

SCHEDULE TO THE ORDER

THE CONSTITUTION OF THE COMMONWEALTH OF THE BAHAMAS

CHAPTER VII

THE JUDICATURE

PART I

The Supreme Court

Establishment of Supreme Court

93.—(1) There shall be a Supreme Court for The Bahamas which shall have such jurisdiction and powers as may be conferred upon it by this Constitution or any other law.

(2) The Justices of the Supreme Court shall be the Chief Justice and such number of other Justices as may be prescribed by Parliament.

(3) No office of Justice of the Supreme Court shall be abolished while there is a substantive holder thereof.

(4) The Supreme Court shall be a Superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court.

Appointment of Justices of Supreme Court

94.—(1) The Chief Justice shall be appointed by the Governor-General by instrument under the Public Seal on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

(2) The other Justices of the Supreme Court shall be appointed by the Governor-General by instrument under the Public Seal acting on the advice of the Judicial and Legal Service Commission.

(3) The qualifications for appointment as a Justice of the Supreme Court shall be such as may be prescribed by any law for the time being in force:

Provided that a person who has been appointed as a Justice of the Supreme Court may continue in office notwithstanding any subsequent variations in the qualifications so prescribed.

Acting Justices

95.—(1) If the Office of Chief Justice is vacant or if the Chief Justice is for any reason unable to perform the functions of his office, then, until a person has been appointed to that office and assumed its functions, or, as the case may be, until the Chief Justice has resumed those functions, they shall be performed by such other person, qualified under paragraph (3) of Article 94 of this Constitution for appointment as a Justice, as the Governor-General, acting in accordance with the advice of the Prime Minister may appoint for that purpose by instrument under the Public Seal.

(2) If the office of a Justice of the Supreme Court is vacant, or if any such Justice is appointed to act as Chief Justice or as a Justice of Appeal, or is for any reason unable to perform the functions of his office, the Governor-General, acting on the advice of the Judicial and Legal Service Commission, may by instrument under the Public Seal appoint a person qualified under paragraph (3) of Article 94 of this Constitution for appointment as a Justice to act as a Justice of the Supreme Court, and any person so appointed shall, subject to the provisions of paragraph (5) of Article 96 of this Constitution, continue to act for the period of his appointment or, if no such period is specified, until

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format. The electronic version of this UK Statutory Instrument has been contributed by Westlaw and is taken from the printed publication. **Read more***

his appointment is revoked by the Governor-General acting on the advice of the Judicial and Legal Service Commission.

(3) Any person appointed to act as a Justice under the provisions of this Article may, notwithstanding that the period of his appointment has expired or his appointment has been revoked, sit as a Justice for the purpose of delivering judgment or doing any other thing in relation to proceedings which were commenced before him while he was so acting.

Tenure of office of Justices of Supreme Court

96.—(1) Subject to the provisions of paragraphs (4) to (7) (inclusive) of this Article, a Justice of the Supreme Court shall hold office until he attains the age of sixty-five years:

Provided that the Governor-General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, may permit a Justice who attains the age of sixty-five years to continue in office until he has attained such later age, not exceeding sixty-seven years, as may (before the Justice has attained the age of sixty-five years) have been agreed between them.

(2) Notwithstanding that he has attained the age at which he is required by or under the provisions of this Article to vacate his office, a person holding the office of Justice of the Supreme Court may, with the permission of the Governor-General, acting in accordance with the advice of the Prime Minister, continue in office for such period after attaining that age as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

(3) Nothing done by a Justice of the Supreme Court shall be invalid by reason only that he has attained the age at which he is required by this Article to vacate his office.

(4) A Justice of the Supreme Court may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of paragraph (5) of this Article.

(5) A Justice of the Supreme Court shall be removed from office by the Governor-General by instrument under the Public Seal if the question of the removal of that Justice from office has, at the request of the Governor-General, made in pursuance of paragraph (6) of this Article, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council and the Judicial Committee has advised Her Majesty that the Justice ought to be removed from office for inability as aforesaid or for misbehaviour.

