
STATUTORY INSTRUMENTS

2009 No. 701

**CARIBBEAN AND NORTH
ATLANTIC TERRITORIES**

**The Turks and Caicos Islands Constitution
(Interim Amendment) Order 2009**

Made - - - - 18th March 2009

Laid before Parliament 25th March 2009

Coming into force in accordance with section 1(3)

At the Court at Buckingham Palace, the 18th day of March 2009

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by sections 5 and 7 of the West Indies Act 1962(1) and of all other powers enabling Her to do so, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Citation, construction and commencement

1.—(1) This Order may be cited as the Turks and Caicos Islands Constitution (Interim Amendment) Order 2009 and shall be construed as one with the Turks and Caicos Islands Constitution Order 2006(2) (in this Order referred to as “the 2006 Order”).

(2) This Order and the 2006 Order may be cited together as the Turks and Caicos Islands Constitution Orders 2006 to 2009.

(3) This Order shall come into force on such day as the Governor, acting in his or her discretion, may appoint by proclamation published in the *Gazette*.

Interpretation

2. In this Order “the Constitution” means the Constitution of the Turks and Caicos Islands set out in Schedule 2 to the 2006 Order.

(1) 1962 c.19.

(2) S.I. 2006/1913.

Duration of Order

3. This Order shall continue in force for the period of two years from the date of its commencement and shall then expire unless it is continued in force or sooner revoked by Order in Council.

Offices to become vacant

4. On the commencement of this Order the following offices shall become vacant—
- (a) Premier and other Minister;
 - (b) Speaker and Deputy Speaker;
 - (c) Leader of the Opposition;
 - (d) Cabinet Secretary;
 - (e) member of the Judicial Service Commission other than that of Chairman;
 - (f) member of the Public Service Commission other than that of Chairman; and
 - (g) Complaints Commissioner.

Cabinet

5. On the commencement of this Order the Cabinet shall cease to exist.

House of Assembly

6. On the commencement of this Order the House of Assembly shall be dissolved and all members of the House shall vacate their seats in the House.

Suspension of certain provisions of the Constitution

7. While this Order is in force the provisions of the Constitution set out in Schedule 1 shall not have effect.

Interim provisions to have effect

8. While this Order is in force the provisions set out in Schedule 2 shall have effect and shall be read together with the provisions of the Constitution not affected by section 7.

Amendment of laws of Turks and Caicos Islands

9. While this Order is in force, where in any law in force in the Turks and Caicos Islands (other than the 2006 Order)—

- (a) there is a reference to the Cabinet, the Premier, a Minister, the Cabinet Secretary or the Leader of the Opposition, any such reference shall be read and construed as a reference to the Governor, acting in his or her discretion;
- (b) there is a reference to any power, duty or function of the Cabinet, the Premier, a Minister, the Cabinet Secretary or the Leader of the Opposition, any such reference shall be read and construed as a reference to a power, duty or function of the Governor and in the exercise or performance of it the Governor shall act in his or her discretion;
- (c) there is a reference to the House of Assembly or any of its committees, the Speaker or the Deputy Speaker, any such reference shall be read and construed as a reference to the Governor, acting in his or her discretion;

- (d) the Governor is required to exercise or perform any power, duty or function after consultation with, or in accordance with the advice of, the Cabinet, the Governor shall exercise or perform that power, duty or function in his or her discretion.

Judith Simpson
Clerk of the Privy Council

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SCHEDULE 1

Section 7

PROVISIONS OF THE CONSTITUTION WHICH
ARE SUSPENDED AND SHALL NOT HAVE EFFECT

1. Section 6(2)(g).
2. In section 22—
 - (a) in subsection (1), the words “shall be a Belonger and”;
 - (b) in subsection (2), the words “who is a Belonger”.
3. In section 25—
 - (a) subsections (1), (2) and (3);
 - (b) in subsection (4), the words “other than the Cabinet”.
4. Sections 27 to 32 inclusive.
5. In section 33—
 - (a) subsections (2), (3) and (5);
 - (b) in subsection (4), the words “(other than the House of Assembly)”.
6. Sections 34 to 38 inclusive.
7. In section 39(5), the words “section 52(2) and section 53(2)”.
8. Parts IV and V.
9. In section 73(2), the words “not exceeding two”.
10. In section 81(2)(b), the words “, acting after consultation with the Premier and the Leader of the Opposition,”.
11. In section 83—
 - (a) in subsection (2)(b), the words “, acting in accordance with the advice of the Premier”;
 - (b) in subsection (2)(c), the words “, acting after consultation with the Premier”;
 - (c) in subsection (2)(d), the words “, acting in accordance with the advice of the Leader of the Opposition”;
 - (d) in subsection (2)(e), the words “, acting after consultation with the Leader of the Opposition”;
 - (e) in subsection (5)(c), the words “an elected or appointed member of the House of Assembly,”;
 - (f) in subsection (7), the words “, acting in the manner prescribed by subsection (2) for the appointment of that member,”.
12. Section 84(3)(d).
13. Section 85(3).
14. Section 86.
15. In section 92—
 - (a) in subsection (2), the words “, acting after consultation with the Premier and the Leader of the Opposition,”;
 - (b) in subsection (4)(c), the words “an elected or appointed member of the House of Assembly or”.

