
STATUTORY INSTRUMENTS

1978 No. 1027

DOMINICA

The Commonwealth of Dominica Constitution Order 1978*Made - - - - 25th July 1978**Coming into Operation 3rd November 1978*

At the Court at Buckingham Palace, the 25th day of July 1978

Present,

The Queen's Most Excellent Majesty in Council

Whereas the status of association of Dominica with the United Kingdom is to terminate on 3rd November 1978 and it is necessary to establish a new constitution for Dominica as a sovereign democratic republic within the Commonwealth styled the Commonwealth of Dominica:

And whereas the Associated State of Dominica has, by a resolution passed in the House of Assembly thereof on 12th July 1978, requested and consented to the making of this Order for that purpose:

Now, therefore, Her Majesty, by virtue and in exercise of the powers vested in Her in that behalf by section 5(4) of the West Indies Act 1967(a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1.—(1) This Order may be cited as the Commonwealth of Dominica Constitution Order 1978.

Citation and
commence-
ment.

(2) This Order shall come into operation on 3rd November 1978:

Provided that paragraph 3(8) of Schedule 2 shall come into operation forthwith.

2. The Dominica Constitution Order 1967(b), the Dominica Constitution (Amendment) Order 1971(c) and the Constitution (Ministerial Provisions) (Amendment) Act, 1975(d), which made provision for the constitution of the Associated State of Dominica, are revoked.

Revocations.

3. The Constitution of the Commonwealth of Dominica set out in Schedule 1 to this Order shall come into effect in Dominica at the commencement of this Order subject to the transitional provisions set out in Schedule 2 to this Order.

Establish-
ment of
Constitution.

N. E. Leigh,
Clerk of the Privy Council.

(a) 1967 c. 4. (b) S.I. 1967/226. (c) S.I. 1971/714. (d) Act No. 32 of 1975.

Section 3

SCHEDULE 1 TO THE ORDER
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THE COMMONWEALTH OF DOMINICA**
ARRANGEMENT OF SECTIONS

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3. Protection of right to personal liberty.
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8. Provisions to secure protection of law.
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WHEREAS the People of Dominica—

(a) have affirmed that the Commonwealth of Dominica is founded upon principles that acknowledge the supremacy of God, faith in fundamental human rights and freedoms, the position of the family in a society of free men and free institutions, the dignity of the human person, and the equal and inalienable rights with which all members of the human family are endowed by their Creator;

(b) respect the principles of social justice and therefore believe that the operation of the economic system should result in so distributing the material resources of the community as to subserve the common good, that there should be adequate means of livelihood for all, that labour should not be exploited or forced by economic necessity to operate in inhumane conditions but that there should be opportunity for advancement on the basis of recognition of merit, ability and integrity;

(c) have asserted their belief in a democratic society in which all persons may, to the extent of their capacity, play some part in the institutions of the national life and thus develop and maintain due respect for lawfully-constituted authority;

(d) recognise that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;

(e) desire that their Constitution should make provision for ensuring the protection in the Commonwealth of Dominica of fundamental human rights and freedoms;

NOW, THEREFORE, the following provisions shall have effect as the Constitution of the Commonwealth of Dominica:

CHAPTER I

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

1. Whereas every person in Dominica is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origins, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely—

Fundamental rights and freedoms.

- (a) life, liberty, security of the person and the protection of the law;
- (b) freedom of conscience, of expression and of assembly and association; and
- (c) protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.

2.—(1) A person shall not be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Dominica of which he has been convicted.

Protection of right to life.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable—

- (a) for the defence of any person from violence or for the defence of property;
- (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
- (d) in order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

Protection
of right to
personal
liberty.

3.—(1) A person shall not be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say:—

- (a) in consequence of his unfitness to plead to a criminal charge or in execution of the sentence or order of a court, whether established for Dominica or some other country, in respect of a criminal offence of which he has been convicted;
- (b) in execution of the order of the High Court or the Court of Appeal punishing him for contempt of the High Court or the Court of Appeal or of another court or tribunal;
- (c) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;
- (d) for the purpose of bringing him before a court in execution of the order of a court;
- (e) upon a reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Dominica;
- (f) under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;
- (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 care or treatment or the protection of the community;
- (i) for the purpose of preventing his unlawful entry into Dominica, or for the purpose of effecting his expulsion, extradition or other lawful removal from Dominica or for the purpose of restraining him while he is being conveyed through Dominica in the course of his extradition or removal as a convicted prisoner from one country to another; or
- (j) to such extent as may be necessary in the execution of a lawful order requiring him to remain within a specified area within Dominica, or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the

taking of proceedings against him with a view to the making of any such order or relating to such an order after it has been made, or to such extent as may be reasonably justifiable for restraining him during any visit that he is permitted to make to any part of Dominica in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as is reasonably practicable and in any case no later than twenty-four hours after such arrest or detention, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained—

(a) for the purpose of bringing him before a court in execution of the order of a court; or

(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Dominica, and who is not released, shall be brought before a court without undue delay and in any case not later than seventy-two hours after such arrest or detention.

(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

(5) If any person arrested or detained as mentioned in subsection (3)(b) of this section is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(6) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person or from any other person or authority on whose behalf that other person was acting.

(7) For the purposes of subsection (1)(a) of this section a person charged before a court with a criminal offence in respect of whom a special verdict has been returned that he was guilty of the act or omission charged but was insane when he did the act or made the omission shall be regarded as a person who has been convicted of a criminal offence and the detention of a person in consequence of such a verdict shall be regarded as detention in execution of the order of a court.

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

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression “forced labour” does not include—

Protection
from slavery
and forced
labour.

- (a) any labour required in consequence of the sentence or order of a court;
- (b) labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;
- (c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;
- (d) any labour required during any period of public emergency or in the event of any other emergency or calamity that threatens the life and 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.

Protection
from
inhuman
treatment.

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

Protection
from
deprivation
of property.

6.—(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where provision is made by a law applicable to that taking of possession or acquisition for the payment, within a reasonable time, of adequate compensation.

(2) Every person having an interest in or right over property that is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the High Court for—

- (a) determining the nature and extent of that interest or right;
- (b) determining whether that taking of possession or acquisition was duly carried out in accordance with a law authorising the taking of possession or acquisition;
- (c) determining what compensation he is entitled to under the law applicable to that taking of possession or acquisition;
- (d) obtaining that compensation:

Provided that if Parliament so provides in relation to any matter referred to in paragraph (a) or (c) of this subsection the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the interest in or right over the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter.

(3) The Chief Justice may make rules with respect to the practice and procedure of the High Court or, subject to such provision as may have been made in that behalf by Parliament, with respect to the practice and procedure of any other tribunal or authority in relation to the jurisdiction conferred on the High Court by subsection (2) of this section or exercisable by the other tribunal or authority for the purposes of that subsection (including rules with respect to the time within which

applications or appeals to the High Court or applications to the other tribunal or authority may be brought).

(4) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any amount of that compensation in the form of a sum of money or, as the case may be, has received any such amount in some other form and has converted any of that amount into a sum of money, the whole of that sum of money (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Dominica.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (4) of this section to the extent that the law in question authorises—

- (a) the attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party; or
- (b) the imposition of reasonable restrictions on the manner in which any sum of money is to be remitted.

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section—

- (a) to the extent that the law in question makes provision for the 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 breach of any law;
 - (iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
 - (iv) in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations;
 - (v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or likely to be injurious to the health of human beings, animals or plants;
 - (vi) in consequence of any law with respect to the limitation of actions; or
 - (vii) 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 the carrying out thereon of work of 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 excuse refused or failed, to carry out).

and except so far as that provision or, as the case may be, the thing done under the authority thereof 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;
- (ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;
- (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.

(7) Nothing contained in or done under the authority of any law enacted by Parliament shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision for the compulsory taking of possession of any property, or the compulsory acquisition 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 monies have been invested other than monies provided by any legislature established for Dominica.

(8) In this section—

“property” means any land or other thing capable of being owned or held in possession and includes any right relating thereto, whether under a contract, trust or law or otherwise and whether present or future, absolute or conditional;

“acquisition”, in relation to an interest in or right over property, means transferring that interest or right to another person or extinguishing or curtailing that interest or right.

Protection
from
arbitrary
search or
entry.

7.—(1) Except with his own consent, a person shall not be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources or the development or utilisation of any property for a purpose beneficial to the community;
- (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;

- (c) that authorises an officer or agent of the Government of Dominica, a local government authority or a body corporate established by law for public purposes to enter on the premises of any person in order to inspect those premises or anything thereon 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 that Government, authority or body corporate, as the case may be; or
- (d) that authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order,

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

8.—(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law. Provisions to secure protection of law.

- (2) Every person who is charged with a criminal offence—
 - (a) shall be presumed to be innocent until he is proved or has pleaded guilty;
 - (b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;
 - (c) shall be given adequate time and facilities for the preparation of his defence;
 - (d) shall be permitted to defend himself before the court in person or, at his own expense, by a legal practitioner of his own choice;
 - (e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and
 - (f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial,

and the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence:

Provided that the trial may take place in his absence in any case in which it is so provided by a law under which he is entitled to adequate notice of the charge and the date, time and place of the trial and to a reasonable opportunity of appearing before the court.

- (3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he 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 shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) A person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall not again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) A person shall not be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) A person who is tried for a criminal offence shall not be compelled to give evidence at the trial:

Provided that nothing in this subsection shall prevent the prosecution or the court from commenting on his failure to give evidence on his own behalf or prevent the court from drawing inferences from any such failure.

(8) Any court or other authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time.

(9) Where the existence or extent of any civil right or obligation has been determined in proceedings in any court or before any other authority any party to those proceedings shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be entitled to obtain within a reasonable time after the judgment or other determination a copy of any record of the proceedings made by or on behalf of the court or other authority.

(10) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(11) Nothing in subsection (10) of this section shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and the legal practitioner representing them to such extent as the court or other authority—

(a) may by law be empowered 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 persons under the age

of eighteen years or the protection of the private lives of persons concerned in the proceedings; or

- (b) may by law be empowered or required to do in the interests of defence, public safety or public order.

(12) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—

- (a) subsection (2)(a) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;
- (b) subsection (2)(e) of this section to the extent that the law in question imposes reasonable 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; or
- (c) subsection (5) of this section 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, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(13) In the case of any person who is held in lawful detention the provisions of subsection (1), paragraphs (d) and (e) of subsection (2) and subsection (3) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(14) In this section “criminal offence” means a criminal offence under the law of Dominica.

9.—(1) Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of conscience, including freedom of thought and of religion, freedom to change his religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

Protection of
freedom of
conscience.

(2) Except with his own consent (or, if he is a person under the age of eighteen years, the consent of his guardian) a person attending any place of education, detained in any prison or corrective institution or serving in a naval, military or air force shall not be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction ceremony or observance relates to a religion which is not his own.

(3) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it maintains; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided by that community whether or not it is in receipt of a government subsidy or other form of financial assistance designed to meet in whole or in part the cost of such course of education.

(4) A person shall not be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required—

- (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, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion; or
- (c) for the purpose of regulating educational institutions in the interests of the persons who receive or may receive instruction in them,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(6) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

Protection of
freedom of
expression.

10.—(1) Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;
- (b) that is reasonably required for the purpose of protecting the reputations, rights 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 the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or
- (c) that imposes restrictions upon public officers that are reasonably required for the proper performance of their functions,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

11.—(1) Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

Protection of
freedom of
assembly and
association.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;
 - (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons; or
 - (c) that imposes restrictions upon public officers that are reasonably required for the proper performance of their functions,
- and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

12.—(1) A person shall not be deprived of his freedom of movement that is to say, the right to move freely throughout Dominica, the right to reside in any part of Dominica, the right to enter Dominica, the right to leave Dominica and immunity from expulsion from Dominica.

Protection of
freedom of
movement.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) for the imposition of restrictions on the movement or residence within Dominica of any person or on any person's right to leave Dominica that are reasonably required in the interests of defence, public safety or public order;
- (b) for the imposition of restrictions on the movement or residence within Dominica or on the right to leave Dominica of persons generally or any class of persons in the interests of defence, public safety, public order, public morality or public health or, in respect of the right to leave Dominica, of securing compliance with any international obligation of the Government particulars of which have been laid before the House of Assembly and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;
- (c) for the imposition of restrictions, by order of a court, on the movement or residence within Dominica of any person or on any person's right to leave Dominica either in consequence of his having been found guilty of a criminal offence under the law of Dominica or for the purpose of ensuring that he appears before a court at a later date for trial of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or lawful removal from Dominica;

- (d) for the imposition of restrictions on the freedom of movement of any person who is not a citizen of Dominica;
- (e) for the imposition of restrictions on the acquisition or use by any person of land or other property in Dominica;
- (f) for the imposition of restrictions upon the movement or residence within Dominica or on the right to leave Dominica of any public officer that are reasonably required for the proper performance of his functions;
- (g) for the removal of a person from Dominica to be tried or punished in some other country for a criminal offence under the law of that other 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 Dominica of which he has been convicted; or
- (h) for the imposition of restrictions on the right of any person to leave Dominica that are reasonably required in order to secure the fulfilment of any obligations imposed on that person by law and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(4) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in subsection (3)(a) of this section so requests at any time during the period of that restriction not earlier than twenty-one days after the order was made or three months after he last made such a request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person appointed by the Chief Justice from among persons who are legal practitioners.

(5) On any review by a tribunal in pursuance of subsection (4) of this section of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of the continuation of that restriction to the authority by whom it was ordered and, unless it is otherwise provided by law, that authority shall be obliged to act in accordance with any such recommendations.

Protection
from dis-
crimination
on the
grounds of
race, etc.

13.—(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person or authority.

(3) In this section, the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by sex, race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

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

- (a) for the appropriation of public revenues or other public funds;
- (b) with respect to persons who are not citizens of Dominica;
- (c) for the application, in the case of persons of any such description as is mentioned in subsection (3) of this section (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 which is the personal law of persons of that description;
- (d) whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage that, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to sex, race, place of origin, political opinions, colour or creed) to be required of any person who is appointed to or to act in any office or employment.

(6) Subsection (2) of this section 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 (4) or subsection (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 7, 9, 10, 11 and 12 of this Constitution, being such a restriction as is authorised by section 7(2), section 9(5), section 10(2), section 11(2) or paragraph (a), (b) or (h) of section 12(3), as the case may be.

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

14. Nothing contained in or done under the authority of a law enacted by Parliament shall be held to be inconsistent with or in contravention of section 3 or section 13 of this Constitution to the extent that the law authorises the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in Dominica during that period.

Derogations
from s. 3 or
s. 13 under
emergency
powers.

15.—(1) When a person is detained by virtue of any such law as is referred to in section 14 of this Constitution the following provisions shall apply, that is to say:—

- (a) he shall, as soon as reasonably practicable and in any case not more than seven days after the commencement of his detention, be furnished with a statement in writing in a language that he

Protection
of persons
detained
under
emergency
laws.

understands specifying in detail the grounds upon which he is detained;

- (b) not more than fourteen days after the commencement of his detention, a notification shall be published in the Official Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;
- (c) not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than three months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons who are legal practitioners;
- (d) he shall be afforded reasonable facilities to consult a legal practitioner of his own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person; and
- (e) at the hearing of his case by the tribunal appointed for the review of his case he shall be permitted to appear in person or to be represented by a legal practitioner of his own choice.

(2) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his 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.

(3) Nothing contained in subsection (1)(d) or subsection (1)(e) of this section shall be construed as entitling a person to legal representation at public expense.

**Enforcement
of protective
provisions.**

16.—(1) If any person alleges that any of the provisions of sections 2 to 15 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction—

- (a) to hear and determine any application made by any person in pursuance of subsection (1) of this section; and
- (b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section,

and may make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 2 to 15 (inclusive) of this Constitution:

Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) If in any proceedings in any court (other than the Court of Appeal or the High Court or a court-martial) any question arises as to the contravention of any of the provisions of sections 2 to 15 (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.

(4) Where any question is referred to the High Court in pursuance of subsection (3) of this section, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal to the Court of Appeal or to the Judicial Committee, in accordance with the decision of the Court of Appeal or, as the case may be, of the Judicial Committee.

(5) The High Court shall have such powers in addition to those conferred by this section as may be conferred upon it by Parliament for the purpose of enabling it more effectively to exercise the jurisdiction conferred upon it by this section.

(6) The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on it by or under this section (including rules with respect to the time within which applications may be brought and references shall be made to the High Court).

17.—(1) In this Chapter, unless the context otherwise requires—

Interpreta-
tion and
savings.

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

“court” means any court of law having jurisdiction in Dominica other than a court established by a disciplinary law, and includes the Judicial Committee and in sections 2 and 4 of this Constitution a court established by a disciplinary law;

“disciplinary law” means a law regulating the discipline of any disciplined force;

“disciplined force” means—

- (a) a naval, military or air force;
- (b) the Police Force;
- (c) a prison service; or
- (d) any such other force or service as may be prescribed by Parliament.

“legal practitioner” means a person entitled to be in or to enter Dominica and entitled to practise as a barrister in Dominica or, except in relation to proceedings before a court in which a solicitor has no right of audience, entitled to practise as a solicitor in Dominica;

“member”, in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

(2) In this Chapter “period of public emergency” means any period during which—

- (a) Dominica is engaged in any war; or
- (b) there is in force a proclamation by the President declaring that a state of public emergency exists; or
- (c) there is in force a resolution of the House supported by the votes of not less than two-thirds of all the members of the House declaring that democratic institutions in Dominica are threatened by subversion.

