that further period.

(11) Nothing in this section or in any emergency regulations shall be construed to preclude the Legislative Assembly from—

- (a) meeting whenever practicable in accordance with its Standing Orders; and
- (b) directing that reports relating to the emergency, including the implementation of any emergency regulations, be prepared and presented in such manner and within such periods to the Legislative Assembly as the Assembly may determine.

Protection of persons detained under emergency laws

22.—(1) When a person is detained by virtue of any law in relation to a period of public emergency the following provisions shall apply—

- (a) notification shall, not more than ten days after the commencement of his or her detention, be published in a public place (and thereafter as soon as possible in a Government Notice) stating that he or she has been detained and giving particulars of the provision of law by virtue of which his or her detention is authorised;
- (b) he or she shall (if not sooner released), as soon as reasonably practicable and in any case not more than four days after the commencement of his or her detention, be informed, in a language that he or she understands, of the grounds on which he or she is detained and furnished with a written statement;

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- (c) his or her case shall, not more than 30 days after the commencement of his or her detention and thereafter during the detention at intervals of not more than three months, be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice;
- (d) he or she shall be afforded reasonable opportunity to consult a legal practitioner of his or her own choice and to hold private communication with him or her; and
- (e) he or she shall, at the hearing of his or her case by the tribunal appointed for its review, be permitted to appear in person or by a legal practitioner of his or her own choice.

(2) For the purposes of subsection (1)(d) and (e), if the detained person is unable to retain a legal practitioner of his or her own choice, the tribunal may approve such person as it deems fit to make representations to it; but nothing in subsection (1)(d) or (e) shall be construed as entitling a detained person to legal representation at public expense.

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

Declaration of incompatibility

23.—(1) If in any legal proceedings primary legislation is found to be incompatible with this Part, the court must make a declaration recording that the legislation is incompatible with the relevant section or sections of the Bill of Rights and the nature of that incompatibility.

(2) A declaration of incompatibility made under subsection (1) shall not constitute repugnancy to this Order and shall not affect the continuation in force and operation of the legislation or section or sections in question.

(3) In the event of a declaration of incompatibility made under subsection (1), the Legislature shall decide how to remedy the incompatibility.

Duty of public officials

24. It is unlawful for a public official to make a decision or to act in a way that is incompatible with the Bill of Rights unless the public official is required or authorised to do so by primary legislation, in which case the legislation shall be declared incompatible with the Bill of Rights and the nature of that incompatibility shall be specified.

Interpretive obligation

25. In any case where the compatibility of primary or subordinate legislation with the Bill of Rights is unclear or ambiguous, such legislation must, so far as it is possible to do so, be read and given effect in a way which is compatible with the rights set out in this Part.

Enforcement of rights and freedoms

26.—(1) Any person may apply to the Grand Court to claim that government has breached or threatened his or her rights and freedoms under the Bill of Rights and the Grand Court shall determine such an application fairly and within a reasonable time.

(2) If, in any proceedings in any court established in the Cayman Islands other than the Grand Court or the Court of Appeal, any issue arises as to the interpretation of the Bill of Rights, the court in which the question has arisen shall refer the question to the Grand Court if it is in its opinion necessary for the issue to be determined.

(3) An appeal shall lie as of right to the Court of Appeal from any final determination of any issue by the Grand Court under the Bill of Rights, and an appeal shall lie as of right from the Court of Appeal to Her Majesty in Council; but no appeal shall lie from a determination by the Grand Court under this section dismissing an application on the ground that it is frivolous or vexatious.

(4) Proceedings under subsection (1) shall be commenced within one year of the decision or act that is claimed to breach the Bill of Rights, or from the date on which such decision or act could reasonably have been known to the complainant; but the Grand Court shall extend time on application by the complainant where such an extension would in the opinion of the Court be in the interests of justice.

(5) Nothing in this section adversely affects the ability of courts to manage their own procedure to ensure that cases are dealt with justly, fairly and expeditiously, including their ability to dismiss applications that are vexatious or unreasonable.

Remedies

27.—(1) In relation to any decision or act of a public official which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.

(2) No award of damages is to be made unless, taking account of all the circumstances of the case, including—

- (a) any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court); and
- (b) the consequences of any decision (of that or any other court) in respect of that act,

the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.

Interpretation of the Bill of Rights

28. In this Part—

“act” includes a failure to act but excludes a failure to introduce before the Legislative Assembly, or for the Legislature to enact, primary legislation;

“Caymanian” has the meaning ascribed to it in the laws of the Cayman Islands for the time being in force;

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

“court” includes tribunal;

“disciplined force” means—

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

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

“minor” means a person who has not attained the age of eighteen years or such other age as may be prescribed for this purpose by any law;

“primary legislation” means a Law enacted by the Legislature;

“public official”—

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- (c) includes a public or governmental body, including any statutory body or company or association in which the Cayman Islands has an interest and which performs a public function or duty;
- (d) includes any organisation or person carrying out a public function or duty, including the Governor, except where the nature of their act is private;
- (e) unless otherwise stated, excludes private schools (whether or not in receipt of government funding, subsidy or other assistance), churches, the Legislature and the courts.