16. In section 95(2), the words “but shall first consult the Cabinet unless in any particular case the matter is in his or her judgement too urgent to permit such consultation”.

17. In section 98—

- (a) in subsection (4), the words “House of Assembly (including Ministers)”;
- (b) in subsection (5), the words “and, notwithstanding anything contained in Part IV of this Constitution, the sanctions which may be imposed may include the suspension of a member of the House of Assembly from sitting and voting in the House for such period as may be prescribed by such a law”.

18. In section 99—

- (a) in subsection (1), the definitions of “appointed member”, “elected member”, “meeting”, “member”, “Minister”, “Premier”, “session”, “sitting” and “Standing Orders”;
- (b) in subsection (2), the words “the House of Assembly” in paragraph (a) and all of the words after paragraph (c);
- (c) in subsection (3), the words “has vacated his or her seat in the House of Assembly or”, the words “or elected as a member of that body or”, and the words “, as the case may be,”;
- (d) in subsection (10), the words “a member of the House of Assembly or”.

SCHEDULE 2

Section 8

INTERIM PROVISIONS WHICH SHALL HAVE EFFECT

Advisory Council

1.—(1) There shall be an Advisory Council for the Turks and Caicos Islands, which shall consist of—

- (a) the Governor;
 - (b) the Deputy Governor, the Chief Executive, the Attorney General and the Permanent Secretary, Finance;
 - (c) up to seven other persons, who shall be known as “the nominated members”, appointed by the Governor, of whom at least five shall be Belongers.
- (2) No person shall be appointed as a nominated member who—
- (a) has been adjudged or otherwise declared bankrupt under any law in force in the Commonwealth and has not been discharged;
 - (b) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in the Islands;
 - (c) is under sentence of death imposed on him or her by a court of law in any country, or is serving or has at any time within the preceding five years been serving any part of a sentence of imprisonment (by whatever name called) of at least twelve months imposed on him or her by such a court or substituted by competent authority for some other sentence imposed on him or her by such a court; or is under such a sentence of imprisonment the execution of which has been suspended; or
 - (d) 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 disclosed to the Governor in writing the nature of such contract and his or her interest, or the interest of such firm or company, in it.

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(3) Each member of the Advisory Council (other than the Governor) shall, before entering upon the functions of his or her office as such member, make before the Governor an oath of allegiance and an oath for the due execution of his or her office in the forms set out in the Schedule to the Constitution.

(4) The Governor may terminate the appointment of any nominated member at any time.

(5) Any appointment and any termination of appointment under this paragraph shall be made by the Governor, acting in his or her discretion, by instrument under the public seal.

Summoning and proceedings of Advisory Council

2.—(1) The Advisory Council shall be summoned by the Governor, acting in his or her discretion.

(2) The Governor shall, so far as practicable, attend and preside at meetings of the Advisory Council.

(3) In the absence of the Governor from any meeting of the Advisory Council, the Deputy Governor, the Chief Executive, the Attorney General or the Permanent Secretary, Finance, in that order, shall preside at the meeting.

(4) No business shall be transacted at any meeting of the Advisory Council if there are less than four members present, including the person presiding.

(5) Subject to subparagraph (4), the Advisory Council shall not be disqualified for the transaction of business by reason of any vacancy in its membership (including any vacancy not filled when the Council is first constituted or reconstituted at any time) and the validity of the transaction of business in the Council shall not be affected by reason only of the fact that some person who was not entitled to do so took part in the proceedings.

(6) The Governor, or any person presiding over a meeting of the Advisory Council in his or her absence, may summon any public officer or other person to a meeting of the Council whenever, in his or her judgement, the business before the Council renders the presence of that officer or other person desirable.

(7) The Governor, acting in his or her discretion, may make rules for the conduct of business by the Advisory Council.

Functions of Advisory Council

3.—(1) Subject to subparagraph (2), the Governor, acting in his or her discretion, may consult the Advisory Council on the formulation of policy and in the exercise of any function conferred upon him or her by the Constitution or any other law.

(2) The Governor shall not consult the Advisory Council—

(a) when acting under instructions given to him or her by Her Majesty through a Secretary of State; or

(b) when exercising any function conferred upon the Governor by this Constitution or any other law which is expressed to be exercisable by the Governor in accordance with the recommendation or advice of, or after consultation with, any person or authority other than the Advisory Council.

(3) The Governor shall not be obliged to act in accordance with any advice given to him or her by the Advisory Council.

(4) The question whether or not the Governor has exercised any function after consultation with, or in accordance with the advice of, the Advisory Council shall not be inquired into by any court.

Chief Executive

4.—(1) There shall be a Chief Executive whose office shall be a public office.

(2) Power to make appointments to the office of Chief Executive, and to remove or exercise disciplinary control over any person holding or acting in that office, is vested in the Governor, acting in his or her discretion.