(3) A proclamation made by the President shall not be effective for the purposes of subsection (2) of this section unless it is declared therein that the President is satisfied—

- (a) that a public emergency has arisen as a result of the imminence of a state of war between Dominica and a foreign state or as a result of the occurrence of any earthquake, hurricane, flood, fire, outbreak of pestilence, outbreak of infectious disease or other calamity whether similar to the foregoing or not; or
- (b) that action has been taken or is immediately threatened by any person of such a nature and on so extensive a scale as to be likely to endanger the public safety or to deprive the community, or any substantial portion of the community, of supplies or services essential to life.

(4) A proclamation made by the President for the purposes of this section—

- (a) shall, unless previously revoked, remain in force for twenty-one days or for such longer period, not exceeding six months, as the House may determine by a resolution supported by the votes of a majority of all the members of the House;
- (b) may be extended from time to time by a resolution of the House passed in like manner as is prescribed in paragraph (a) of this subsection for further periods, not exceeding in respect of each such extension a period of six months; and
- (c) may be revoked at any time by a resolution supported by the votes of a majority of all the members of the House of Assembly.

(5) A resolution passed by the House for the purposes of subsection (2) of this section may be revoked at any time by a resolution of the House supported by the votes of a majority of all the members thereof.

(6) In relation to any person who is a member of a disciplined force of Dominica, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 2, 4 and 5 of this Constitution.

(7) In relation to any person who is a member of a disciplined force of a country other than Dominica that is lawfully present in Dominica, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

CHAPTER II

THE PRESIDENT

18.—(1) There shall be a President of Dominica who shall be elected by the House and shall hold office for a term of five years. Establishment of office.

(2) The President shall have such functions as are prescribed by this Constitution and such additional functions (if any) as may be prescribed by Parliament:

Provided that no such additional functions shall be conferred upon him without his consent signified by writing under his hand addressed to the Speaker.

19.—(1) Whenever the office of President is vacant or the term of office of the President is due to expire within not more than ninety days, the Prime Minister shall consult with the Leader of the Opposition as to their joint nomination of a suitable candidate for election as President. Election.

(2) If the Prime Minister and the Leader of the Opposition submit to the Speaker by writing under their hands a joint nomination of a candidate for election as President to which that candidate has consented, the Speaker shall inform the House of the nomination, and declare that candidate to have been duly elected without putting the question to the vote.

(3) If the Prime Minister is unable to agree with the Leader of the Opposition as to their joint nomination of a candidate for election as President, he shall notify the Speaker to that effect and the Speaker shall inform the House accordingly.

(4) The Prime Minister or the Leader of the Opposition or any three members of the House may, during the period expiring fourteen days after the day on which the House has been so informed, submit to the Speaker by writing under their hands nominations of candidates for election as President and the Speaker shall at the first meeting of the House after the expiration of that period and before the House proceeds to any other business inform the House of the nominations he has received and to which the candidates concerned have consented.

(5) An election of the President at which the candidates shall be those of whose nomination the House has been informed by the Speaker, shall thereafter be held at the meeting of the House referred to in subsection (4) of this section (or if proceedings under section 22 of this Constitution are pending before the Court of Appeal, at a meeting of the House held as soon as is practicable after those proceedings) and the Speaker shall declare the candidate who has at that election received the votes of a majority of all the members of the House to have been duly elected:

Provided that—

- (a) if at that election the House has been informed of the nomination of only one candidate the Speaker shall declare that candidate to have been duly elected without putting the question to the vote; and
- (b) when the question of the election of the President from among two or more candidates is put to the vote, the votes shall be given by ballot in such manner as not to disclose how any particular member of the House votes.

(6) Where a person consents to be nominated for election as President he shall do so by writing under his hand addressed to the Speaker.

(7) A person who has been declared to have been duly elected as President under this section shall assume office as such on the day after the day on which his predecessor vacates the office of President or, if that office is already vacant, he shall assume office on the day after the day on which he was declared to have been duly elected.

Qualifications
for office
nomination.

20.—(1) A person shall be qualified to be nominated for election as President if, and shall not be so qualified unless, he is a citizen of Dominica of the age of forty years or upwards who at the date of his nomination has been resident in Dominica for five years immediately preceding his nomination.

(2) For the purposes of subsection (1) of this section a person shall be deemed to reside in Dominica if he holds an office in the service of the Government and lives outside Dominica because he is required to do so for the proper discharge of his functions.

Disqualifi-
cations for
election and
holding office.

21.—(1) A person shall not be qualified to be elected as President if—

- (a) he has already held the office of President for two terms; or
- (b) he is disqualified to be elected or appointed as a Representative or Senator by virtue of subsection (1)(a), (b), (c), (d), (e) or (f) of section 32 of this Constitution or by virtue of any law enacted in pursuance of subsection (2), (3) or (5) of that section.

(2) A person shall not be qualified to hold the office of President if he holds any other office of emolument whether in the public service or otherwise nor engage in any other occupation for reward.

Determina-
tion of
questions
as to
qualifications.

22.—(1) The Court of Appeal shall have jurisdiction to hear and determine any question whether any person is qualified to be nominated for election, or elected, as President.

(2) An application to the Court of Appeal for the determination of any question under this section may be made by the Attorney-General or by any other member of the House and, if it is made by a member other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(3) The powers, practice and procedure of the Court of Appeal in respect of any application for the determination of any question under this section, including (without prejudice to the generality of the foregoing) the time in which and the conditions upon which an application may be made, shall be regulated by such provision as may be made by Parliament.

(4) No appeal shall lie from any decision of the Court of Appeal under this section.

(5) A certificate under the hand of the Speaker stating that a person was declared to have been duly elected under section 19 of this Constitution shall be conclusive evidence of the fact so stated and shall not be questioned in any court of law.

(6) In the exercise of his functions under this section, the Attorney-General shall not be subject to the direction or control of any other person or authority.

23.—(1) Subject to the provisions of this section and of section 25 of this Constitution, the President shall vacate his office at the expiration of a term of five years from the date on which he was declared to have been duly elected. Tenure of office.

(2) Where a person is elected to fill a vacancy in the office of President occurring before the expiration of the term of office of his predecessor he shall hold office only for the unexpired portion of that term.

(3) Parliament may extend the term of office of the President under subsection (1) or (2) of this section for a period not exceeding six months, in order to avoid the holding of an election to the office of President during a period while Parliament is dissolved or at a time within one month before the beginning or one month after the end of such a period.

24.—(1) The President may be removed from office under section 25 of this Constitution where— Removal from office.

- (a) he wilfully violates any provision of the Constitution;
- (b) he behaves in such a way as to bring his office into hatred, ridicule or contempt;
- (c) he behaves in a way that endangers the security of Dominica;
- (d) because of physical or mental incapacity, he is unable to perform the functions of his office;
- (e) any circumstances arise that, if he were not President, would cause him to be disqualified to be elected as such by virtue of subsection (1)(b) of section 21 of this Constitution; or
- (f) he is appointed to any such office, or engages in any such occupation, as is referred to in subsection (2) of that section.

25.—(1) The office of the President shall become vacant if—

- (a) the House (acting upon a motion signed by not less than one-third of all the members of the House) by resolution supported by the votes of not less than two-thirds of all the members of the House proposes the removal of the President from office on grounds of complaint specified with full particulars in the resolution; Procedure for removal from office.
- (b) a tribunal consisting of the Chief Justice and two other judges of the Supreme Court appointed by the Chief Justice, being as far as practicable the most senior judges, investigates the complaint and makes a report on the facts thereof to the House; and
- (c) the House, after considering the report, by resolution supported by the votes of not less than two-thirds of all the members of the House declares that the President shall be removed from office.

(2) Parliament may make provision with respect to the powers, practice and procedure of tribunals established for the purpose of subsection 1(b) of this section and, subject as aforesaid, any such tribunal may by regulation or otherwise regulate its own procedure.

(3) Where a resolution is passed in accordance with subsection (1)(a) of this section, the President shall forthwith cease to perform the

functions of his office; but he may resume the performance of those functions if, after the House has considered a report made to it under subsection (1)(b) of this section, no such resolution as is referred to in subsection (1)(c) of this section is passed.

Oath.

26.—A person elected to hold the office of President or designated or elected to act as President shall before entering upon the duties of the office of President take and subscribe the oath of office, such oath being administered by the Chief Justice or such other judge of the Supreme Court as may be designated by the Chief Justice.

Protection
in respect
of legal
proceedings.

27.—(1) Whilst any person holds office or is acting as President no criminal proceedings shall be instituted or continued against him in respect of anything done or omitted to be done by him either in his official capacity or in his private capacity and no civil proceedings shall be instituted or continued in respect of which relief is claimed against him in respect of any thing done or omitted to be done in his private capacity.

(2) Where provision is made by law limiting the time within which proceedings of any description may be brought against any person, the period during which any person has held office or acted as President shall not be taken into account in calculating any period of time described by that law which determines whether any such proceedings as are mentioned in subsection (1) of this section may be brought against that person.

Acting
President.

28.—(1) Whenever the holder of the office of President is unable to perform the functions of his office by reason of his absence from Dominica, by reason of illness or by reason that he is suspended from the exercise of those functions under section 25(3) of this Constitution, those functions shall be performed—

- (a) by such person as may with his consent have been designated in that behalf by the holder of the office of President, acting after consultation with the Prime Minister and the Leader of the Opposition, by writing under his hand; or
- (b) if there is no person so designated or if the person so designated is unable to act, by such person as may have been elected in that behalf by the House in accordance with the like procedure as is prescribed by section 19 of this Constitution for the election of the President.

(2) A person shall not be qualified to act as President unless he is qualified to be elected as, and to hold the office of, President:

Provided that the Speaker or the Deputy Speaker may act as President, in which case he shall cease to perform the functions of his office during any period during which he is so acting.

(3) A person acting as President under this section shall cease to act when he is notified—

- (a) that another person has been designated or elected to act; or
- (b) that the holder of the office of President is about to resume the performance of the functions of his office.

CHAPTER III

PARLIAMENT

PART I

Establishment of Parliament

29. There shall be a Parliament of Dominica which shall consist of the President and a House of Assembly. Composition.

30.—(1) The House shall consist of— Composition
of
House of
Assembly.

(a) such number of Representatives as corresponds with the number of constituencies for the time being established in accordance with the provisions of section 57 of this Constitution, who shall be elected in accordance with the provisions of section 33 of this Constitution;

(b) nine Senators appointed or elected in accordance with the provisions of section 34 of this Constitution.

(2) If a person who is not a member of the House is elected to be Speaker he shall, by virtue of holding the office of Speaker, be a member of the House.

(3) At any time when the office of Attorney-General is a public office, the Attorney-General shall, by virtue of holding or acting in that office, be a member of the House.

31.—(1) Subject to the provisions of section 32 of this Constitution, a person shall be qualified to be elected as a Representative if, and shall not be so qualified unless, he— Qualifica-
tions for
Representa-
tives and
Senators.

(a) is a citizen of Dominica of the age of twenty-one years or upwards;

(b) has resided in Dominica for a period of twelve months immediately before the date of his nomination for election or is domiciled and resident in Dominica at that date; and

(c) is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the House.

(2) Subject to the provisions of section 32 of this Constitution, a person shall be qualified to be elected or appointed as a Senator if, and shall not be so qualified unless, he—

(a) is a Commonwealth citizen of the age of twenty-one years or upwards;

(b) is domiciled and resident in Dominica at the date of his appointment or nomination for election; and

(c) is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the House.

32.—(1) A person shall not be qualified to be elected or appointed as a Representative or Senator (hereinafter in this section referred to as a member) if he— Disqualifi-
cations for
Representa-
tives and
Senators.

- (a) is by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or state;
 - (b) is a minister of religion;
 - (c) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Dominica;
 - (d) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Dominica;
 - (e) is under sentence of death imposed on him by a court of law in any part of the Commonwealth or is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;
 - (f) subject to such exceptions and limitations as may be prescribed by Parliament, has an interest in any government contract and has not, within seven days of his nomination as a candidate for election or, as the case may be, at least seven days before the date of his prospective appointment, disclosed the nature of the contract and of his interest therein by means of a notice published in the Official Gazette and in a daily or weekly newspaper circulating in Dominica; or
 - (g) holds or is acting in the office of President.
- (2) If it is so provided by Parliament, a person shall not be qualified to be elected or appointed as a member if he holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connection with, the conduct of any election of members or the compilation of any register of votes for the purpose of electing Representatives.
- (3) If it is so provided by Parliament, a person who is convicted by any court of law of any offence that is prescribed by Parliament and that is connected with the election of members or who is reported guilty of such an offence by the court trying an election petition shall not be qualified, for such period (not exceeding seven years) following his conviction or, as the case may be, following the report of the court as may be so prescribed, to be elected or appointed as a member.
- (4) A person shall not be qualified to be elected as a Representative if he is a Senator or is nominated for election as a Senator; and a person shall not be qualified to be appointed or elected as a Senator if he is a Representative or is nominated for election as a Representative.
- (5) If it is so provided by Parliament and subject to such exceptions and limitations (if any) as Parliament may prescribe, a person shall not be qualified to be elected or appointed as a member if—
- (a) he holds or is acting in any office or appointment (whether specified individually or by reference to a class of office or appointment);
 - (b) he belongs to any of the armed forces of Dominica or to any class of person that is comprised in any such force; or
 - (c) he belongs to any police force or to any class of person that is comprised in any such force.

(6) In subsection (1) of this section—

“government contract” means any contract made with the Government or with a department of the Government or with an officer of the Government contracting as such;

“minister of religion” means any person in holy orders and any other person the functions of whose principal occupation include teaching or preaching in any congregation for religious worship.

(7) For the purposes of paragraph (e) of subsection (1) of this section—

(a) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds twelve months, but if any one of such sentences exceeds that term they shall be regarded as one sentence; and

(b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

33.—(1) Each of the constituencies established in accordance with the provisions of section 57 of this Constitution shall return one Representative to the House who shall be directly elected in such manner as may, subject to the provisions of this Constitution, be prescribed by or under any law. Election of Representatives.

(2) (a) Every Commonwealth citizen of the age of eighteen years or upwards who possesses such qualifications relating to residence or domicile in Dominica as Parliament may prescribe shall, unless he is disqualified by Parliament from registration as a voter for the purpose of electing Representatives, be entitled to be registered as such a voter in accordance with the provisions of any law in that behalf, and no other person may be so registered.

(b) Every person who is registered as aforesaid in any constituency shall, unless he is disqualified by Parliament from voting in that constituency in any election of Representatives, be entitled so to vote, in accordance with the provisions of any law in that behalf, and no other person may so vote.

(3) In any election of Representatives the votes shall be given by ballot in such manner as not to disclose how any particular person votes.

34.—(1) Of the Senators—

(a) five shall be appointed by the President, acting in accordance with the advice of the Prime Minister; and

(b) four shall be appointed by the President, acting in accordance with the advice of the Leader of the Opposition:

Appointment or election of Senators.

Provided that, if it is so prescribed by Parliament, the Senators shall, instead of being appointed under the foregoing provisions of this section, be elected, in accordance with such provision as may be made by Parliament in that behalf.

(2) Where Parliament makes provision for voting for the purpose of electing Senators, the persons entitled to vote shall be the persons entitled to vote for the purpose of electing Representatives and no other persons and the votes shall be given by ballot in such manner as not to disclose how any particular person votes.

Tenure of
office of
Representa-
tives and
Senators.

35.—(1) A Representative or a Senator (hereinafter in this section referred to as a member) shall vacate his seat in the House at the next dissolution of Parliament after his election or appointment.

(2) A Senator appointed in accordance with the provisions of paragraph (a) of section 34 of this Constitution shall vacate his seat in the House if his appointment is revoked by the President, acting in accordance with the advice of the Prime Minister, and a Senator appointed in accordance with the provisions of paragraph (b) of that section shall vacate his seat in the House if his appointment is revoked by the President, acting in accordance with the advice of the Leader of the Opposition.

(3) A member shall also vacate his seat in the House—

- (a) if he is absent from the sittings of the House for such period and in such circumstances as may be prescribed in the rules of procedure of the House;
- (b) in the case of a Representative, if he ceases to be a citizen of Dominica or, in the case of a Senator, if he ceases to be a Commonwealth citizen;
- (c) subject to the provisions of subsection (4) of this section, if any other circumstances arise that, if he were not a member, would cause him to be disqualified to be elected or appointed as such by virtue of subsection (1) of section 32 of this Constitution or by virtue of any law enacted in pursuance of subsection (2), (3) or (5) of that section;
- (d) if he is elected to be President; or
- (e) if (not being the Speaker or the Deputy Speaker) he is elected to act as President.

(4) (a) If any circumstances such as are referred to in paragraph (c) of subsection (3) of this section arise because any member is under sentence of death or imprisonment, adjudged to be of unsound mind, declared bankrupt or convicted or reported guilty of an offence relating to elections and if it is open to the member to appeal against the decision (either with the leave of a court of law or other authority or without such leave), he shall forthwith cease to perform his functions as a member but, subject to the provisions of this section, he shall not vacate his seat until the expiration of a period of thirty days thereafter.

Provided that the Speaker may, at the request of the member, from time to time extend that period for further periods of thirty days to enable the member to pursue an appeal against the decision, so, however, that extensions of time exceeding in the aggregate one hundred and fifty days shall not be given without the approval, signified by resolution, of the House.

(b) If, on the determination of any appeal, such circumstances continue to exist and no further appeal is open to the member, or if, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal of leave to appeal or for any other reason, it ceases to be open to the member to appeal, he shall forthwith vacate his seat.

(c) If at any time before the member vacates his seat such circumstances aforesaid cease to exist, his seat shall not become vacant on the expiration of the period referred to in paragraph (a) of this subsection and he may resume the performance of his functions as a member.

36.—(1) When the House first meets after any general election of Representatives and before it proceeds to the despatch of any other business, it shall elect a person to be the Speaker of the House; and if the office of Speaker falls vacant at any time before the next dissolution of Parliament, the House shall, as soon as practicable, elect another person to that office. Speaker.