(6) If the Prime Minister (in the case of the Chief Justice) or the Chief Justice after consultation with the Prime Minister (in the case of any other Justice) represents to the Governor-General that the question of removing a Justice of the Supreme Court from office for inability as aforesaid or for misbehaviour ought to be investigated, then—

- (a) the Governor-General shall appoint a tribunal, which shall consist of a Chairman and not less than two other members, selected by the Governor-General acting in accordance with the advice of the Prime Minister (in the case of the Chief Justice) or of the Chief Justice (in the case of any other Justice) from among persons who hold or have held high judicial office;
- (b) that tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to the Governor-General whether he should request that the question of the removal of that Justice should be referred by Her Majesty to the Judicial Committee; and
- (c) if the tribunal so recommends, the Governor-General shall request that the question should be referred accordingly.

(7) The provisions of the Commissions of Inquiry Act(1) as in force immediately before the appointed day shall, subject to the provisions of this Article, apply as nearly as may be in relation to tribunals appointed under paragraph (6) of this Article or, as the context may require, to the members thereof as they apply in relation to the Commissions or Commissioners appointed under that Act, and for that purpose shall have effect as if they formed part of this Constitution.

(8) If the question of removing a Justice of the Supreme Court from office has been referred to a tribunal appointed under paragraph (6) of this Article, the Governor-General, acting in accordance with the advice of the Prime Minister (in the case of the Chief Justice) or of the Chief Justice after the Chief Justice has consulted with the Prime Minister (in the case of any other Justice), may suspend the Justice from performing the functions of his office.

(9) Any such suspension may at any time be revoked by the Governor General, acting in accordance with the advice of the Prime Minister or the Chief Justice (as the case may be), and shall in any case cease to have effect—

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

(10) The provisions of this Article shall be without prejudice to the provisions of paragraph (2) of Article 95 of this Constitution.

Oaths to be taken by Justices of Supreme Court

97. A Justice of the Supreme Court shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and a judicial oath in such form as is prescribed by any law in force in The Bahamas.

PART 2

Court of Appeal

Establishment of Court of Appeal

98.—(1) There shall be a Court of Appeal for The Bahamas which shall have such jurisdiction and powers as may be conferred upon it by this Constitution or any other law.

(2) The Justices of Appeal of the Court of Appeal shall be—

- (a) a President;
- (b) the Chief Justice by virtue of his office as head of the Judiciary but who, however, shall not sit in the Court of Appeal, unless he has been invited so to sit by the President of the Court; and
- (c) such number of other Justices of Appeal as may be prescribed by Parliament.

(3) No office of Justice of Appeal shall be abolished while there is a substantive holder thereof.

(4) The Court of Appeal shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court.

(1) Statute Law of the Bahama Islands, Revised Edition 1965. Cap. 180.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format. The electronic version of this UK Statutory Instrument has been contributed by Westlaw and is taken from the printed publication. **Read more***

Justices of the Court of Appeal

99.—(1) The President of the Court of Appeal and other Justices of Appeal shall be appointed by the Governor-General by instrument under the Public Seal on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

(2) The qualifications for appointment as a Justice of Appeal shall be such as may be prescribed by any law for the time being in force;

Provided that—

- (i) a person shall not be qualified for appointment as a Justice of Appeal unless he holds or has held high judicial office; and
- (ii) a person who has been appointed as a Justice of Appeal may continue in office notwithstanding any subsequent variations in the qualifications so prescribed.

Other arrangements for appeals

100.—(1) Notwithstanding anything contained in this Part of this Chapter, Parliament may make provisions—

- (a) for implementing arrangements made between the Government of The Bahamas and the Government or Governments of any other part or parts of the Commonwealth relating to the establishment of a court of appeal to be shared by The Bahamas with that part or those parts of the Commonwealth, and for the hearing and determination by such a court of appeal of appeals from decisions of any court in The Bahamas; or
- (b) for the hearing and determination of appeals from decisions of any court in The Bahamas by a Court established for any other part of the Commonwealth.

