

SCHEDULE 2

The Constitution of the Turks and Caicos Islands

PART IV

THE LEGISLATURE

Composition

Constitution of Legislature

42. 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

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

- (a) a Speaker, elected as provided in section 44;
- (b) fifteen elected members;
- (c) four appointed members; and
- (d) the Attorney General.

(2) The Attorney General shall not have the right to vote in the House of Assembly.

The Speaker and Deputy Speaker

44.—(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 of the House 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 elected or appointed member of the House of Assembly; or
(ii) in the case of the Deputy Speaker, if he or she ceases to be a member of the House;

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- (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 30 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 the House of Assembly, of a motion expressing no confidence in him or her as Speaker or Deputy Speaker, as the case may be.

Elected members

45.—(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) For the purposes of elections to the House of Assembly, the Islands—
 - (a) shall be a single electoral district and shall return five members to the House of Assembly; and
 - (b) shall also be divided into ten electoral districts each of which shall return one member to the House.

Qualifications for elected membership

46. Subject to section 49, 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, on the date of his or her nomination for election he or she—

- (a) has attained the age of 21 years; and
- (b) 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 that date; and
- (c) is a Turks and Caicos Islander.

Appointed members

47.—(1) Appointed members of the House of Assembly shall be appointed from among persons qualified under section 48, and so far as possible from among persons representing shades of opinion which would not otherwise be represented in the House, as follows—

- (a) two shall be appointed by the Governor, acting in his or her discretion; and
- (b) two shall be appointed by the Governor, acting after consultation with the Premier and 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

48. Subject to section 49, 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 21 years and is qualified to be registered as an elector in the Islands.

Disqualifications for elected or appointed membership

49.—(1) No person shall be qualified to be an elected member of the House of Assembly who, on the date of his or her nomination for election—

- (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 or in the office of judge of the Supreme Court or the Court of Appeal or magistrate;
- (c) has been adjudged or otherwise declared bankrupt under any law in force in any country 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) is serving or has at any time within the period of fifteen 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 a court in any country 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 has not, by that date, disclosed in a notice to the Integrity Commission the nature of such contract and his or her interest, or the interest of such firm or company, in it;
- (g) has been convicted of an offence of corruption or an offence relating to political party regulation or the misuse of public money under any law in force in the Islands;
- (h) is disqualified for membership of the House of Assembly by any law relating to offences connected with elections;
- (i) has not made a declaration as required by section 50; or
- (j) 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;
- (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.

(3) At the close of nominations of candidates for election to the House of Assembly the Integrity Commission shall publish any notice delivered to it under subsection (1)(f) in such manner as it considers effective for the purpose of informing the electorate before the date of election.

(4) No person shall be qualified to be an appointed member of the House of Assembly who, on the date of his or her proposed appointment, falls within any of paragraphs (a) to (h) of subsection (1).

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Declaration by candidates for election to House of Assembly

50.—(1) Each candidate for election to the House of Assembly shall, on the date of his or her nomination for election, make a written declaration to the Supervisor of Elections that he or she is qualified for election under section 46 and that no disqualification mentioned in section 49 applies to him or her.

(2) The Supervisor of Elections shall publish any declaration made to him or her under subsection (1) by the close of the next following working day.

(3) Within five days of the publication of any such declaration, a challenge to the veracity of that declaration may be brought by any registered elector or by the Attorney General before the Supreme Court; the Supreme Court shall hear and determine the matter as expeditiously as possible, and its decision shall be final and not subject to any appeal.

Tenure of seats of members of House of Assembly

51.—(1) Every elected or appointed 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 election or appointment.

(2) An elected or appointed 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 the Speaker declares his or her seat vacant in the circumstances described in subsection (3); or
- (e) subject to section 52, 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 election by virtue of any provision of section 49(1) other than paragraph (i).

(3) Subject to section 52, if the Integrity Commission determines that an elected or appointed member of the House of Assembly has acquired a prohibited interest in a contract with the Government, the Speaker shall declare the seat of that member vacant.

(4) The Integrity Commission shall make and publish rules defining the circumstances in which the acquisition by an elected or appointed member of the House of Assembly of an interest in a contract with the Government is prohibited, and each such member of the House shall disclose to the Integrity Commission every interest he or she acquires in any such contract within seven days of acquiring it.

(5) 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.

Delay in vacation of seat to allow for an appeal

52.—(1) A member of the House of Assembly whose seat has been declared vacant by the Speaker under section 51(3) may appeal the legality of the declaration to the Supreme Court, whose decision shall be final and not subject to any further appeal, and pending the decision of the Supreme Court the member shall not vacate his or her seat but shall cease to perform his or her functions as a member.

(2) If the Supreme Court upholds the legality of the declaration the member shall forthwith vacate his or her seat, and if the Supreme Court does not uphold the legality of the declaration the member shall not vacate his or her seat and may resume the performance of his or her functions as a member.

(3) If circumstances such as are referred to in section 51(2)(e) arise because a member of the House of Assembly—

- (a) is declared bankrupt;
- (b) is adjudged to be of unsound mind;
- (c) is under sentence of imprisonment; or
- (d) is convicted of an offence relating to party political regulation, an offence relating to misuse of public money, 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, but, subject to subsection (5), he or she shall not vacate his or her seat in the House until the expiration of 30 days thereafter.

(4) At the request of the member the Governor, acting in his or her discretion, may from time to time extend the period of 30 days referred to in subsection (3) for further periods of 30 days to enable the member to pursue an appeal against the decision, but extensions of time exceeding in the aggregate 330 days shall not be given without the approval of the House of Assembly signified by resolution.

(5) If, on the determination of any appeal, such circumstances as are mentioned in subsection (3) 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.

(6) If at any time before the member vacates his or her seat such circumstances as are mentioned in subsection (3) cease to exist, his or her seat shall not become vacant on the expiration of the period referred to in that subsection and he or she may resume the performance of his or her functions as a member.

Determination of questions as to membership of House of Assembly

53.—(1) Without prejudice to section 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 52(3) to cease to perform his or her functions as such member,

and the decision of the Supreme Court shall be final and not subject to any appeal.

(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 subsection (1)(b) may also be made by any member of the House of Assembly.

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

Penalty for unauthorised person sitting or voting

54.—(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 1,000 United States 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.

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Qualifications of electors and entitlement to vote

55.—(1) Subject to subsection (2), a person shall be qualified to be registered as an elector for the purposes 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, or he or she is a member of Her Majesty’s Forces, a person working abroad on Government business or a student resident abroad in such circumstances as may be prescribed by Ordinance; and
 - (iii) he or she is a Turks and Caicos Islander.

(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 serving a sentence of imprisonment (by whatever name called) for a term of at least twelve months imposed on him or her by a court in any country 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 49(2) shall apply for the purposes of subsection (2)(b) of this section as it applies for the purposes of section 49(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 doing so 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 electoral district; or
- (b) he or she has voted in another electoral district.

Leader of the Opposition

56.—(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 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—

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- (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) if the holder of that office is appointed as a Minister.