(2) The Speaker may be elected either from among the members of the House who are not members of the Cabinet or Parliamentary Secretaries or from among persons who are not members of the House:

Provided that a person who is not a member of the House shall not be elected as Speaker if—

- (a) he is not a Commonwealth citizen; or
- (b) he is a person disqualified to be elected or appointed as a Representative or Senator by virtue of subsection (1) of section 32 of this Constitution or by virtue of any law enacted in pursuance of subsection (2), (3) or (5) of that section.

(3) No business shall be transacted in the House (other than the election of a Speaker) at any time when the office of Speaker is vacant.

(4) A person shall vacate the office of Speaker—

(a) in the case of a Speaker who was elected from among the members of the House—

(i) if he ceases to be a member of the House:

Provided that the Speaker shall not vacate his office by reason only that he has ceased to be a member of the House on a dissolution of Parliament, until the House first meets after the dissolution; or

(ii) if he becomes a member of the Cabinet or a Parliamentary Secretary;

(b) in the case of a Speaker who was elected from among persons who were not members of the House—

(i) when the House first meets after any dissolution of Parliament;

(ii) if he ceases to be a Commonwealth citizen;

(iii) if any circumstances arise that would cause him to be disqualified to be elected or appointed as a Representative or Senator by virtue of subsection (1) of section 32 of this Constitution or by virtue of any law enacted in pursuance of subsection (2), (3) or (5) of that section; or

(iv) if he is elected to be President.

(5) If, by virtue of section 35(4) of this Constitution, the Speaker (being a Representative or a Senator) is required to cease to perform his functions as a member of the House he shall also cease to perform his functions as Speaker; and if the Speaker resumes the performance of his functions as a member of the House, in accordance with the provisions of that section, he shall also resume the performance of his functions as Speaker.

(6) At any time when, by virtue of section 28(2) or section 35(4) of this Constitution, the Speaker is unable to perform the functions of his

office, those functions shall, until he vacates his seat in the House or resumes the performance of the functions of his office, be performed by the Deputy Speaker or, if the office of Deputy Speaker is vacant or the Deputy Speaker is required to cease to perform his functions as a member of the House by virtue of section 28(2) or 35(4) of this Constitution, by such member of the House (not being a member of the Cabinet or a Parliamentary Secretary) as the House may elect for the purpose.

Deputy
Speaker.

37.—(1) When the House first meets after any general election of Representatives and before it proceeds to the despatch of any other business except the election of the Speaker, the House shall elect a member of the House, who is not a member of the Cabinet or a Parliamentary Secretary, to be Deputy Speaker of the House, and if the office of Deputy Speaker falls vacant at any time before the next dissolution of Parliament, the House shall, as soon as convenient, elect another member of the House to that office.

(2) A person shall vacate the office of Deputy Speaker—

(a) if he ceases to be a member of the House;

(b) if he becomes a member of the Cabinet or a Parliamentary Secretary;

or

(c) if he is elected to be Speaker.

(3) If, by virtue of section 35(4) of this Constitution, the Deputy Speaker is required to cease to perform his functions as a member of the House he shall also cease to perform his functions as Deputy Speaker and if the Deputy Speaker resumes the performance of his functions as a member of the House, in accordance with the provisions of that section, he shall also resume the performance of his functions as Deputy Speaker.

(4) At any time when, by virtue of section 28(2) or section 35(4) of this Constitution, the Deputy Speaker is unable to perform the functions of his office, those functions shall, until he vacates his seat in the House or resumes the performance of the functions of his office, be performed by such member of the House (not being a member of the Cabinet or a Parliamentary Secretary) as the House may elect for the purpose.

Responsi-
bility for
elections.

38.—(1) The Electoral Commission shall be responsible for the registration of voters for the purpose of electing Representatives and for the conduct of elections of Representatives and Senators and shall have such powers and other functions relating to such registration and elections as may be prescribed by law.

(2) In the discharge of its functions the Electoral Commission shall be assisted by a Chief Elections Officer, whose office shall be a public office, and the Commission may give such directions as it considers necessary or expedient to the Officer, who shall comply with such directions or cause them to be complied with.

(3) For the purposes of the exercise of his functions under subsection (2) of this section, the Chief Elections Officer may give such directions as he considers necessary or expedient to any registering officer, presiding officer or returning officer relating to the exercise by that officer of his functions under any law regulating the registration of voters or

the conduct of elections, and any officer to whom directions are given under this subsection shall comply with those directions.

(4) The Electoral Commission may make such reports to the President concerning the matters for which it is responsible under this section, or any draft bill or instrument that is referred to it under section 51 of this Constitution, as it may think fit and if the Commission so requests in any such report other than a report on a draft bill or instrument that report shall be laid before the House.

(5) Without prejudice to the provisions of subsection (2) of this section, in the exercise of his functions under this section the Chief Elections Officer shall not be subject to the direction or control of any other person or authority.

(6) The question whether the Chief Elections Officer has acted in accordance with the directions of the Electoral Commission shall not be enquired into in any court of law.

39.—(1) There shall be a Clerk of the House.

**Clerk of
House
and his staff.**

(2) The office of the Clerk of the House and the offices of the members of his staff shall be public offices.

40.—(1) The High Court shall have jurisdiction to hear and determine any question whether—

**Deter-
mination of
questions of
membership.**

(a) any person has been validly elected as a Representative or Senator;

(b) any person has been validly appointed as a Senator;

(c) any person who has been elected as Speaker from among persons who were not members of the House was qualified to be so elected or has vacated the office of Speaker; or

(d) any member of the House has vacated his seat or is required, under the provisions of section 35(4) of this Constitution, to cease to perform any of his functions as a member of the House.

(2) An application to the High Court for the determination of any question under subsection (1)(a) of this section may be made by any person entitled to vote in the election to which the application relates or by any person who was a candidate at that election or by the Attorney-General and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(3) An application to the High Court for the determination of any question under subsection (1)(b) or subsection (1)(c) of this section may be made by any elected member of the House or by the Attorney-General and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(4) An application to the High Court for the determination of any question under subsection (1)(d) of this section may be made—

(a) by any elected member of the House or by the Attorney-General; or

(b) in the case of the seat of an elected member of the House, by any person registered in some constituency as a voter for the purpose of selecting Representatives,

and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(5) The circumstances and manner in which and the imposition of conditions upon which any application may be made to the High Court for the determination of any question under this section and the powers, practice and procedure of the High Court in relation to any such application shall be regulated by such provision as may be made by Parliament.

(6) An appeal shall lie as of right to the Court of Appeal from any final decision of the High Court determining such a question as is referred to in subsection (1) of this section.

(7) No appeal shall lie from any decision of the Court of Appeal in exercise of the jurisdiction conferred by subsection (6) of this section and no appeal shall lie from any decision of the High Court in proceedings under this section other than a final decision determining such a question as is referred to in subsection (1) of this section.

(8) In the exercise of his functions under this section, the Attorney-General shall not be subject to the direction or control of any other person or authority.

PART 2

Legislation and procedure of Parliament

Power to
make laws.

41. Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Dominica.

Alteration
of
Constitution
and
Supreme
Court Order.

42.—(1) Parliament may alter any of the provisions of this Constitution or of the Supreme Court Order in the manner specified in the following provisions of this section.

(2) A bill to alter this section, Schedule 1 to this Constitution or any of the provisions of this Constitution specified in Part I of that Schedule or any of the provisions of the Supreme Court Order specified in Part II of that Schedule shall not be regarded as being passed by the House of Assembly unless on its final reading in the House the bill is supported by the votes of not less than three-quarters of all the elected members of the House; and a bill to alter any of the provisions of this Constitution or, as the case may be, of the Supreme Court Order not so specified shall not be regarded as being passed by the House unless on its final reading in that House the bill is supported by the votes of not less than two-thirds of all the elected members of the House.

(3) A bill to alter any of the provisions of this Constitution or the Supreme Court Order shall not be submitted to the President for his assent—

- (a) unless there has been an interval of not less than ninety days between the introduction of the bill in the House of Assembly and the beginning of the proceedings in the House on the second reading of the bill; and
- (b) if the bill provides for the alteration of this section, Schedule 1 to this Constitution or any of the provisions of this Constitution or the Supreme Court Order specified in that Schedule, unless after it has been passed by the House the bill has been approved on a referendum, held in accordance with such provision as may be made in that behalf by Parliament, by a majority of the votes validly cast on that referendum.

(4) The provisions of paragraph (b) of subsection (3) of this section shall not apply in relation to any bill to alter—

(a) section 106 of this Constitution in order to give effect to any agreement between Dominica and the United Kingdom concerning appeals from any court having jurisdiction in Dominica to the Judicial Committee;

(b) any of the provisions of the Supreme Court Order in order to give effect to any international agreement to which Dominica is a party relating to the Supreme Court or any other court (or any office or authority having functions in respect of any such court) constituted in common for Dominica and for other countries also parties to the agreement.

(5) Every person who, at the time when the referendum is held, would be entitled to vote for the purpose of electing Representatives shall be entitled to vote on a referendum held for the purposes of this section in accordance with such procedures as may be prescribed by Parliament for the purposes of the referendum and no other person shall be entitled so to vote.

(6) In any referendum for the purposes of this section the votes shall be given by ballot in such manner as not to disclose how any particular person votes.

(7) The conduct of any referendum for the purposes of this section shall be the responsibility of the Electoral Commission and the provisions of sections 38 and 51 of this Constitution shall apply in relation to the referendum and legislation relating thereto as they apply in relation to the exercise of their functions with respect to elections of Representatives and legislation relating thereto.

(8) (a) A bill to alter any of the provisions of this Constitution or the Supreme Court Order shall not be submitted to the President for his assent unless it is accompanied by a certificate under the hand of the Speaker that the provisions of subsections (2) and (3) of this section have been complied with.

(b) The certificate of the Speaker under this subsection shall be conclusive that the provisions of subsections (2) and (3) of this section have been complied with and shall not be enquired into in any court of law.

(c) In this subsection references to the Speaker shall, if the person holding the office of Speaker is for any reason unable to perform the functions of his office and no other person is performing them, include references to the Deputy Speaker.

(9) In this section and Schedule 1 to this Constitution references to any of the provisions of this Constitution or the Supreme Court Order include references to any law that alters that provision.

43. Without prejudice to any provision made by Parliament relating to the powers, privileges and immunities of the House and its committees, or the privileges and immunities of the members and officers of the House and of other persons concerned in the business of the House or its committees, no civil or criminal proceedings may be instituted against any member of the House for words spoken before, or written in a report to, the House or a committee thereof or by reason of any

Freedom of speech.

matter or thing brought by him therein by petition, bill, resolution, motion or otherwise.

Oath by
members.

44.—(1) Every member of the House shall, before taking his seat in the House, take and subscribe before the House the oath of allegiance but a member may before taking that oath take part in the election of the Speaker.

(2) Any person elected to the office of Speaker shall, if he has not already taken and subscribed the oath of allegiance under subsection (1) of this section, take and subscribe that oath before the House before entering upon the duties of his office.

Presiding.

45. There shall preside at any sitting of the House—

- (a) the Speaker;
- (b) in the absence of the Speaker, the Deputy Speaker; or
- (c) in the absence of the Speaker and the Deputy Speaker, such member of the House (not being a member of the Cabinet or a Parliamentary Secretary) as the House may elect for that purpose.

Voting.

46.—(1) Save as otherwise provided in sections 17(2), 17(4), 19(5), 25(1) and 42(2) of this Constitution, any question proposed for decision in the House shall be determined by a majority of the votes of the members present and voting:

Provided that questions of no confidence in the Government shall be determined by a majority of the votes of all the elected members of the House.

(2) A question shall not be regarded as having been validly determined by a vote in the House unless at least twelve members, or such greater number of members as Parliament may prescribe, take part in the voting.

(3) The references to all the members of the House in sections 17(2), 17(4), 19(5) and 25(1) of this Constitution shall not include the Speaker if he was elected from among persons who were not members of the House.

(4) A Speaker who was elected from among the members of the House or other member presiding in the House shall not vote unless on any question the votes are equally divided, in which case he shall have and exercise a casting vote:

Provided that in the case of the question of the final reading of such a bill as is referred to in section 42(2) of this Constitution he shall, if he is an elected member of the House, have an original vote but no casting vote.

(5) A Speaker who was elected from among persons who were not members of the House shall have neither an original nor a casting vote.

(6) If, upon any question before the House, the votes of the members are equally divided and no casting vote may be exercised, the motion shall be lost.

Effect of
vacancies,
etc.

47. The House may act notwithstanding any vacancy in its membership (including any vacancy not filled when the House first meets after any general election of Representatives or Senators) and the presence or

participation of any person not entitled to be present at or to participate in the proceedings of the House shall not invalidate those proceedings.

48.—(1) Any person who sits or votes in the House knowing or having reasonable grounds for knowing that he is not entitled to do so shall be guilty of an offence and liable to a fine not exceeding one hundred dollars, or such other sum as may be prescribed by Parliament, for each day on which he so sits or votes in the House.

Penalty for sitting if unqualified.

(2) Any prosecution for an offence under this section shall be instituted in the High Court and shall not be so instituted except by the Director of Public Prosecutions.

49.—(1) The power of Parliament to make laws shall be exercised by bills passed by the House and assented to by the President.

Mode of exercise of legislative power.

(2) When a bill is submitted to the President for assent in accordance with the provisions of this Constitution he shall signify that he assents.

(3) When the President assents to a bill that has been submitted to him in accordance with the provisions of this Constitution the bill shall become law and the President shall thereupon cause it to be published in the Official Gazette as law.

(4) No law made by Parliament shall come into operation until it has been published in the Official Gazette but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.

50. Except on the recommendation of the President signified by a Minister, the House shall not—

Restrictions with regard to certain financial measures.

(a) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, makes provision for any of the following purposes:—

- (i) for the imposition of taxation or the alteration of taxation otherwise than by reduction;
- (ii) for the imposition of any charge upon the Consolidated Fund or any other public fund of Dominica or the alteration of any such charge otherwise than by reduction;
- (iii) for the payment, issue or withdrawal from the Consolidated Fund or any other public fund of Dominica of any monies not charged thereon or any increase in the amount of such payment, issue or withdrawal; or
- (iv) for the composition or remission of any debt due to the Government; or

(b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes.

51. Every proposed bill and every proposed regulation or other instrument having the force of law relating to the registration of electors for the purpose of electing Representatives or to the election of Representatives and Senators shall be referred to the Electoral Commission and to the Chief Elections Officer at such time as shall give

Scrutiny of electoral legislation.

them sufficient opportunity to make comments thereon before the bill is introduced in the House or, as the case may be, the regulation or other instrument is made.

Regulation
of procedure
in House.

52. Subject to the provisions of this Constitution, the House may regulate its own procedure and may in particular make rules for the orderly conduct of its own proceedings.

PART 3

Summoning, prorogation and dissolution

Sessions.

53.—(1) Each session of Parliament shall be held at such place within Dominica and shall commence at such time as the President may by Proclamation appoint.

(2) There shall be a session of Parliament once at least in every year, so that a period of six months shall not intervene between the last sitting of the House in one session and the first sitting thereof in the next session.

Prorogation
and
dissolution.

54.—(1) The President may at any time prorogue or dissolve Parliament.

(2) Subject to the provisions of subsection (3) of this section Parliament, unless sooner dissolved, shall continue for five years from the date of the first sitting of the House after any dissolution and shall then stand dissolved.

(3) At any time when Dominica is at war, Parliament may extend the period of five years specified in subsection (2) of this section for not more than twelve months at a time:

Provided that the life of Parliament shall not be extended under this subsection for more than five years.

(4) In the exercise of his powers to dissolve Parliament, the President shall act in accordance with the advice of the Prime Minister:

Provided that if the office of the Prime Minister is vacant and the President, acting in his own deliberate judgment, considers that there is no prospect of his being able within a reasonable time to appoint to that office a person who can command the support of the majority of the elected members of the House, the President shall dissolve Parliament.

(5) If, after a dissolution of Parliament and before the holding of the general election of Representatives, the Prime Minister advises the President that, owing to the existence of a state of war or of a state of emergency in Dominica, it is necessary to recall Parliament, the President shall summon the Parliament that has been dissolved to meet, but, unless the life of Parliament is extended under the provisions of subsection (3) of this section, the general election of Representatives shall proceed and the Parliament that has been recalled shall, if not sooner dissolved, again stand dissolved on the date appointed for the nomination of candidates in that general election.

Holding of
elections.

55.—(1) A general election of Representatives or, where provision has been made by Parliament for the election of the Senators, a general election of Senators shall be held at such time within three months after any dissolution of Parliament as the President may appoint for that election.

(2) As soon as practicable after the holding of any general election of Representatives the President shall, unless provision has been made by Parliament for their election, proceed to the appointment of the Senators in accordance with the provisions of section 34 of this Constitution.

(3) Where the seat of a Representative or Senator falls vacant otherwise than by reason of a dissolution of the House—

- (a) if the vacant seat is that of a Representative, a by-election shall be held;
- (b) if the vacant seat is that of a Senator who has been appointed, an appointment shall be made; or
- (c) if the vacant seat is that of a Senator who has been elected, such electoral proceedings as may be prescribed shall be taken, to fill the vacancy within three months of the occurrence of the vacancy unless the House is sooner dissolved.

PART 4

Constituency Boundaries and Electoral Commissions

56.—(1) There shall be a Constituency Boundaries Commission and an Electoral Commission for Dominica (each of which is hereinafter in this section referred to as a Commission).

Constituency.
Boundaries
Commission
and
Electoral
Commission.