(2) A law enacted in pursuance of paragraph (1) of this Article may provide that the jurisdiction conferred on any such court as is referred to in that paragraphs shall be to the exclusion, in whole or in part, of the jurisdiction of the Court of Appeal established by this Part of this Chapter; and during any period when jurisdiction is so conferred to the exclusion of the whole jurisdiction of the said Court of Appeal, Parliament may suspend the provisions of this Part establishing that Court.

(3) In paragraph (1) of this Article the expression “any court in The Bahamas” includes the Court of Appeal established by this Part of this Chapter.

Acting Justices of Court of Appeal

101.—(1) If the office of President of the Court of Appeal is vacant or if the President of the Court of Appeal is for any reason unable to perform the functions of his office, then, until a person has been appointed to that office and assumed its functions or, as the case may be, until the President of the Court of Appeal has resumed those functions, they shall be performed by such other person, qualified under paragraph (2) of Article 99 of this Constitution for appointment as a Justice of Appeal, as the Governor-General, acting in accordance with the advice of the Prime Minister, may appoint for that purpose by instrument under the Public Seal.

(2) If the office of a Justice of Appeal (other than the President) is vacant, or if any such Justice is appointed to act as President of the Court of Appeal, or is for any reason unable to perform the functions of his office, the Governor-General, acting on the advice of the Judicial and Legal Service Commission, may by instrument under the Public Seal appoint a person qualified under paragraph (2) of Article 99 of this Constitution for appointment as a Justice of Appeal to act as a Justice of Appeal, and any person so appointed shall, subject to the provisions of paragraph (5) of Article 102 of this Constitution, continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the Governor-General acting on the advice of the Judicial and Legal Service Commission.

(3) Any person appointed to act as a Justice of Appeal under the provisions of this Article may, notwithstanding that the period of his appointment has expired or his appointment has been revoked, sit as a Justice for the purpose of delivering judgment or doing any other thing in relation to proceedings which were commenced before him while he was so acting.

Tenure of office of Justices of Appeal

102.—(1) Subject to the provisions of paragraph (4) to (7) (inclusive) of this Article, a Justice of Appeal shall hold office until he attains the age of sixty-eight years:

Provided that the Governor-General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, may permit a Justice of Appeal who attains the age of sixty-eight years to continue in office until he has attained such later age, not exceeding seventy years, as may (before the Justice of Appeal has attained the age of sixty-eight years) have been agreed between them.

(2) Notwithstanding that he has attained the age at which he is required by or under the provisions of this Article to vacate his office, a person holding the office of Justice of Appeal may, with the permission of the Governor-General, acting in accordance with the advice of the Prime Minister, continue in office for such period after attaining that age as may be necessary to enable him to deliver judgment or to do any other thing in relating to proceedings that were commenced before him before he attained that age.

(3) Nothing done by a Justice of Appeal shall be invalid by reason only that he has attained the age at which he is required by this Article to vacate his office.

(4) A Justice of Appeal may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of paragraph (5) of this Article.

(5) A Justice of Appeal shall be removed from office by the Governor-General by instrument under the Public Seal if the question of the removal of that Justice of Appeal from the office has, at the request of the Governor-General made in pursuance of paragraph (6) of this Article, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council and the Judicial Committee has advised Her Majesty that the Justice of Appeal ought to be removed from office for inability as aforesaid or for misbehaviour.