(3) Under the authority of the Governor, the Chief Executive shall be the head of the public service, and in exercising that responsibility the Chief Executive shall comply with any directions given to him or her by the Governor.

Acting Governor and Governor's deputy

5.—(1) Section 23(1) of the Constitution shall have effect as if paragraphs (a), (b) and (c) were replaced by the following—

- “(a) the Deputy Governor; or
- (b) the Chief Executive; or
- (c) the Attorney General; or
- (d) the Permanent Secretary, Finance.”.

(2) Section 24(1) of the Constitution shall have effect as if the reference to “paragraph (a), (b) or (c) of section 23(1)” were a reference to “paragraph (a), (b), (c) or (d) of section 23(1)”.

Appointments

6. The Governor may make any of the following appointments in his or her discretion—
- (a) the appointment of members of the Judicial Service Commission under section 81(2)(b) of the Constitution;
 - (b) the appointment of members of the Public Service Commission under section 83(2)(b), (c), (d) and (e) of the Constitution; and
 - (c) the appointment of a Complaints Commissioner under section 92(2) of the Constitution.

Appointment, etc, of public officers

7. Section 84(1) of the Constitution shall have effect as if the words “unless the Governor is instructed by Her Majesty through a Secretary of State to do otherwise” were replaced by the words—

“but the Governor, acting in his or her discretion, may—

- (a) act otherwise than in accordance with that advice if he or she determines that compliance with that advice would prejudice Her Majesty's service; and
- (b) make an appointment to any public office without reference to the Public Service Commission in any case where he or she considers that reasons of urgency so require”.

Power to make laws

8. The Governor, acting in his or her discretion, may make laws for the peace, order and good government of the Turks and Caicos Islands.

Consultative Forum

9.—(1) There shall be a Consultative Forum for the Turks and Caicos Islands.

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(2) The Consultative Forum shall consist of—

- (a) between eleven and fifteen members, who shall be known as “the appointed members”, appointed by the Governor from among persons representative of the community; and
- (b) the Chief Executive, the Attorney General and the Permanent Secretary, Finance.

(3) Paragraph 1(2) shall apply in relation to the appointment of an appointed member of the Consultative Forum as it applies in relation to the appointment of a nominated member of the Advisory Council.

(4) The Governor shall appoint an appointed member of the Consultative Forum to preside over its proceedings, and any other appointed member to preside in the absence of that member; and the Governor may terminate any such appointment at any time.

(5) Each member of the Consultative Forum shall, before entering upon the functions of his or her office as such member, make before the Forum an oath of allegiance in the form set out in the Schedule to the Constitution.

(6) The Governor may terminate the appointment of any appointed member of the Consultative Forum at any time.

(7) Any appointment and any termination of appointment under this paragraph shall be made by the Governor, acting in his or her discretion, by instrument under the public seal.

Functions of Consultative Forum

10.—(1) The functions of the Consultative Forum shall be to make recommendations to the Governor on—

- (a) any Bill or other proposal for legislation referred to it by the Governor;
- (b) any policy or proposed policy of the Government referred to it by the Governor or on its own initiative; and
- (c) any other matter brought before the Consultative Forum by one of its members.

(2) The Governor shall not be bound by any recommendations made by the Consultative Forum.

(3) The Governor, acting in his or her discretion, may assign to any member of the Advisory Council responsibility for the conduct on behalf of the Governor of any business in the Consultative Forum.

(4) The Governor, acting in his or her discretion, may, by order published in the Gazette, make rules for the summoning of the Consultative Forum and the discharge of its functions.

Disallowance of laws

11.—(1) Any law made by the Governor may be disallowed by Her Majesty through a Secretary of State.

(2) Whenever a law has been disallowed by Her Majesty the Governor shall, as soon as practicable, cause notice of the disallowance to be published in the *Gazette* and the law shall be annulled with effect from the date of the publication of that notice.

(3) Section 16(1) of the Interpretation Act 1978⁽³⁾ shall apply to the annulment of any law under this section as it applies to the repeal of an Act of Parliament, save that any enactment repealed or amended by or in pursuance of that law shall have effect as from the date of the annulment as if that law had not been made.

(3) 1978 c.30.

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Registration of interests

12. Section 98(4) of the Constitution shall have effect as if there were inserted after the words “all members of the” the words “Advisory Council (except the Governor)”.

Interpretation

13. Section 99(2)(a) of the Constitution shall have effect as if there were inserted before the words “the Public Service Commission” the words “the Advisory Council, the Consultative Forum,”.

Forms of oaths and affirmations

14. In the Schedule to the Constitution, paragraph 3 shall have effect as if the references to “the Cabinet” were references to “the Advisory Council”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order suspends certain provisions of the Constitution of the Turks and Caicos Islands, in particular relating to ministerial government and the House of Assembly. It makes temporary provision in their place for the government of the Islands by the Governor, who may consult an Advisory Council and a Consultative Forum established by the Order. The Order is to expire after two years unless it is continued in force or is sooner revoked by a further Order in Council.