(2) The Constituency Boundaries Commission shall consist of—

- (a) the Speaker, as chairman;
- (b) two members appointed by the President, acting in accordance with the advice of the Prime Minister; and
- (c) two members appointed by the President, acting in accordance with the advice of the Leader of the Opposition.

(3) The Electoral Commission shall consist of—

- (a) a chairman appointed by the President, acting in his own deliberate judgment;
- (b) two members appointed by the President, acting in accordance with the advice of the Prime Minister; and
- (c) two members appointed by the President, acting in accordance with the advice of the Leader of the Opposition:

Provided that for the purposes of paragraph (b) or (c) of this subsection (and without prejudice to the provisions of section 63(2) of this Constitution), the President shall act in his own deliberate judgment and without the advice of the Prime Minister or, as the case may be, the advice of the Leader of the Opposition, if, having requested that advice, he does not receive it within thirty days.

(4) A person shall not be qualified to be appointed as a member of a Commission if he is a member of the House or a public officer nor, in the case of the chairman of the Electoral Commission, unless he holds one of the specified qualifications and has held one or other of those qualifications for a total period of not less than seven years.

(5) Subject to the provisions of this section, a member of a Commission who has been appointed shall vacate his office—

- (a) when the House first meets after the next dissolution of Parliament after his appointment;

(b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

(6) A member of a Commission who has been appointed may be removed from office but only for inability to discharge the functions thereof (whether arising from infirmity of mind or body or any other cause) or for misbehaviour, and he shall not be so removed except in accordance with the provisions of this section.

(7) A member of a Commission who has been appointed shall be removed from office by the President if the question of his removal from office has been referred to a tribunal appointed under subsection (8) of this section and the tribunal has recommended to the President that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(8) If the Prime Minister, in the case of a member of the Constituency Boundaries Commission, appointed in accordance with paragraph (b) of subsection (2) of this section, or the Leader of the Opposition, in the case of a member of that Commission appointed in accordance with paragraph (c) of that subsection, represents to the President or if, in the case of the chairman of the Electoral Commission, the President, acting in his own deliberate judgment, and, in the case of any other member of that Commission, the President, acting after consultation with the Prime Minister and the Leader of the Opposition, considers that the question of removal of a member of the Commission from office for inability as aforesaid or for misbehaviour ought to be investigated, then—

- (a) the President shall appoint a tribunal, which shall consist of a chairman and not less than two other members, selected by the Chief Justice, from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court; and
- (b) the tribunal shall enquire into the matter and report on the facts thereof to the President and recommend to the President whether the member of the Commission ought to be removed from office for inability as aforesaid or for misbehaviour.

(9) A Commission may regulate its own procedure, and, with the consent of the Prime Minister, confer powers and impose duties on any public officer or on any authority of the Government of Dominica for the purpose of the discharge of its functions.

(10) A Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all its members.

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

PART 5

Delimitation of constituencies

57.—(1) The Electoral Boundaries Commission (hereinafter in this section referred to as the Commission) shall, in accordance with the provisions of this section, review the number and boundaries of the constituencies into which Dominica is divided and submit to the President reports either—

**Review of
constituency
boundaries.**

- (a) showing the constituencies into which it recommends that Dominica should be divided in order to give effect to the rules set out in Schedule 2 to this Constitution; or
- (b) stating that, in its opinion, no alteration is required to the existing number or boundaries of constituencies in order to give effect to those rules.

(2) Reports under subsection (1) of this section shall be submitted by the Commission at intervals of not less than two nor more than five years.

(3) As soon as may be after the Commission has submitted a report under subsection (1)(a) of this section, the Prime Minister shall lay before the House for its approval the draft of an order by the President for giving effect, whether with or without modifications, to the recommendations contained in the report, and that draft order may make provision for any matters that appear to the Prime Minister to be incidental to or consequential upon the other provisions of the draft.

(4) Where any such draft order gives effect to any such recommendations with modifications, the Prime Minister shall lay before the House together with the draft order a statement of the reasons for the modifications.

(5) If the motion for the approval of any draft order laid before the House under this section is rejected by the House, or is withdrawn by leave of that House, the Prime Minister shall amend the draft order and lay the amended draft before the House.

(6) If any draft order laid before the House under this section is approved by resolution of the House, the Prime Minister shall submit it to the President who shall make an order in terms of the draft; and that order shall come into force upon the next dissolution of Parliament after it is made.

(7) The question of the validity of any order by the President purporting to be made under this section and reciting that a draft thereof has been approved by resolution of the House shall not be enquired into in any court of law.

(8) Parliament may provide for an appeal to the High Court against a recommendation or statement made to the President by the Commission in pursuance of paragraph (a) or (b) of subsection (1) of this section.

CHAPTER IV

THE EXECUTIVE

Executive
authority of
Dominica.

58.—(1) The executive authority of Dominica is vested in the President.

(2) Subject to the provisions of this Constitution, the executive authority of Dominica may be exercised by the President either directly or through officers subordinate to him.

(3) Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the President.

Ministers
of the
Government.

59.—(1) There shall be a Prime Minister of Dominica, who shall be appointed by the President.

(2) Whenever the President has occasion to appoint a Prime Minister he shall appoint an elected member of the House who appears to him likely to command the support of the majority of the elected members of the House.

(3) There shall be, in addition to the office of Prime Minister, such other offices of Minister of the Government as may be established by Parliament or, subject to the provisions of any law enacted by Parliament, by the President, acting in accordance with the advice of the Prime Minister.

(4) Appointments to the office of Minister, other than the office of Prime Minister, shall be made by the President, acting in accordance with the advice of the Prime Minister, from among the members of the House:

Provided that not more than three Ministers shall be appointed from among Senators who have been appointed as such.

(5) If occasion arises for making an appointment to the office of Prime Minister or any other Minister while Parliament is dissolved, then, notwithstanding the provisions of subsections (2) and (4) of this section (but subject to the proviso to subsection (4)), a person who was an elected member of the House immediately before the dissolution may be appointed as Prime Minister or any other Minister and a person who was a Senator immediately before the dissolution, having been appointed as such, may be appointed as any Minister other than Prime Minister.

(6) The President shall remove the Prime Minister from office if a resolution of no confidence in the Government is passed by the House and the Prime Minister does not within three days either resign from his office or advise the President to dissolve Parliament.

(7) If, at any time between the holding of a general election of Representatives and the first meeting of the House thereafter, the President considers that in consequence of changes in the membership of the House resulting from that election and of any general election of Senators the Prime Minister will not be able to command the support of the majority of the elected members of the House the President may remove the Prime Minister from office.

- (8) The office of any Minister shall become vacant—
- (a) if the holder of the office ceases to be a member of the House otherwise than by reason of the dissolution of Parliament;
 - (b) in the case of the Prime Minister, if, when the House first meets after the dissolution of Parliament, he is not then an elected member of the House;
 - (c) in the case of any other Minister, if, when the House first meets after the dissolution of Parliament, he is not then a member of the House; or
 - (d) if, by virtue of section 35(4) of this Constitution, he is required to cease to perform his functions as a member of the House.
- (9) The office of a Minister other than the Prime Minister shall become vacant—
- (a) if the President, acting in accordance with the advice of the Prime Minister, so directs;
 - (b) if the Prime Minister resigns from office within three days after a resolution of no confidence in the Government has been passed by the House or is removed from office under subsection (6) of this section; or
 - (c) on the appointment of any person to the office of Prime Minister.
- (10) In the exercise of the powers conferred upon him by subsections (2), (5) and (7) of this section the President shall act in his own deliberate judgment.

60.—(1) There shall be a Cabinet of Ministers for Dominica which shall consist of the Prime Minister and the other Ministers. Cabinet of Ministers.

(2) At any time when the office of Attorney-General is a public office, the Attorney-General shall, by virtue of holding or acting in that office, be a member of the Cabinet in addition to the Ministers.

(3) The functions of the Cabinet shall be to advise the President in the government of Dominica and the Cabinet shall be collectively responsible to Parliament for any advice given to the President by or under the general authority of the Cabinet and for all things done by or under the authority of any Minister in the execution of his office.

(4) The provisions of subsection (3) of this section shall not apply in relation to—

- (a) the appointment and removal from office of Ministers, temporary Ministers and Parliamentary Secretaries, the assignment of responsibility to any Minister under section 61 of this Constitution, or the authorisation of another Minister to perform the functions of the Prime Minister during absence or illness;
- (b) the dissolution of Parliament; or
- (c) the matters referred to in section 73 of this Constitution (which relate to the prerogative of mercy).

61. The President, acting in accordance with the advice of the Prime Minister, may, by directions in writing, assign to the Prime Minister or any other Minister responsibility for any business of the Government, including the administration of any department of government: Allocation of portfolios to Ministers.

Provided that responsibility for finance shall be assigned to a Minister who is a elected member of the House.

Performance of functions of Ministers during absence or illness.

62.—(1) Whenever the Prime Minister is absent from Dominica or by reason of illness is unable to perform the functions conferred upon him by this Constitution, the President may authorise some other Minister to perform those functions (other than the functions conferred by this section) and that Minister may perform those functions until his authority is revoked by the President.

(2) Whenever a Minister other than the Prime Minister is absent from Dominica or is within Dominica but by leave of the President is not performing the functions of his office or by reason of illness is unable to perform those functions, the President may authorize some other Minister to perform those functions or may appoint a member of the House of Assembly to be a temporary Minister in order to perform those functions; and that Minister or temporary Minister may perform those functions until his authority or, as the case may be, his appointment is revoked by the President:

Provided that the office of a temporary Minister shall become vacant if any circumstances arise that, if he were a Minister, would cause him to vacate office as such.

(3) The powers of the President under this section shall be exercised by him in accordance with the advice of the Prime Minister:

Provided that if the President, acting in his own deliberate judgment, considers that it is impracticable to obtain the advice of the Prime Minister owing to his absence or illness he may exercise those powers without that advice and in his own deliberate judgment.

Exercise of President's functions.

63.—(1) In the exercise of his functions the President shall act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet except in cases where he is required by this Constitution or any other law to act in accordance with the advice of, or after consultation with, any person or authority other than the Cabinet:

Provided that the foregoing provisions of this subsection shall not apply where the President is authorised to act in his own deliberate judgment in accordance with the following provisions of this Constitution—

- (a) section 56 (which relates to the Constituency Boundaries Commission and the Electoral Commission);
- (b) sections 59 and 62 (which relate to Ministers);
- (c) section 66 (which relates to the Leader of the Opposition);
- (d) section 85 (which relates to the appointment, etc., of public officers);
- (e) section 87 (which relates to the Chief Elections Officer);
- (f) section 93 (which relates to the Public Service Board of Appeal); and
- (g) section 108 (which relates to the Parliamentary Commissioner).

(2) During any period in which there is a vacancy in the office of Leader of the Opposition by reason of the fact that no person is both

qualified for appointment to that office in accordance with this Constitution and willing to accept appointment, or if the President, acting in his own deliberate judgment, considers that it is not practicable for him to obtain the advice of the Leader of the Opposition within the time within which it may be necessary for him to act, he may act without that advice and in his own deliberate judgment in the exercise of any power conferred upon him by this Constitution in respect of which it is provided that he shall act on the advice of, or after consultation with, the Leader of the Opposition.

(3) Nothing in subsection (1) of this section shall require the President to act in accordance with the advice of the Cabinet or a Minister in exercise of the functions conferred upon him by the following provisions of this Constitution—

- (a) the proviso to section 54(4) (which requires the President to dissolve Parliament in certain circumstances);
- (b) section 59(6) (which requires the President to remove the Prime Minister from office in certain circumstances);
- (c) section 64 (which entitles the President to information);
- (d) sections 56(5), 66(4), 84(6), 87(7), 88(8), 89(7), and 108(7) (which require the President to remove the holders of certain offices from office in certain circumstances).

64. The Prime Minister shall keep the President fully informed concerning the general conduct of the government of Dominica and shall furnish the President with such information as he may request with respect to any particular matter relating to the government of Dominica.

President to be informed concerning matters of government.

65. A Minister or a Parliamentary Secretary shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance, the oath of office and the oath of secrecy.

Oaths to be taken by Ministers, etc.

66.—(1) There shall be a Leader of the Opposition who shall be appointed by the President.

Leader of the Opposition.

(2) Whenever there is occasion for the appointment of a Leader of the Opposition the President shall appoint the elected member of the House who appears to him most likely to command the support of a majority of the elected members of the House who do not support the Government: or, if no elected member of the House appears to him to command such support, the elected member of the House who appears to him to command the support of the largest single group of members of the House who do not support the Government:

Provided that if a member of the House was elected at a general election in which he stood as a supporter of a political party and the majority of members of the House elected at that time (whether as Representatives or Senators) stood as supporters of that party, he shall, so long as he remains a member of the House by virtue of that election, not be eligible for appointment as Leader of the Opposition.

(3) If occasion arises to appoint a Leader of the Opposition during the period between a dissolution of Parliament and the day on which

the ensuing election of Representatives is held, an appointment may be made as if Parliament had not been dissolved.

- (4) The office of Leader of the Opposition shall become vacant—
- (a) if he ceases to be a member of the House otherwise than by reason of a dissolution of Parliament;
 - (b) if, when the House first meets after a dissolution of Parliament, he is not then a member of the House;
 - (c) if, under the provisions of section 35(4) of this Constitution, he is required to cease to perform his functions as a member of the House; or
 - (d) if he is removed from office by the President under the provisions of subsection (4) of this section.

(5) If it appears to the President that the Leader of the Opposition is no longer able to command the support of a majority of the elected members of the House who do not support the Government or (if no elected member of the House appears to him to be able to command such support) the support of the largest single group of members of the House who do not support the Government, he shall remove the Leader of the Opposition from office.

(6) The powers of the President under this section shall be exercised by him in his own deliberate judgment.

Parliamentary Secretaries.

67.—(1) The President, acting in accordance with the advice of the Prime Minister, may appoint Parliamentary Secretaries from among the members of the House to assist Ministers in the performance of their duties:

Provided that, if occasion arises for making an appointment while Parliament is dissolved, a person who was a member of the House immediately before the dissolution may be appointed as a Parliamentary Secretary.

- (2) The office of a Parliamentary Secretary shall become vacant—
- (a) if the President, acting in accordance with the advice of the Prime Minister, so directs;
 - (b) if the Prime Minister resigns from office within three days after a resolution of no confidence in the Government has been passed by the House or is removed from office under section 59(6) of this Constitution;
 - (c) upon the appointment of any person to the office of Prime Minister;
 - (d) if the holder of the office ceases to be a member of the House otherwise than by reason of a dissolution of Parliament;
 - (e) if, when the House first meets after the dissolution of Parliament, he is not then a member of the House; or
 - (f) if, by virtue of section 35(4) of this Constitution, he is required to cease to perform his functions as a member of the House.

Permanent secretaries.

68. Where any Minister has been charged with responsibility for any department of government, he shall exercise general direction and control over that department; and, subject to such direction and control, every department of government shall be under the supervision of a

public officer whose office is referred to in this Constitution as the office of a permanent secretary:

Provided that two or more government departments may be placed under the supervision of one permanent secretary.

69.—(1) There shall be a Secretary to the Cabinet whose office shall be a public office. Secretary to the Cabinet.

(2) The Secretary to the Cabinet, who shall have charge of the Cabinet Office, shall be responsible, in accordance with such instructions as may be given to him by the Prime Minister, for arranging the business for, and keeping the minutes of, the Cabinet and for conveying the decisions of the Cabinet to the appropriate person or authority and shall have such other functions as the Prime Minister may direct.

70. Subject to the provisions of this Constitution and of any other law, the President may constitute offices for Dominica, make appointments to any such office and terminate any such appointment. Constitution of offices, etc.

71.—(1) There shall be an Attorney-General who shall be the principal legal adviser to the Government. Attorney-General.

(2) The office of Attorney-General shall be either a public office or the office of a Minister.

(3) At any time when the office of Attorney-General is a public office the same person may, if qualified, be appointed to hold or act in the office of Attorney-General and the office of Director of Public Prosecutions.

(4) Where the offices of Attorney-General and Director of Public Prosecutions are held by the same person the following provisions of this Constitution shall have effect as if references therein to the Director included references to the Attorney-General, that is to say, sections 86, 88(5), (6), (7), (8), (9) and (10), 96(3) and 121(8)(a); but the provisions of this subsection shall be without prejudice to the powers of Parliament or, subject to the provisions of any law enacted by Parliament, the President to determine that the office of Attorney-General shall be the office of a Minister.

72.—(1) There shall be a Director of Public Prosecutions whose office shall be a public office. Control of public prosecutions.

(2) The Director of Public Prosecutions shall have power in any case in which he considers it desirable so to do—

- (a) to institute and undertake criminal proceedings against any person before any court of law (other than a court-martial) in respect of any offence alleged to have been committed by that person;
- (b) to take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority; and
- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(3) The powers of the Director of Public Prosecutions under subsection (2) of this section may be exercised by him in person or through other persons acting under and in accordance with his general or special instructions.

(4) The powers conferred on the Director of Public Prosecutions by paragraphs (b) and (c) of subsection (2) of this section shall be vested in him to the exclusion of any other person or authority:

Provided that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.

(5) For the purposes of this section, any appeal from a judgment in criminal proceedings before any court or any case stated or question of law reserved for the purpose of any such proceedings, to any other court (including the Judicial Committee) shall be deemed to be part of those proceedings:

Provided that the power conferred on the Director of Public Prosecutions by subsection (2)(c) of this section shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved at the instance of such a person.

(6) In the exercise of the powers vested in him by subsection (2) of this section, the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority:

Provided that the powers vested in him by paragraph (c) of that subsection (2) shall be exercised by him in accordance with such general or special directions (if any) as the Attorney-General may give him.