(6) If the Prime Minister (in the case of the President of the Court of Appeal) or the President of the Court of Appeal or the Chief Justice after consultation with the Prime Minister (in the case of any other Justice of Appeal) represents to the Governor-General that the question of removing a Justice of Appeal from office for inability as aforesaid or for misbehaviour ought to be investigated, then—

- (a) the Governor-General shall appoint a tribunal, which shall consist of a Chairman and not less than two other members, selected by the Governor-General acting in accordance with the advice of the Prime Minister (in the case of the President of the Court of Appeal) or of the President of the Court of Appeal (in the case of any other Justice of Appeal) from among persons who hold or have held high judicial office;
- (b) that tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to the Governor-General whether he should request that the question of the removal of that Justice of Appeal should be referred by Her Majesty to the Judicial Committee; and
- (c) if the tribunal so recommends, the Governor-General shall request that the question should be referred accordingly.

(7) The provisions of the Commissions of Inquiry Act(2) as in force immediately before the appointed day shall, subject to the provisions of this Article, apply as nearly as may be in relation to

(2) Statute Law of the Bahama Islands, Revised Edition 1965, Cap. 180.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format. The electronic version of this UK Statutory Instrument has been contributed by Westlaw and is taken from the printed publication. **Read more***

tribunals appointed under paragraph (6) of this Article or, as the context may require, to the members thereof as they apply in relation to Commissions or Commissioners appointed under that Act, and for that purpose shall have effect as if they formed part of this Constitution.

(8) If the question of removing a Justice of Appeal from office has been referred to a tribunal appointed under paragraph (6) of this Article, the Governor-General acting in accordance with the advice of the Prime Minister (in the case of the President of the Court of Appeal) or of the President of the Court of Appeal after the President of the Court of Appeal has consulted with the Prime Minister (in the case of any other Justice of Appeal), may suspend the Justice of Appeal from performing the functions of his office.

(9) Any such suspension may at any time be revoked by the Governor-General, acting in accordance with the advice of the Prime Minister or the President of the Court of Appeal (as the case may be), and shall in any case cease to have effect if—

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

(10) The provisions of this Article shall be without prejudice to the provisions of paragraph (2) of Article 101 of this Constitution.

(11) The provisions of this Article and of Article 103 of this Constitution shall not apply to the Chief Justice.

Oaths to be taken by Justices of Appeal

103. A Justice of Appeal shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and a judicial oath in such form as is prescribed by any law in force in The Bahamas.

PART 3

Appeals to Court of Appeal and Her Majesty in Council

Appeals relating to fundamental rights and freedoms

104.—(1) An appeal to the Court of Appeal shall lie as of right from final decisions of the Supreme Court given in exercise of the jurisdiction conferred on the Supreme Court by Article 28 of this Constitution (which relates to the enforcement of fundamental rights and freedoms).

(2) An appeal shall lie as of right to the Judicial Committee of Her Majesty's Privy Council or to such other court as may be prescribed by Parliament under Article 105(3) of this Constitution from any decision given by the Court of Appeal in any such case.

Appeals to Her Majesty in Council in other cases

105.—(1) Parliament may provide for an appeal to lie from decisions of the Court of Appeal established by Part 2 of this Chapter to the Judicial Committee of Her Majesty's Privy Council or to such other court as may be prescribed by Parliament under this Article, either as of right or with the leave of the said Court of Appeal, in such cases other than those referred to in Article 104(2) of this Constitution as may be prescribed by Parliament.

(2) Nothing in this Constitution shall affect any right of Her Majesty to grant special leave to appeal from decisions such as are referred to in paragraph (1) of this Article.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format. The electronic version of this UK Statutory Instrument has been contributed by Westlaw and is taken from the printed publication. **Read more**

(3) Parliament may by law provide for the functions required in this Chapter to be exercised by the Judicial Committee of Her Majesty's Privy Council to be exercised by any other court established for the purpose in substitution for the Judicial Committee.

Interpretation of “Court of Appeal”

106. References in this Part to “the Court of Appeal” include references to a shared court of appeal established under Article 100(1) of this Constitution when exercising jurisdiction in respect of The Bahamas.