**Prerogative
of mercy.**

73.—(1) The President may—

- (a) grant a pardon, either free or subject to lawful conditions, to any person convicted of any offence;
- (b) grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for any offence;
- (c) substitute a less severe form of punishment for any punishment imposed on any person for any offence; or
- (d) remit the whole or any part of any punishment imposed on any person for any offence or of any penalty or forfeiture otherwise due to the Government of Dominica on account of any offence.

(2) The powers of the President under subsection (1) of this section shall be exercised by him in accordance with the advice of such Minister as may from time to time be designated by the President, acting in accordance with the advice of the Prime Minister.

**Advisory
Committee
on
Prerogative
of Mercy.**

74.—(1) There shall be an Advisory Committee on the Prerogative of Mercy for Dominica (hereinafter in this section referred to as the Committee) which shall consist of—

- (a) the Minister for the time being designated under section 73(2) of this Constitution, who shall be chairman;

(b) the Attorney-General; and

(c) not more than four other members appointed by the President, by writing under his hand.

(2) A member of the Committee appointed under subsection (1)(c) of this section shall hold his seat thereon for such period as may be specified in the instrument by which he was appointed:

Provided that his seat shall become vacant—

(a) in the case of a person who at the date of his appointment was a Minister, if he ceases to be a Minister; or

(b) if the President, by writing under his hand, so directs.

(3) The Committee may act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings.

(4) The Committee may regulate its own procedure.

(5) In the exercise of his functions under this section, the President shall act in accordance with the advice of the Prime Minister.

75.—(1) Where any person has been sentenced to death (otherwise than by a court-martial) for an offence, the Minister for the time being designated under section 73(2) of this Constitution shall cause a written report of the case from the trial judge (or the Chief Justice, if a report from the trial judge cannot be obtained) together with such other information derived from the record of the case or elsewhere as he may require, to be taken into consideration at a meeting of the Advisory Committee on the Prerogative of Mercy; and after obtaining the advice of the Committee he shall decide in his own deliberate judgment whether to advise the President to exercise any of his powers under section 73(1) of this Constitution.

Functions of
Advisory
Committee.

(2) The Minister for the time being designated under section 73(2) of this Constitution may consult with the Advisory Committee on the Prerogative of Mercy before tendering any advice to the President under that subsection in any case not falling within subsection (1) of this section but he shall not be obliged to act in accordance with the recommendation of the Committee.

CHAPTER V

FINANCE

76. All revenues or other moneys raised or received by Dominica (not being revenues or other moneys that are payable, by or under any law for the time being in force in Dominica, into some other fund established for a specific purpose) shall be paid into and form a Consolidated Fund.

Consolidated
Fund.

77.—(1) No moneys shall be withdrawn from the Consolidated Fund except—

(a) to meet expenditure that is charged upon the Fund by this Constitution or by any law enacted by Parliament; or

(b) where the issue of those moneys has been authorised by an

Withdrawals
from
Consolidated
Fund or
other public
funds.

appropriation law or by a law made in pursuance of section 79 of this Constitution.

(2) Where any moneys are charged by this Constitution or any law enacted by Parliament upon the Consolidated Fund or any other public fund, they shall be paid out of that fund by the Government to the person or authority to whom payment is due.

(3) No moneys shall be withdrawn from any public fund other than the Consolidated Fund unless the issue of those moneys has been authorised by or under any law.

(4) Parliament may prescribe the manner in which withdrawals may be made from the Consolidated Fund or any other public fund.

Authorisa-
tion of
expenditure
from
Consolidated
Fund by
appropria-
tion law.

78.—(1) The Minister for the time being responsible for finance shall cause to be prepared and laid before the House of Assembly before, or not later than forty-five days after, the commencement of each financial year estimates of the revenues and expenditure of Dominica for that financial year.

(2) When the estimates of expenditure (other than expenditure charged upon the Consolidated Fund by this Constitution or by any law enacted by Parliament) have been approved by the House of Assembly, a bill, known as an appropriation bill, shall be introduced in the House, providing for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums, under separate votes for the several services required, to the purposes specified therein.

(3) If in respect of any financial year it is found—

- (a) that the amount appropriated by the appropriation law to any purpose is insufficient or that a need has arisen for expenditure for a purpose to which no amount has been appropriated by that law; or
- (b) that any moneys have been expended for any purpose in excess of the amount appropriated to that purpose by the appropriation law or for a purpose to which no amount has been appropriated by that law,

a supplementary estimate showing the sums required or spent shall be laid before the House and, when the supplementary estimate has been approved by the House, a supplementary appropriation bill shall be introduced in the House providing for the issue of such sums from the Consolidated Fund and appropriating them to the purposes specified therein.

Authorisa-
tion of
expenditure
in advance of
appropria-
tion.

79. There shall be such provision as may be made by Parliament under which, if the appropriation law in respect of any financial year has not come into operation by the beginning of that financial year, the Minister for the time being responsible for finance may authorise the withdrawal of moneys from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government of Dominica until the expiration of four months from the beginning of that financial year or the coming into operation of the law, whichever is the earlier.

80.—(1) There shall be such provision as may be made by Parliament for the establishment of a Contingencies Fund and for authorising the Minister for the time being responsible for finance, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

Con-
tingencies
Fund.

(2) Where any advance is made from the Contingencies Fund, a supplementary estimate shall as soon as possible be laid before the House and when the supplementary estimate has been approved by the House, a supplementary appropriation bill shall be introduced as soon as possible in the House for the purpose of replacing the amount so advanced.

81.—(1) There shall be paid to the holders of the offices to which this section applies such salaries and such allowances as may be prescribed by or under a law enacted by Parliament.

Remunera-
tion of
certain
officers.

(2) The salaries and allowances prescribed in pursuance of this section in respect of the holders of the offices to which this section applies shall be a charge on the Consolidated Fund.

(3) The salary prescribed in pursuance of this section in respect of the holder of any office to which this section applies and his other terms of service (other than allowances that are not taken into account in computing, under any law in that behalf, any pension payable in respect of his service in that office) shall not be altered to his disadvantage after his appointment.

(4) When a person's salary or other terms of service depend upon his option, the salary or terms for which he opts shall, for the purposes of subsection (3) of this section, be deemed to be more advantageous to him than any others for which he might have opted.

(5) This section applies to the offices of the President, member of the Public Service Commission, member of the Police Service Commission, member of the Public Service Board of Appeal, the Director of Public Prosecutions, the Director of Audit, the Parliamentary Commissioner, the Deputy Parliamentary Commissioner and the Chief Elections Officer.

(6) Nothing in this section shall be construed as prejudicing the provisions of section 95 of this Constitution (which protects pensions rights in respect of service as a public officer).

82.—(1) All debt charges for which Dominica is liable shall be a charge on the Consolidated Fund.

Public debt.

(2) For the purposes of this section debt charges include interest, sinking fund charges, the repayment or amortization of debt and all expenditure in connection with the raising of loans on the security of the Consolidated Fund and the service and redemption of the debt created thereby.

83.—(1) There shall be a Director of Audit whose office shall be a public office.

Audit
of public
accounts, etc.

(2) The Director of Audit shall, at least once in every year, audit and report on the public accounts of Dominica, the accounts of all officers

and authorities of the Government, the accounts of all courts of law in Dominica (including any accounts of the Court of Appeal or the High Court maintained in Dominica), the accounts of every Commission established by this Constitution and the accounts of the Parliamentary Commissioner and the Clerk of the House.

(3) The Director of Audit and any officer authorised by him shall have access to all books, records, returns, reports and other documents which in his opinion relate to any of the accounts referred to in subsection (2) of this section.

(4) The Director of Audit shall submit every report made by him in pursuance of subsection (2) of this section to the Minister for the time being responsible for finance who shall, not later than seven days after the House of Assembly first meets after he has received the report, lay it before the House.

(5) If the Minister fails to lay a report before the House of Assembly in accordance with the provisions of subsection (4) of this section the Director of Audit shall transmit copies of that report to the Speaker of the House who shall, as soon as practicable, present them to the House.

(6) The Director of Audit shall exercise such other functions in relation to the accounts of the Government or the accounts of other authorities or bodies established by law for public purposes as may be prescribed by or under any law enacted by Parliament.

(7) In the exercise of his functions under subsections (2), (3), (4) and (5) of this section, the Director of Audit shall not be subject to the direction or control of any other person or authority.

CHAPTER VI

THE PUBLIC SERVICE

PART 1

The Public Service Commission

Public
Service
Commission.

84.—(1) There shall be a Public Service Commission for Dominica (hereinafter in this section referred to as the Commission) which shall consist of—

- (a) a chairman and a deputy chairman appointed by the President, acting in accordance with the advice of the Prime Minister;
- (b) two members appointed by the President, acting in accordance with the advice of the Prime Minister, from amongst persons selected by the appropriate representative body; and
- (c) not more than three other members appointed by the President, acting in accordance with the advice of the Prime Minister:

Provided that the Prime Minister shall consult the Leader of the Opposition before tendering any advice to the President for the purposes of paragraph (b) or (c) of this subsection.

(2) A person shall not be qualified to be appointed as a member of the Commission if—

- (a) he is, or has at any time during the five years immediately preceding his appointment been, a member of the House;

- (b) he is, or has at any time during the year preceding his appointment been, a judge of the Supreme Court or a public officer.
- (3) A member of the Commission shall not, within the period of three years commencing with the day on which he last held or acted in the office of member of the Commission, be eligible for appointment to or to act in any public office.
- (4) Subject to the provisions of this section, the office of a member of the Commission shall become vacant—
- (a) at the expiration of three years from the date of his appointment; or
- (b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified to be appointed as such under subsection (2) of this section.
- (5) A member of the Commission may be removed from office only for inability to exercise 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 this section.
- (6) A member of the Commission shall be removed from office by the President if the question of his removal from office has been referred to a tribunal appointed under subsection (7) of this section and the tribunal has recommended to the President that he ought to be removed from office for inability as aforesaid or for misbehaviour.
- (7) If the Prime Minister represents to the President that the question of removing a member of the Commission under this section ought to be investigated, then—
- (a) the President shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and
- (b) the tribunal shall enquire into the matter and report on the facts thereof to the President and recommend to him whether the member ought to be removed under this section.
- (8) If the question of removing a member of the Commission has been referred to a tribunal under this section, the President, acting in accordance with the advice of the Prime Minister, may suspend that member from the exercise of the functions of his office and any such suspension may at any time be revoked by the President, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the President that that member should not be removed.
- (9) If the office of chairman of the Commission is vacant or if the holder of that office is for any reason unable to exercise the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, they shall be exercised by the deputy chairman or, if the office of deputy chairman is vacant or the holder of that office is for any reason unable to

exercise the functions of his office, by such other member of the Commission as may for the time being be designated by the President, acting in accordance with the advice of the Prime Minister.

(10) If at any time there are less than two members of the Commission besides the chairman or if any such member is acting as chairman or is for any reason unable to exercise the functions of his office, the President, acting in accordance with the advice of the Prime Minister, may appoint a person who is qualified to be appointed as a member of the Commission to act as a member, and any person so appointed shall, subject to the provisions of subsection (4) of this section, continue to act until the office in which he is acting has been filled or, as the case may be, until the holder thereof has resumed his functions or until his appointment to act has been revoked by the President, acting in accordance with the advice of the Prime Minister.

(11) A member of the Commission shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and the oath of office.

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

(13) The Commission may by regulation or otherwise regulate its own procedure and, with the consent of the Prime Minister, may confer powers or impose duties on any public officer or on any authority of the Government of Dominica for the purpose of the exercise of its functions.

(14) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all its members.

(15) In this section "the appropriate representative body" means such body as is designated by the President, acting in accordance with the advice of the Prime Minister, as the principal body in Dominica representing the interests of public officers (other than police officers).

Appoint-
ment, etc.,
of public
officers.

85.—(1) The power to appoint persons to hold or act in offices in the public service (including the power to confirm appointments), and, subject to the provisions of section 93 of this Constitution, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Public Service Commission.

(2) The Public Service Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under subsection (1) of this section to any one or more members of the Commission or, with the consent of the Prime Minister, to any public officer.

(3) The provisions of this section shall not apply in relation to the following offices, that is to say—

(a) any office to which section 86 of this Constitution applies;

- (b) the office of Chief Elections Officer;
- (c) the office of Director of Public Prosecutions;
- (d) the office of Director of Audit;
- (e) any office to which section 90 of this Constitution applies; or
- (f) any office in the Police Force.

(4) No person shall be appointed under this section to or to act in any office on the President's personal staff except with the concurrence of the President, acting in his own deliberate judgment.

(5) Before any of the powers conferred by this section are exercised by the Public Service Commission or any other person or authority in relation to the Clerk of the House or a member of his staff, the Commission or that person or authority shall consult with the Speaker.

(6) Before any of the powers conferred by this section are exercised by the Public Service Commission or any other person or authority in relation to a member of the staff of the Parliamentary Commissioner of the Chief Elections Officer, the Commission or that person or authority shall consult the Commissioner or, as the case may be, the Officer.

(7) A public officer shall not be removed from office or subjected to any other punishment under this section on the grounds of any act done or omitted by him in the exercise of a judicial function conferred on him unless the Judicial and Legal Services Commission concurs therein.

PART 2

Appointments, etc., to particular offices

86.—(1) This section applies to the offices of Secretary to the Cabinet, permanent secretary, head of a department of government, deputy head of a department of government, Clerk of the House, any office for the time being designated by the Public Service Commission as an office of a chief professional adviser to a department of government and any office for the time being designated by the Commission, after consultation with the Prime Minister, as an office the holders of which are required to reside outside Dominica for the proper discharge of their functions or as an office in Dominica whose functions relate to external affairs.

Appoint-
ment, etc., of
permanent
secretaries
and certain
other
officers.

(2) The power to appoint persons to hold or to act in offices to which this section applies (including the power to confirm appointments), and subject to the provisions of section 93 of this Constitution, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the President, acting in accordance with the advice of the Public Service Commission:

Provided that—

- (a) the power to appoint a person to hold or act in an office of permanent secretary on transfer from another such office carrying the same salary shall vest in the President, acting in accordance with the advice of the Prime Minister;
- (b) before the Public Service Commission tenders advice to the President with respect to the appointment of any person to hold an office to which this section applies (other than an appointment to an office of permanent secretary on transfer from

another such office carrying the same salary) it shall consult with the Prime Minister and if the Prime Minister signifies his objection to the appointment of any person to the office, the Commission shall not advise the President to appoint that person.

(3) References in this section to a department of government shall not include the department of the Attorney-General, the department of the Director of Public Prosecutions, the department of the Director of Audit, the department of the Parliamentary Commissioner, the department of the Chief Elections Officer or the Police Force.

**Chief
Elections
Officer.**

87.—(1) The Chief Elections Officer (hereinafter in this section referred to as the Officer) shall be appointed by the President, acting after consultation with the Electoral Commission.

(2) If the office of the Officer is vacant or if the holder of that office is for any reason unable to exercise the functions of his office, the President, acting after consultation with the Electoral Commission, may appoint a person to act as in that office.

(3) A person shall not be qualified to be appointed to hold the office of the Officer unless he holds such qualifications (if any) as may be prescribed by Parliament.

(4) A person appointed to act in the office of the Officer shall, subject to the provisions of subsections (5), (7), and (8) of this section, cease so to act—

(a) when a person is appointed to hold that office and has assumed the functions thereof or, as the case may be, when the person in whose place he is acting resumes the functions of that office; or

(b) at such earlier time as may be prescribed by the terms of his appointment.

(5) Subject to the provisions of subsection (6) of this section, the Officer shall vacate his office when he attains the prescribed age.

(6) A person holding the office of the Officer may be removed from office only for inability to exercise 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 this section.

(7) The Officer shall be removed from office by the President if the question of his removal from office has been referred to a tribunal appointed under subsection (8) of this section and the tribunal has recommended to the President that he ought to be removed for inability as aforesaid or for misbehaviour.

(8) If the President, acting in his own deliberate judgment, considers that the question of removing the Officer under this section ought to be investigated, then—

(a) the President shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and

criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and

- (b) the tribunal shall enquire into the matter and report on the facts thereof to the President and recommend to him whether the Officer ought to be removed under this section.

(9) If the question of removing the Officer has been referred to a tribunal under this section, the President, acting in his own deliberate judgment, may suspend the Officer from the exercise of the functions of his office and any such suspension may at any time be revoked by the President, acting as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the President that the Officer should not be removed.

(10) The prescribed age for the purposes of subsection (5) of this section is the age of fifty-five years or such other age as may be prescribed by Parliament:

Provided that any law enacted by Parliament, to the extent to which it alters the prescribed age after a person has been appointed to be or to act as Officer, shall not have effect in relation to that person unless he consents that it should have effect.

88.—(1) The Director of Public Prosecutions shall be appointed by the President, acting in accordance with the advice of the Public Service Commission. Director of Public Prosecutions.

(2) If the office of Director of Public Prosecutions is vacant or if the holder of that office is for any reason unable to exercise the functions of his office, the President, acting in accordance with the advice of the Public Service Commission, may appoint a person to act as Director.

(3) Before tendering advice for the purposes of subsection (1) or (2) of this section the Public Service Commission shall consult the Prime Minister.

(4) A person shall not be qualified to be appointed to hold the office of Director of Public Prosecutions unless he holds one of the specified qualifications and has held one or other of those qualifications for a total period of not less than seven years.

(5) A person appointed to act in the office of Director of Public Prosecutions shall, subject to the provisions of subsections (6), (8), (9) and (10) of this section, cease so to act—

- (a) when a person is appointed to hold that office and has assumed the functions thereof or, as the case may be, when the person in whose place he is acting resumes the functions of that office; or
- (b) at such earlier time as may be prescribed by the terms of his appointment.

(6) Subject to the provisions of subsection (7) of this section, the Director of Public Prosecutions shall vacate his office when he attains the prescribed age.

(7) A person holding the office of Director of Public Prosecutions may be removed from office only for inability to exercise 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 this section.

(8) The Director of Public Prosecutions shall be removed from office by the President if the question of his removal from office has been

referred to a tribunal appointed under subsection (9) of this section and the tribunal has recommended to the President that he ought to be removed for inability as aforesaid or for misbehaviour.

(9) If the Prime Minister or the chairman of the Public Service Commission represents to the President that the question of removing the Director of Public Prosecutions under this section ought to be investigated, then—

- (a) the President shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and
- (b) the tribunal shall enquire into the matter and report on the facts thereof to the President and recommend to him whether the Director ought to be removed under this section.

(10) If the question of removing the Director of Public Prosecutions has been referred to a tribunal under this section, the President, acting in accordance with the advice of the Public Service Commission, may suspend the Director from the exercise of the functions of his office and any such suspension may at any time be revoked by the President, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the President that the Director should not be removed.

(11) The prescribed age for the purposes of subsection (6) of this section is the age of fifty-five years or such other age as may be prescribed by Parliament:

Provided that any law enacted by Parliament, to the extent to which it alters the prescribed age after a person has been appointed to be or to act as Director of Public Prosecutions, shall not have effect in relation to that person unless he consents that it should have effect.

Director of
Audit.

89.—(1) The Director of Audit shall be appointed by the President, acting in accordance with the advice of the Public Service Commission.

(2) If the office of Director of Audit is vacant or if the holder of that office is for any reason unable to exercise the functions of his office, the President, acting in accordance with the advice of the Public Service Commission, may appoint a person to act as Director.

(3) Before tendering advice for the purposes of subsection (1) or subsection (2) of this section, the Public Service Commission shall consult the Prime Minister.

(4) A person appointed to act in the office of Director of Audit shall, subject to the provisions of subsections (5), (7), (8) and (9) of this section, cease so to act—

- (a) when a person is appointed to hold that office and has assumed the functions thereof or, as the case may be, when the person in whose place he is acting resumes the functions of that office; or
- (b) at such earlier time as may be prescribed by the terms of his appointment.

(5) Subject to the provisions of subsection (7) of this section the

Director of Audit shall vacate his office when he attains the prescribed age.

(6) A person holding the office of Director of Audit may be removed from office only for inability to exercise 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 this section.

(7) The Director of Audit shall be removed from office by the President if the question of his removal from office has been referred to a tribunal appointed under subsection (8) of this section and the tribunal has recommended to the President that he ought to be removed for inability as aforesaid or for misbehaviour.

(8) If the Prime Minister or the chairman of the Public Service Commission represents to the President that the question of removing the Director of Audit under this section ought to be investigated—

- (a) the President shall appoint a tribunal which shall consist of a chairman and not less than two other members selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and
- (b) the tribunal shall enquire into the matter and report on the facts thereof to the President and recommend to him whether the Director ought to be removed under this section.

(9) If the question of removing the Director of Audit has been referred to a tribunal under this section, the President, acting in accordance with the advice of the Public Service Commission, may suspend the Director of Audit from the exercise of the functions of his office and any such suspension may at any time be revoked by the President, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the President that the Director should not be removed.

(10) The prescribed age for the purposes of subsection (5) of this section is the age of fifty-five or such other age as may be prescribed by Parliament:

Provided that any law enacted by Parliament to the extent to which it alters the prescribed age after a person has been appointed to be or to act as Director of Audit, shall not have effect in relation to that person unless he consents that it should have effect.

90.—(1) This section applies to the offices of magistrate, registrar of the High Court and assistant registrar of the High Court and to any public office in the department of the Attorney-General (including the public office of Attorney-General) or in the department of the Parliamentary Commissioner, the department of the Chief Elections Officer (other than the office of Officer) or the department of the Director of Public Prosecutions (other than the office of Director) for appointment to which persons are required to hold one or other of the specified qualifications.

Appoint-
ment, etc.,
of
magistrates,
registrars
and legal
officers.

(2) The power to appoint persons to hold or act in offices to which this section applies (including the power to confirm appointments) shall vest in the Public Service Commission:

Provided that before exercising the powers conferred by this section in any case the Public Service Commission shall consult the Judicial and Legal Services Commission.

(3) Subject to the provisions of section 71(4) of this Constitution, the power to exercise disciplinary control over persons holding or acting in offices to which this section applies and the power to remove such persons from office shall vest in the Judicial and Legal Services Commission:

Provided that before exercising the powers conferred by this subsection in any case the Judicial and Legal Services Commission shall consult the Public Service Commission.

PART 3

The Police

Police
Service
Commission.

91.—(1) There shall be a Police Service Commission for Dominica which shall consist of—

- (a) a chairman and a deputy chairman appointed by the President, acting in accordance with the advice of the Prime Minister;
- (b) two members appointed by the President, acting in accordance with the advice of the Prime Minister, from amongst persons selected by the appropriate representative body; and
- (c) not more than three other members appointed by the President, acting in accordance with the advice of the Prime Minister:

Provided that the Prime Minister shall consult the Leader of the Opposition before tendering any advice to the President for the purposes of paragraph (b) or (c) of this subsection.

(2) The provisions of section 84 of this Constitution (other than subsections (1) and (15)) shall apply in relation to the Police Service Commission as they apply in relation to the Public Service Commission.

(3) In this section “the appropriate representative body” means such body as is designated by the President, acting in accordance with the advice of the Prime Minister, as the principal body in Dominica representing the interests of police officers.

Appoint-
ment, etc.,
of police
officers.

92.—(1) The power to appoint a person to hold or act in the office of Chief of Police or Deputy Chief of Police and, subject to the provisions of section 93 of this Constitution, the power to remove the Chief of Police or Deputy Chief of Police from office shall vest in the President, acting in accordance with the advice of the Prime Minister, given after consultation with the Leader of the Opposition and the Police Service Commission.

(2) The power to appoint persons to hold or act in offices in the Police Force below the rank of Deputy Chief of Police (including the power to confirm appointments), and, subject to the provisions of section 93 of this Constitution, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Police Service Commission.

(3) The Police Service Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers

under subsection (2) of this section in respect of officers below the rank of sergeant or of persons holding or acting in those offices to any one or more members of the Commission or, with the consent of the Prime Minister, to the Chief of Police or any other officer of the Police Force.

(4) A police officer shall not be removed from office or subjected to any other punishment under this section on the grounds of any act done or omitted by him in the exercise of any judicial function conferred on him unless the Judicial and Legal Services Commission concurs therein.

PART 4

The Public Service Board of Appeal

93.—(1) There shall be a Public Service Board of Appeal for Dominica (hereinafter in this section and in section 94 of this Constitution referred to as the Board) which shall consist of—

Public
Service
Board of
Appeal.

- (a) one member appointed by the President, acting in his own deliberate judgment, who shall be chairman;
- (b) one member appointed by the President, acting in accordance with the advice of the Prime Minister; and
- (c) one member appointed by the President, acting in accordance with the advice of the appropriate representative body.

(2) A person shall not be qualified for appointment as a member of the Board if he is a member of the House and a person shall not be qualified for appointment under paragraph (c) of subsection (1) of this section unless he is or has been a public officer.

(3) Subject to the provisions of this section, the office of a member of the Board shall become vacant—

- (a) at the expiration of three years from the date of his appointment; or
- (b) if any circumstances arise that, if he were not a member of the Board, would cause him to be disqualified to be appointed as such under subsection (2) of this section.

(4) A member of the Board may be removed from office only for inability to exercise 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 this section.

(5) A member of the Board shall be removed from office by the President if the question of his removal from office has been referred to a tribunal appointed under subsection (6) of this section and the tribunal has recommended to the President that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(6) If the President considers that the question of removing a member of the Board under this section ought to be investigated, then—

- (a) the President shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or of a court having jurisdiction in appeals from such a court; and

(b) the tribunal shall enquire into the matter and report on the facts thereof to the President and recommend to him whether the member ought to be removed under this section.

(7) If the question of removing a member of the Board has been referred to a tribunal under this section, the President may suspend that member from the exercise of the functions of his office and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the tribunal recommends to the President that that member should not be removed.

(8) If at any time any member of the Board is for any reason unable to exercise the functions of his office, the President may appoint a person who is qualified to be appointed as a member of the Board to act as a member, and any person so appointed shall, subject to the provisions of subsection (4) of this section, continue to act until the holder thereof has resumed his functions or until his appointment to act has been revoked by the President.

(9) In the exercise of the powers conferred upon him by subsections (6), (7) and (8) of this section the President shall, in the case of a member of the Board appointed under paragraph (b) of subsection (1) of this section, act in accordance with the advice of the Prime Minister and shall in any other case act in his own deliberate judgment.

(10) The Board shall, in the exercise of its functions under this Constitution, not be subject to the direction or control of any other person or authority.

(11) In this section “the appropriate representative body” means the body designated under section 84 (15) of this Constitution.

**Appeals in
discipline
cases.**

94.—(1) This section applies to—

- (a) any decision of the President, acting in accordance with the advice of the Public Service Commission or the advice of the Police Service Commission, or any decision of the Public Service Commission or of the Police Service Commission, to remove a public officer from office or to exercise disciplinary control over a public officer (including a decision made on appeal from or confirming a decision of any person to whom powers are delegated under section 85(2) or 92(3) of this Constitution);
- (b) any decision of any person to whom powers are delegated under section 85(2) or 92(3) of this Constitution to remove a public officer from office or to exercise disciplinary control over a public officer (not being a decision which is subject to appeal to or confirmation by the Public Service Commission or the Police Service Commission);
- (c) such decisions with respect to the discipline of any military, naval or air force of Dominica as may be prescribed by Parliament.

(2) Subject to the provisions of this section, an appeal shall lie to the Board from any decision to which this section applies at the instance of the public officer or member of the naval, military or air force in respect of whom the decision is made.

(3) Upon an appeal under this section the Board may affirm or set aside the decision appealed against or may make any other decision

which the authority or person from whom the appeal lies could have made.

(4) Every decision of the Board shall require the concurrence of a majority of all its members.

(5) Subject to the provisions of subsection (4) of this section, the Board may by regulation make provision for—

- (a) the procedure of the Board;
- (b) the procedure in appeals under this section; or
- (c) excepting from the provisions of subsection (2) of this section decisions in respect of public officers holding offices whose emoluments do not exceed such sum as may be prescribed by the regulations or such decisions to exercise disciplinary control, other than decisions to remove from office, as may be so prescribed.

(6) Regulations made under this section may, with the consent of the Prime Minister, confer powers or impose duties on any public officer or any authority of the Government of Dominica for the purpose of the exercise of the functions of the Board.

(7) The Board may, subject to the provisions of this section and to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member.

PART 5

Pensions

95.—(1) The law to be applied with respect to any pensions benefits that were granted to any person before the commencement of this Constitution shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person. Pensions laws and protection of pensions rights.

(2) The law to be applied with respect to any pensions benefits (not being benefits to which subsection (1) of this section applies) shall—

- (a) in so far as those benefits are wholly in respect of a period of service as a judge or officer of the Supreme Court or a public officer that commenced before the commencement of this Constitution, be the law that was in force at such commencement; and
- (b) in so far as those benefits are wholly or partly in respect of a period of service as a judge or officer of the Supreme Court or a public officer that commenced after the commencement of this Constitution, be the law in force on the date on which that period of service commenced,

or any law in force at a later date that is not less favourable to that person.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts shall, for the purposes of this section, be deemed to be more favourable to him than the other law or laws.

(4) All pensions benefits shall (except to the extent that they are by law charged upon and duly paid out of some other fund) be a charge on the Consolidated Fund.

(5) In this section "pensions benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as judges or officers of the Supreme Court or public officers or for the widows, children, dependants or personal representatives of such persons in respect of such service.

(6) References in this section to the law with respect to pensions benefits include (without prejudice to their generality) references to the law regulating the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which any such benefits that have been granted may be withheld, reduced in amount or suspended and the law regulating the amount of any such benefits.

Power to
withhold
pensions,
etc.

96.—(1) Where under any law any person or authority has a discretion—

(a) to decide whether or not any pensions benefits shall be granted;
or

(b) to withhold, reduce in amount or suspend any such benefits that have been granted,

those benefits shall be granted and may not be withheld, reduced in amount or suspended unless the Public Service Commission concurs in the refusal to grant the benefits or, as the case may be, in the decision to withhold them, reduce them in amount or suspend them.

(2) Where the amount of any pensions benefits that may be granted to any person is not fixed by law, the amount of the benefits to be granted to him shall be the greatest amount for which he is eligible unless the Public Service Commission concurs in his being granted benefits of a smaller amount.

(3) The Public Service Commission shall not concur under subsection (1) or subsection (2) of this section in any action taken on the ground that any person who holds or has held the office of judge of the Supreme Court, Director of Public Prosecutions, Director of Audit or Chief Elections Officer has been guilty of misbehaviour in that office unless he has been removed from that office by reason of such misbehaviour.

(4) Before the Public Service Commission concurs under subsection (1) or subsection (2) of this section in any action taken on the ground that any person who holds or has held any office to which, at the time of such action, section 90 of this Constitution applies has been guilty of misbehaviour in that office, the Public Service Commission shall consult the Judicial and Legal Services Commission.

(5) In this section "pensions benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as judges or officers of the Supreme Court or public officers or for the widows, children, dependants or personal representatives of such persons in respect of such service.

CHAPTER VII

CITIZENSHIP

97.—(1) Every person who, having been born in Dominica, is immediately before the commencement of this Constitution a citizen of the United Kingdom and Colonies shall become a citizen of Dominica at such commencement. Persons who become citizens on 3rd November 1978.

(2) Every person who, immediately before the commencement of this Constitution, is a citizen of the United Kingdom and Colonies—

(a) having become such a citizen under the British Nationality Act 1948(a) by virtue of his having been naturalised in Dominica as a British subject before that Act came into force; or

(b) having become such a citizen by virtue of his having been naturalised or registered in Dominica under the British Nationality Acts 1948 to 1965,

shall become a citizen of Dominica at such commencement.

(3) Every person who, having been born outside Dominica, is immediately before the commencement of this Constitution a citizen of the United Kingdom and Colonies shall, if his father or mother becomes, or would but for his death have become, a citizen of Dominica by virtue of subsection (1) or subsection (2) of this section, become a citizen of Dominica at such commencement.

98. Every person born in Dominica after the commencement of this Constitution shall become a citizen of Dominica at the date of his birth: Persons born in Dominica on or after 3rd November 1978.

Provided that a person shall not become a citizen of Dominica by virtue of this section if at the time of his birth—

(a) neither of his parents is a citizen of Dominica and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Dominica; or

(b) his father is a citizen of a country with which Dominica is at war and the birth occurs in a place then under occupation by that country.

99. A person born outside Dominica after the commencement of this Constitution shall become a citizen of Dominica at the date of his birth if, at that date, his father or mother is a citizen of Dominica otherwise than by virtue of this section or section 97(3) of this Constitution. Persons born outside Dominica on or after 3rd November 1978.

100.—(1) The following persons shall be entitled, upon making application and, in the case of a British protected person or an alien who has attained the age of eighteen years, taking the oath of allegiance, to be registered as citizens of Dominica— Registration.

(a) any person who is married to a citizen of Dominica or who has been married to a person who, at any time during the period during which they were married to each other, was a citizen of Dominica;

(b) any person who, being a Commonwealth citizen, is and for the previous seven years has been ordinarily resident in Dominica;

- (c) any person who, having been a citizen of Dominica, has renounced his citizenship in order to qualify for the acquisition or retention of the citizenship of another country;
- (d) any person who is married to any such person as is mentioned in paragraphs (b) or (c) of this subsection or who was married to a person who, at any time during the period during which they were married to each other, was entitled to be registered as a citizen of Dominica under either of those paragraphs;
- (e) any person under the age of eighteen years who is the child, stepchild or child adopted in a manner recognised by law of a citizen of Dominica or is the child, stepchild or child so adopted of a person who is or would but for his death have been entitled to be registered as a citizen of Dominica under this subsection; or
- (f) any person who, before the commencement of this Constitution, has been married to a person—
 - (i) who becomes a citizen of Dominica by virtue of section 97 of this Constitution; or
 - (ii) who, having died before such commencement, would but for his death have become a citizen of Dominica by virtue of that section,
 but whose marriage has been terminated by death or dissolution before such commencement.

(2) An application under this section shall be made in such manner as may be prescribed, as respects that application, by or under a law enacted by Parliament and in the case of a person to whom subsection (1)(e) of this section applies, it shall be made on his behalf by his parent or guardian before he attains the age of eighteen years or such later age as may be so prescribed.

Acquisition,
deprivation
and
renunciation.

101. There shall be such provision as may be made by Parliament for—

- (a) the acquisition of citizenship of Dominica by persons who are not eligible or who are no longer eligible to become citizens of Dominica under the provisions of this Chapter;
- (b) depriving of his citizenship of Dominica any person who is a citizen of Dominica otherwise than by virtue of section 97, 98 or 99 of this Constitution;
- (c) the renunciation by any person of his citizenship of Dominica.

Interpreta-
tion.

102.—(1) In this Chapter—

“alien” means a person who is not a Commonwealth citizen, a British protected person or a citizen of the Republic of Ireland;

“British protected person” means a person who is a British protected person for the purpose of the British Nationality Act 1948 or any Act of the Parliament of the United Kingdom altering that Act.

(2) For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the Government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(3) Any reference in this Chapter to the national status of the father of a person at the time of that person’s birth shall, in relation to a

person born after the death of his father, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before the commencement of this Constitution and the birth occurred after such commencement the national status that the father would have had if he had died immediately after such commencement shall be deemed to be his national status at the time of his death.

CHAPTER VIII

JUDICIAL PROVISIONS

103.—(1) Subject to the provisions of sections 22(5), 38(6), 42(8), 57(7), 115(8), 118(3) and 121(10) of this Constitution, any person who alleges that any provision of this Constitution (other than a provision of Chapter I thereof) has been or is being contravened may, if he has a relevant interest, apply to the High Court for a declaration and for relief under this section.

Original
Jurisdiction
of High
Court in
constitu-
tional
questions.

(2) The High Court shall have jurisdiction on an application made under this section to determine whether any provision of this Constitution (other than a provision of Chapter I thereof) has been or is being contravened and to make a declaration accordingly.

(3) Where the High Court makes a declaration under this section that a provision of this Constitution has been or is being contravened and the person on whose application the declaration is made has also applied for relief, the High Court may grant to that person such remedy as it considers appropriate, being a remedy available generally under the law of Dominica in proceedings in the High Court.

(4) The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on the Court by or under this section, including provision with respect to the time within which any application under this section may be made.

(5) A person shall be regarded as having a relevant interest for the purpose of an application under this section only if the contravention of this Constitution alleged by him is such as to affect his interests.

(6) The right conferred on a person by this section to apply for a declaration and relief in respect of an alleged contravention of this Constitution shall be in addition to any other action in respect of the same matter that may be available to that person under any other enactment or any rule of law.

(7) Nothing in this section shall confer jurisdiction on the High Court to hear or determine any such question as is referred to in section 40 of this Constitution.

104.—(1) Where any question as to the interpretation of this Constitution arises in any court of law established for Dominica (other than the Court of Appeal, the High Court or a court martial) and the court is of opinion that the question involves a substantial question of law, the court shall refer the question to the High Court.

Reference
of constitu-
tional
questions to
High Court.

(2) Where any question is referred to the High Court in pursuance of this section, the High Court shall give its decision upon the question

and the court in which the question arose shall dispose of the case in accordance with that decision or, if the decision is the subject of an appeal to the Court of Appeal or the Judicial Committee, in accordance with the decision of the Court of Appeal or, as the case may be, the Judicial Committee.

Appeals to
Court of
Appeal.

105.—(1) Subject to the provisions of section 40(7) of this Constitution, an appeal shall lie from decisions of the High Court to the Court of Appeal as of right in the following cases—

- (a) final decisions in any civil or criminal proceedings on questions as to the interpretation of this Constitution;
- (b) final decisions given in exercise of the jurisdiction conferred on the High Court by section 16 of this Constitution (which relates to the enforcement of the fundamental rights and freedoms).

(2) An appeal shall lie from final decisions of the Public Service Board of Appeal to the Court of Appeal.

(3) The Chief Justice may make rules with respect to the practice and procedure of the Court of Appeal in relation to appeals from the Public Service Board of Appeal to the Court of Appeal.

Appeals
to the
Judicial
Committee.

106.—(1) An appeal shall lie from decisions of the Court of Appeal to the Judicial Committee as of right in the following cases—

- (a) final decisions in any civil proceedings where the matter in dispute on the appeal to the Judicial Committee is of the prescribed value or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the prescribed value or upwards;
- (b) final decisions in proceedings for dissolution or nullity of marriage;
- (c) final decisions in any civil or criminal proceedings which involve a question as to the interpretation of this Constitution; and
- (d) such other cases as may be prescribed by Parliament.

(2) An appeal shall lie from decisions of the Court of Appeal to the Judicial Committee with the leave of the Court of Appeal in the following cases—

- (a) decisions in any civil proceedings where in the opinion of the Court of Appeal the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to the Judicial Committee; and
- (b) such other cases as may be prescribed by Parliament.

(3) An appeal shall lie to the Judicial Committee with the special leave of the Committee from any decision of the Court of Appeal in any civil or criminal matter.

(4) References in this section to decisions of the Court of Appeal shall be construed as references to decisions of the Court of Appeal in exercise of the jurisdiction conferred by this Constitution or any law for the time being in force in Dominica:

Provided that they do not include references to decisions in exercise of the jurisdiction conferred by section 105(2) of this Constitution.

(5) In this section the prescribed value means the value of fifteen hundred dollars or such other value as may be prescribed by Parliament.

(6) This section shall be subject to the provisions of sections 22(4) and 40(7) of this Constitution.

107. In this Chapter references to the contravention of any provision of, or the interpretation of, this Constitution shall be construed as including references to the contravention of any provision of, or the interpretation of, the Supreme Court Order. Interpretation.

CHAPTER IX

PARLIAMENTARY COMMISSIONER

108.—(1) There shall be a Parliamentary Commissioner for Dominica who shall be an officer of Parliament and who shall not hold any other office of emolument whether in the public service or otherwise nor engage in any other occupation for reward. Appointment, etc., of Commissioner

(2) The Parliamentary Commissioner shall be appointed by the President, acting after consultation with the Prime Minister and the Leader of the Opposition, for a term not exceeding five years.

(3) Before entering upon the duties of his office, the Parliamentary Commissioner shall take and subscribe the oath of office before the Speaker.

(4) Subject to the provisions of subsection (7) of this section the Parliamentary Commissioner shall vacate his office at the expiration of the term for which he was appointed:

Provided that he shall vacate his office—

- (a) if with his consent he is nominated for election as a Representative or Senator; or
- (b) if he is appointed to any other office of emolument or engages in any other occupation for reward.

(5) If the office of Parliamentary Commissioner becomes vacant, an appointment to fill the office shall be made within ninety days of the occurrence of the vacancy:

Provided that the House may by resolution extend that period for further periods not exceeding in the aggregate one hundred and fifty days.

(6) A person holding the office of Parliamentary Commissioner may be removed from office only for inability to exercise 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 this section.

(7) The Parliamentary Commissioner shall be removed from office by the President if the question of his removal from office has been referred to a tribunal appointed under subsection (8) of this section and the tribunal has recommended to the President that he ought to be removed for inability as aforesaid or for misbehaviour.

(8) If the President, acting after consultation with the Prime Minister and the Leader of the Opposition, considers that the question of

removing the Parliamentary Commissioner under this section ought to be investigated—

- (a) the President shall appoint a tribunal which shall consist of a chairman and not less than two other members selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and
- (b) the tribunal shall enquire into the matter and report on the facts thereof to the President and recommend to him whether the Commissioner ought to be removed under this section.

(9) If the question of removing the Parliamentary Commissioner has been referred to a tribunal under this section, the President, acting after consultation with the Prime Minister and the Leader of the Opposition, may suspend the Commissioner from the exercise of the functions of his office and any such suspension may at any time be revoked by the President, acting as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the President that the Commissioner should not be removed.

Deputy Parliamentary Commissioner and staff.

109.—(1) There shall be a Deputy Parliamentary Commissioner and the provisions of section 108 of this Constitution shall apply in relation to the Commissioner and his office as they apply in relation to the Parliamentary Commissioner and his office.

(2) The Deputy Parliamentary Commissioner shall assist the Parliamentary Commissioner in the performance of the functions of his office and whenever that office is vacant or the holder of the office is for any reason unable to perform those functions, the Deputy Parliamentary Commissioner shall perform those functions.

Functions of Commissioner.

110.—(1) Subject to the provisions of this section and sections 111 and 112 of this Constitution, the principal function of the Parliamentary Commissioner shall be to investigate any decision or recommendation made, including any advice given or recommendation made to a Minister, or any act done or omitted by any department of government or any other authority to which this section applies, or by officers or members of such a department or authority, being action taken in exercise of the administrative functions of that department or authority.

(2) The Parliamentary Commissioner shall be provided with a staff adequate for the efficient discharge of his functions and the offices of the members of his staff shall be public offices.

(3) The Parliamentary Commissioner may investigate any such matter in any of the following circumstances—

- (a) where a complaint is duly made to the Commissioner by any person alleging that the complainant has sustained an injustice as a result of a fault in administration;
- (b) where a member of the House requests the Commissioner to investigate the matter on the ground that a person or body of persons specified in the request has or may have sustained such injustice; and

- (c) in any other circumstances in which the Commissioner considers that he ought to investigate the matter on the ground that some person or body of persons has or may have sustained such injustice.
- (4) The authorities other than departments of government to which this section applies are—
 - (a) local authorities or other bodies established for purposes of the public service or of local government;
 - (b) authorities or bodies the majority of whose members are appointed by the President or by a Minister or whose revenues consist wholly or mainly of moneys provided out of public funds;
 - (c) any authority empowered to determine the person with whom any contract shall be entered into by or on behalf of the Government; and
 - (d) such other authorities as may be prescribed by Parliament.

111.—(1) In investigating any matter leading to, resulting from or connected with the decision of a Minister, the Parliamentary Commissioner shall not inquire into or question the policy of the Minister in accordance with which the decision was made. Restrictions on matters for investigation.

(2) The Parliamentary Commissioner shall have power to investigate complaints of administrative injustice under section 110 notwithstanding that such complaints raise questions as to the integrity or corruption of the public service or any department or office of the public service, and may investigate any conditions resulting from, or calculated to facilitate or encourage, corruption in the public service, but he shall not undertake any investigation into specific charges of corruption against individuals.

(3) Where in the course of an investigation it appears to the Parliamentary Commissioner that there is evidence of any corrupt act by any public officer or by any person in connection with the public service, he shall report the matter to the appropriate authority with his recommendation as to any further investigation he may consider proper.

- (4) The Parliamentary Commissioner shall not investigate—
 - (a) any action in respect of which the complainant has or had
 - (i) a remedy by way of proceedings in a court of law; or
 - (ii) a right of appeal, reference or review to or before an independent and impartial tribunal other than a court of law; or
 - (b) any such action, or action taken with respect to any matter, as is described in Schedule 3 to this Constitution.
- (5) Notwithstanding the provisions of subsection (4) of this section the Parliamentary Commissioner—
 - (a) may investigate a matter notwithstanding that the complainant has or had a remedy by way of proceedings in a court of law if satisfied that in the particular circumstances it is not reasonable to expect him to take or to have taken such proceedings;
 - (b) is not in any case precluded from investigating any matter by reason only that it is open to the complainant to apply to the High Court for redress under section 16 of this Constitution (which relates to the enforcement of the fundamental rights and freedoms).

Discretion
of Com-
missioner.

112. In determining whether to initiate, continue or discontinue an investigation, the Parliamentary Commissioner shall, subject to the provisions of sections 110 and 111 of this Constitution, act in his discretion and, in particular and without prejudice to the generality of this discretion, the Commissioner may refuse to initiate or may discontinue an investigation where it appears to him that—

- (a) a complaint relates to action of which the complainant has knowledge for more than twelve months before the complaint was received by the Commissioner;
- (b) the subject matter of the complaint is trivial;
- (c) the complaint is frivolous or vexatious or is not made in good faith; or
- (d) the complainant has not a sufficient interest in the subject matter of the complaint.

Report on
investiga-
tion.

113.—(1) Where a complaint or request for an investigation is duly made and the Parliamentary Commissioner decides not to investigate the matter or where he decides to discontinue an investigation of the matter, he shall inform the person who made the complaint or request of the reasons for his decision.

(2) Upon the completion of an investigation the Parliamentary Commissioner shall inform the department of government or the authority concerned of the results of the investigation and if he is of the opinion that any person has sustained an injustice in consequence of a fault in administration, he shall inform the department of government or the authority of the reasons for his opinion and make such recommendations as he thinks fit.

(3) The Parliamentary Commissioner may in his original recommendations, or at any later stage if he thinks fit, specify the time within which the injustice should be remedied.

(4) Where the investigation is undertaken as a result of a complaint or request, the Parliamentary Commissioner shall inform the person who made the complaint or request of his findings.

(5) Where the matter is in the opinion of the Parliamentary Commissioner of sufficient public importance or where the Commissioner has made a recommendation under subsection (2) of this section and within the time specified by him no sufficient action has been taken to remedy the injustice, then the Commissioner shall make a special report to the House on the case.

(6) The Parliamentary Commissioner shall make annual reports to the House on the performance of his functions which shall include statistics in such form and in such detail as may be prescribed of the complaints received by him and the results of his investigations.

Power to
obtain
evidence.

114.—(1) The Parliamentary Commissioner shall have the powers of the High Court to summon witnesses to appear before him and to compel them to give evidence on oath and to produce documents relevant to the proceedings before him and all persons giving evidence at those proceedings shall have the same duties and liabilities and enjoy the same privileges as in the High Court.

(2) The Parliamentary Commissioner shall have power to enter and

inspect the premises of any department of government or any authority to which section 110 applies, to call for, examine and where necessary retain any document kept on such premises and there to carry out any investigation in pursuance of his functions.

115.—(1) There shall be such provision as may be made by Parliament—

Prescribed
matters
concerning
Com-
missioner.

(a) for regulating the procedure for the making of complaints and requests to the Parliamentary Commissioner and for the exercise of his functions;

(b) for conferring such powers on the Commissioner and imposing duties on persons in connection with the due performance of his functions; and

(c) generally for facilitating the performance by the Commissioner of his functions.

(2) The Parliamentary Commissioner may not be empowered to summon a Minister or a Parliamentary Secretary to appear before him or to compel a Minister or a Parliamentary Secretary to answer any questions relating to any matter under investigation by the Commissioner.

(3) The Parliamentary Commissioner may not be empowered to summon any witness to produce any Cabinet papers or to give any confidential income tax information.

(4) No complainant may be required to pay any fee in respect of his complaint or request or for any investigation to be made by the Parliamentary Commissioner.

(5) No proceedings, civil or criminal, may lie against the Parliamentary Commissioner, or against any person holding an office or appointment under him, for anything he may do or report or say in the course of the exercise or intended exercise of the functions of the Commissioner under this Constitution, unless it is shown that he acted in bad faith.

(6) The Parliamentary Commissioner, and any person holding office or appointment under him, may not be called to give evidence in any court of law, or in any proceedings of a judicial nature, in respect of anything coming to his knowledge in the exercise of his functions.

(7) Anything said or any information supplied or any document, paper, or thing produced by any person in the course of any enquiry by or proceedings before the Parliamentary Commissioner under this Constitution shall be privileged in the same manner as if the enquiry or proceedings were proceedings in a court of law.

(8) No proceedings of the Parliamentary Commissioner may be held bad for want of form, and, except on the ground of lack of jurisdiction, no proceeding or decision of the Commissioner shall be liable to be challenged, reviewed, quashed or called in question in any court of law.

CHAPTER X

MISCELLANEOUS

116. Dominica shall be a sovereign democratic republic.

Declaration
of republic.

Supreme law.

117. This Constitution is the supreme law of Dominica and, subject to the provisions of this Constitution, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.

Functions of President.

118.—(1) Any reference in this Constitution to the functions of the President shall be construed as a reference to his powers and duties in the exercise of the executive authority of Dominica and to any other powers and duties conferred or imposed on him as President by or under this Constitution or any other law.

(2) Where by this Constitution the President is required to perform any function after consultation with any person or authority he shall not be obliged to exercise that function in accordance with the advice of that person or authority.

(3) Where by this Constitution the President is required to perform any function in accordance with the advice of, or after consultation with, any person or authority, the question whether the President has so exercised that function shall not be enquired into in any court of law.

Resignations.

119.—(1) The President may resign his office, and a Representative or Senator may resign his seat, by writing under his hand addressed to the Speaker and the resignation shall take effect, and the office or seat shall accordingly become vacant, when the writing is received by—

- (a) the Speaker;
- (b) if the office of Speaker is vacant or the Speaker is for any reason unable to perform the functions of his office and no other person is performing them, the Deputy Speaker; or
- (c) if the office of Deputy Speaker is vacant or the Deputy Speaker is for any reason unable to perform the functions of his office and no other person is performing them, the Clerk of the House.

(2) The Speaker or the Deputy Speaker may resign his office by writing under his hand addressed to the House and the resignation shall take effect, and the office shall accordingly become vacant, when the writing is received by the Clerk of the House.

(3) Any person who has been appointed to an office established by this Constitution (other than an office to which subsection (1) or (2) of this section applies) or any office of Minister or temporary Minister established in accordance with section 59(3) or 62(2) of this Constitution may resign that office by writing under his hand addressed to the person or authority by whom he was appointed and the resignation shall take effect, and the office shall accordingly become vacant—

- (a) at such time or on such date (if any) as may be specified in the writing; or
- (b) when the writing is received by the person or authority to whom it is addressed or by such other person as may be authorised to receive it,

whichever is the later:

Provided that the resignation may be withdrawn before it takes effect if the person or authority to whom the resignation is addressed consents to its withdrawal.

120.—(1) Subject to the provisions of section 21(1) of this Constitution, where any person has vacated any office established by this Constitution or any office of Minister or temporary Minister established under this Constitution, he may, if qualified, again be appointed or elected to hold that office in accordance with the provisions of this Constitution.

Re-appointment and concurrent appointments.

(2) Where this Constitution vests in any person or authority the power to make any appointment to any office, a person may be appointed to that office, notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of the office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

121.—(1) In this Constitution, unless the context otherwise requires—
“Commonwealth citizen” has such meaning as Parliament may by law prescribe;

Interpretation.

“Dominica” means the Commonwealth of Dominica;

“dollars” means dollars in the currency of Dominica;

“financial year” means any period of twelve months beginning on 1st July in any year or such other date as may be prescribed by law;

“the Government” means the Government of Dominica;

“the House” means the House of Assembly;

“the Judicial Committee” means the Judicial Committee of the Privy Council;

“law” includes any instrument having the force of law and any unwritten rule of law and “lawful” and “lawfully” shall be construed accordingly;

“Minister” means a Minister of the Government and includes a temporary Minister;

“Parliament” means the Parliament of Dominica;

“oath” includes affirmation;

“oath of allegiance” means such oath of allegiance as may be prescribed by law;

“oath of office” means, in relation to any office, such oath for the due execution of that office as may be prescribed by law;

“oath of secrecy” means such oath of secrecy as may be prescribed by law;

“the Police Force” means the Dominica Police Force and includes any other police force established to succeed to the functions of the Dominica Police Force;

“public office” means any office of emolument in the public service;

“public officer” means a person holding or acting in any public office;

“the public service” means, subject to the provisions of this section, the service in a civil capacity of the Government;

“session” means the period beginning when the House first meets after Parliament has at any time been prorogued or dissolved and ending when Parliament is prorogued or when Parliament is dissolved without having been prorogued;

“sitting” means the period during which the House is sitting continuously without adjournment and includes any period during which it is in committee;

“Speaker” and “Deputy Speaker” mean the respective persons holding office as Speaker and Deputy Speaker of the House.

(2) In this Constitution references to an office in the public service shall not be construed as including—

- (a) references to the office of the Speaker or Deputy Speaker of the House of Assembly, the Prime Minister or any other Minister, a temporary Minister, a Parliamentary Secretary or a member of the House, the Parliamentary Commissioner or the Deputy Parliamentary Commissioner;
- (b) references to the office of a member of any Commission established by this Constitution or a member of the Advisory Committee on the Prerogative of Mercy or a member of the Public Service Board of Appeal;
- (c) references to the office of judge or officer of the Supreme Court;
- (d) save in so far as may be provided by Parliament, references to the office of a member of any other council, board, panel, committee or other similar body (whether incorporated or not) established by or under any law.

(3) In this Constitution—

- (a) references to the Supreme Court Order include references to any law in force in Dominica altering that Order;
- (b) references to the Supreme Court, the Court of Appeal, the High Court and the Judicial and Legal Services Commission are references to the Supreme Court, the Court of Appeal, the High Court and the Judicial and Legal Services Commission established by the Supreme Court Order;
- (c) references to the Chief Justice have the same meaning as in the Supreme Court Order;
- (d) references to a judge of the Supreme Court are references to a judge of the High Court or the Court of Appeal and, unless the context otherwise requires, include references to a judge of the former Supreme Court of the Windward Islands and Leeward Islands; and
- (e) references to officers of the Supreme Court are references to the Chief Registrar and other officers of the Supreme Court appointed under the Supreme Court Order.

(4) In this Constitution “the specified qualifications” means the professional qualifications specified by or under any law in force in Dominica, one of which must be held by any person before he may apply under that law to be admitted to practice as a barrister or a solicitor in Dominica.

(5) For the purposes of this Constitution, a person shall not be regarded as holding an office by reason only of the fact that he is in receipt of a pension or other like allowance.

(6) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including, to the extent of his authority, a refer-

ence to any person for the time being authorised to exercise the functions of that office.

(7) Except in the case where this Constitution provides for the holder of any office thereunder to be such person holding or acting in any other office as may for the time being be designated in that behalf by some other specified person or authority, no person may, without his consent, be nominated for election to any such office or be appointed to or to act therein or otherwise be selected therefor.

(8) References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service:

Provided that—

- (a) nothing in this subsection shall be construed as conferring on any person or authority the power to require the Director of Public Prosecutions, the Director of Audit or the Chief Elections Officer to retire from the public service; and
- (b) any power conferred by any law to permit a person to retire from the public service shall, in the case of any public officer who may be removed from office by some person or authority other than a Commission established by this Constitution, vest in the Public Service Commission.

(9) Any provision in this Constitution that vests in any person or authority the power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public office on attaining an age specified by or under that law.

(10) Where this Constitution vests in any person or authority the power to appoint any person to act in or to exercise the functions of any office if the holder thereof is himself unable to exercise those functions, no such appointment shall be called in question on the grounds that the holder of the office was not unable to exercise those functions.

(11) No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has exercised those functions in accordance with this Constitution or any other law.

(12) Without prejudice to the provisions of section 32(3) of the Interpretation Act 1889(a) (as applied by subsection (14) of this section), where any power is conferred by this Constitution to make any order, regulation or rule or give any direction or make any designation, the power shall be construed as including the power, exercisable in like manner and subject to the like conditions, if any, to amend or revoke any such order, regulation, rule, direction, or designation.

(13) In this Constitution references to altering this Constitution or any other law, or any provision thereof, include references---

- (a) to revoking it, with or without re-enactment thereof or the making of different provision in lieu thereof;
- (b) to modifying it whether by omitting or amending any of its provisions or inserting additional provisions in it or otherwise; and
- (c) to suspending its operation for any period or terminating any such suspension.

(14) The Interpretation Act 1889 shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation thereto as it applies for the purpose of interpreting and in relation to Acts of the Parliament of the United Kingdom.

Section 42

SCHEDULE 1 TO THE CONSTITUTION

ALTERATION OF CONSTITUTION AND SUPREME COURT ORDER

PART I

PROVISIONS OF CONSTITUTION REFERRED TO IN SECTION 42(2)

- (i) Chapter I;
- (ii) sections 18, 28 and 58;
- (iii) sections 29, 30, 33, 38, 40, 41, 49, 52, 53, 54, 55, 56 and 57;
- (iv) Chapter V;
- (v) sections 72, 84, 85, 86, 87, 88, 89, 90, 91, 92, 95 and 96;
- (vi) Chapter VIII;
- (vii) Chapter IX;
- (viii) section 121 in its application to any of the provisions mentioned in this Schedule; or
- (ix) Schedule 2.

PART II

PROVISIONS OF THE SUPREME COURT ORDER REFERRED TO IN SECTION 42(2)

Sections 4, 5, 6, 8, 11, 18 and 19.

Section 57

SCHEDULE 2 TO THE CONSTITUTION

RULES CONCERNING CONSTITUENCIES

All constituencies shall contain as nearly equal numbers of inhabitants as appears to the Constituency Boundaries Commission to be reasonably practicable but the Commission may depart from this principle to such extent as it considers expedient to take account of the following factors, that is to say:—

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

Section 111(4)(b)

SCHEDULE 3 TO THE CONSTITUTION

MATTERS NOT SUBJECT TO INVESTIGATION BY
PARLIAMENTARY COMMISSIONER

1. Action taken in matters certified by the Attorney General to affect relations or dealings between the Government and the government of any country or territory other than Dominica or any international organisation.

2. Action taken in any country or territory outside Dominica by or on behalf of any officer representing or acting under the authority of the Government.
3. Action taken under any law relating to extradition or fugitive offenders.
4. Action taken for the purposes of investigating crime or of protecting the security of Dominica.
5. The commencement or conduct of civil or criminal proceedings before any court of law having jurisdiction in Dominica or before any international court or tribunal.
6. Any exercise of the prerogative of mercy.
7. Action taken in matters relating to contractual or other commercial transactions, being transactions of a department of government or an authority to which section 110 applies but not being transactions for or relating to—
 - (a) the acquisition of land compulsorily or in circumstances in which it could be acquired compulsorily;
 - (b) the disposal as surplus of land acquired compulsorily or in circumstances in which it could have been acquired compulsorily.
8. Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters in relation to service in any office or employment in the public service or under any authority as may be prescribed by law.
9. Any matter relating to any person who is or was a member of the armed forces of Dominica in so far as the matter relates to—
 - (a) the terms and conditions of his service as such; or
 - (b) any order, command, penalty or punishment given to or affecting him in his capacity as such.
10. Any action which by virtue of any provision of this Constitution may not be enquired into by any court of law.

Section 3

SCHEDULE 2 TO THE ORDER

TRANSITIONAL PROVISIONS

*Arrangement of paragraphs**Paragraph*

1. Election of first President, etc.
2. Existing laws
3. Parliament
4. Ministers and Parliamentary Secretaries
5. Office of Attorney-General
6. Existing public officers
7. Oaths
8. Supreme Court Order
9. Appeals Order
10. Judicial Committee
11. Protection from inhuman treatment
12. Protection from deprivation of property
13. Commonwealth citizen
14. Interpretation

1.—(1) A President shall be elected under section 19 of the Constitution as soon as is practicable after the commencement of this Constitution and in any case not later than ninety days from such commencement; and accordingly consultations for the purposes of subsection (1) of that section may take place at any time between the making of this Order and such commencement between the persons respectively holding office under the former Constitution as Premier and as Leader of the Opposition.

Election
of first
President,
etc.

(2) Until such time as a person has assumed office as President, having been elected as such in accordance with section 19 of the Constitution, the person who immediately before the commencement of the Constitution held office as Governor of Dominica (or, if there is no such person, the person who was then acting as Governor) shall discharge the functions of the office of President and the provisions of section 28 of the Constitution shall apply in relation to him as if he were the holder of the office of President.

2.—(1) The existing laws shall, as from the commencement of the Constitution, be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution and the Supreme Court Order.

Existing
laws.

(2) Where any matter that falls to be prescribed or otherwise provided for under the Constitution by Parliament or by any other authority or person is prescribed or provided for by or under an existing law (including any amendment to any such law made under this section), that prescription or provision shall, as from the commencement of the Constitution, have effect (with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Constitution and the Supreme Court Order) as if it had been

made under the Constitution by Parliament or, as the case may require, by the other authority or person.

(3) The President may by order made at any time before 3 November 1979 make such alterations to any existing law as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of the Constitution and the Supreme Court Order or otherwise for giving effect or enabling effect to be given to those provisions.

(4) The provisions of this paragraph shall be without prejudice to any powers conferred by the Constitution or by any other law upon any person or authority to make provision for any matter, including the alteration of any existing law.

(5) For the purposes of this paragraph, the expression "existing law" means any Act, Ordinance, law, rule, regulation, order or other instrument made in pursuance of or continued in force by or under the former Constitution and having effect as part of the law of Dominica or of any part thereof immediately before the commencement of the Constitution.

Parliament.

3.—(1) Until other constituencies are established for Dominica by order in pursuance of section 57 of the Constitution and the order has come into effect there shall, for the purposes of the election of Representatives, be twenty-one constituencies having the same boundaries as the constituencies into which Dominica is divided immediately before the commencement of the Constitution for the purpose of the election of elected members of the House under the former Constitution and those constituencies shall be deemed to have been established under that section.

(2) The persons who, immediately before the commencement of the Constitution, are elected members of the House under the former Constitution shall, as from the commencement of the Constitution, be deemed to have been elected as Representatives in pursuance of the provisions of section 33 of the Constitution in the respective constituencies corresponding to the constituencies by which they were returned to the House and shall hold their seats in the House in accordance with the provisions of the Constitution.

(3) The persons who, immediately before the commencement of the Constitution, are nominated members of the House under the former Constitution shall vacate their seats in the House at the commencement of the Constitution but shall be eligible for appointment as Senators in pursuance of the provisions of section 34 of the Constitution.

(4) The persons who, immediately before the commencement of the Constitution, are respectively the Speaker and Deputy Speaker of the House and the Leader of the Opposition shall be deemed as from the commencement of the Constitution to have been elected as Speaker and Deputy Speaker of the House or, as the case may be appointed as Leader of the Opposition in accordance with the provisions of the Constitution and shall hold office in accordance with those provisions.

(5) Until Parliament otherwise provides, any person who holds or acts in any office the holding of which would, immediately before the commencement of the Constitution, have disqualified him for member-

ship of the House under the former Constitution shall be disqualified to be elected as a Representative or appointed or elected as a Senator as though provisions in that behalf had been made in pursuance of section 32(5) of the Constitution.

(6) The rules of procedure of the House under the former Constitution as in force immediately before the commencement of the Constitution shall, until it is otherwise provided by the House under section 52 of the Constitution, be the rules of procedure of the House but they shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

(7) Subject to the provisions of section 54 of the Constitution, Parliament shall, unless sooner dissolved, stand dissolved on 28 April 1980 (that is to say, five years from the first sitting of the House after the last dissolution of Parliament under the former Constitution).

(8) The report of the Constituency Boundaries Commission under section 49 of the former Constitution that was required to have been submitted to the Governor not later than 9 June 1978 may be so submitted at any time before 3 November 1978 and—

(a) if the required report is so submitted before that date, the first report of the Commission under section 57 of the Constitution shall be submitted to the President not later than two years nor more than five years from the date on which the required report was submitted to the Governor; but

(b) if the required report is not so submitted before that date, the first report of the Commission under section 57 of the Constitution shall be submitted to the President not later than 31 January 1979.

(9) Any person who, by virtue of this paragraph, is deemed as from the commencement of the Constitution to have been elected or appointed as Speaker or any other member of the House of Assembly shall, before taking his seat in the House, take and subscribe the oath of allegiance in accordance with section 44 of the Constitution.

4.—(1) The person who, immediately before the commencement of the Constitution, holds the office of Premier under the former Constitution shall as from the commencement of the Constitution, hold office as Prime Minister as if he had been appointed thereto under section 59 of the Constitution.

Ministers and
Parliamentary
Secretaries.

(2) The persons who, immediately before the commencement of the Constitution, hold office as Ministers (other than the Premier) or as Parliamentary Secretaries under the former Constitution shall, as from the commencement of the Constitution hold the like offices as if they had been appointed thereto under section 59 or 67 of the Constitution.

(3) Any person holding the office of Prime Minister or other Minister by virtue of the provisions of sub-paragraphs (1) and (2) of this paragraph who, immediately before the commencement of the Constitution, was charged under the former Constitution with responsibility for any matter or any department of government, shall, as from the commencement of the Constitution, be deemed to have been assigned responsibility for that matter or department under section 61 of the Constitution.

Office of
Attorney-
General.

5. Until Parliament or, subject to the provisions of any law enacted by Parliament, the President, acting in accordance with the advice of the Prime Minister, otherwise decides, the office of Attorney-General shall be a public office.

Existing
public
officers.

6. Subject to the provisions of the Constitution, every person who immediately before the commencement of the Constitution holds or is acting in a public office under the former Constitution shall, as from the commencement of the Constitution, continue to hold or act in that office or the corresponding office established by the Constitution as if he had been appointed thereto in accordance with the provisions of the Constitution:

Provided that any person who under the former Constitution or any other law in force immediately before such commencement would have been required to vacate his office at the expiration of any period shall vacate his office at the expiration of that period.

Oaths.

7. Until such time as the oath of allegiance, the oath of secrecy or, in relation to any office, the oath of office is prescribed by law, that oath may be taken in the form prescribed immediately before the commencement of the Constitution, with the substitution, in the case of the oath of allegiance, of a reference to Dominica for the reference to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors.

Supreme
Court
Order.

8. The West Indies Associated States Supreme Court Order 1967(a), in so far as it has effect as part of the law of Dominica, may be cited as the Supreme Court Order and for the purposes of the law of Dominica—

- (a) the Supreme Court established by that Order shall, unless Parliament otherwise provides, be styled the Eastern Caribbean Supreme Court; and
- (b) references in that Order to the Premier of Dominica or to the Premier of any other independent state shall be construed as references to the Prime Minister of Dominica or, as the case may be, to the Prime Minister of that other state.

Appeals
Order.

9. The West Indies Associated States (Appeals to Privy Council) Order 1967(b) may, in its application to Dominica, be cited as the Dominica Appeals to Judicial Committee Order and shall, to the extent that it forms part of the law of Dominica, have effect as if—

- (a) the expression “appeal” meant an appeal under section 106 of the Constitution;
- (b) the expression “Courts Order” included any law in force in Dominica altering the Supreme Court Order;
- (c) section 3 were revoked; and
- (d) references to Her Majesty in Council were references to the Judicial Committee.

Judicial
Committee.

10. (1) The Judicial Committee shall have jurisdiction—

- (a) to dispose of any petition to Her Majesty under section 99 of the former Constitution for special leave to appeal to Her Majesty

in Council that was filed in the Office of the Judicial Committee before the commencement of the Constitution as if it were a petition for special leave to appeal to the Committee under section 106 of the Constitution; and

(b) to continue and dispose of any pending appeal to Her Majesty in Council under section 99 of the former Constitution where final leave to appeal has been granted by the Court of Appeal or special leave to appeal has been granted by Her Majesty before the commencement of the Constitution as if it were an appeal to the Committee under section 106 of the Constitution and to make such judgment and order thereon as they consider appropriate.

(2) Section 106 of the Constitution shall have effect as if subparagraph (1) of this paragraph formed part of that section.

11. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of section 5 of the Constitution to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Dominica immediately before 1 March 1967 (being the date on which Dominica became an associated state).

Protection from inhuman treatment.

12. Nothing in section 6 of the Constitution shall affect the operation of any law in force immediately before 1 March 1967 or any law made on or after that date that alters a law in force immediately before that date and that does not—

Protection from deprivation of property.

- (a) add to the kinds of property that may be taken possession of or the rights over and interests in property that may be acquired;
- (b) make the conditions governing entitlement to compensation or the amount thereof less favourable to any person owning or having an interest in the property; or
- (c) deprive any person of such right as is mentioned in subsection (2) of that section.

13. Until such time as Parliament otherwise prescribes, the expression “Commonwealth citizen” shall have the meaning assigned to it by the British Nationality Act 1948 or any Act of the Parliament of the United Kingdom altering that Act.

Commonwealth citizen.

14.—(1) In this Schedule—

“the Constitution” means the Constitution set out in Schedule 1 of this Order;

“the former Constitution” means the Constitution in force immediately before the commencement of this Order.

Interpretation.

(2) The provisions of section 121 of the Constitution shall apply for the purposes of interpreting this Schedule and otherwise in relation thereto as they apply for the purposes of interpreting and in relation to the Constitution.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order, which is made at the request and with the consent of the Associated State of Dominica under section 5(4) of the West Indies Act 1967, provides a new constitution for Dominica as a sovereign democratic republic within the Commonwealth styled the Commonwealth of Dominica to come into effect on 3 November 1978 upon the termination of the status of association of Dominica with the United Kingdom under the Act.

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