

SCHEDULE 2

The Constitution of the Turks and Caicos Islands

PART II

THE GOVERNOR

The Governor

20.—(1) There shall be a Governor of the Turks and Caicos Islands who shall be appointed by Her Majesty by Commission under Her Sign Manual and Signet and shall hold office during Her Majesty's pleasure.

(2) The Governor shall have such functions as may be conferred upon him or her by or under this Constitution or any other law and such other functions as Her Majesty may from time to time be pleased to assign to him or her and, subject to this Constitution and, in the case of functions conferred upon him or her by or under any other law, subject to that law, shall perform all such functions (including functions which are expressed by this Constitution to be exercisable in his or her discretion or which the Governor is directed by this Constitution to exercise in his or her own judgement) according to such instructions, if any, as may be given to him or her by Her Majesty; but the question whether or not the Governor has in any matter complied with any such instructions shall not be inquired into by any court.

(3) A person appointed to the office of Governor shall, before assuming the functions of that office, make oaths of allegiance and for the due execution of that office in the forms set out in the Schedule to this Constitution.

Emoluments of Governor

21. The holder of the office of Governor shall receive such emoluments as may for the time being be fixed by a Secretary of State by directions in writing, and those emoluments are hereby charged on and shall be paid out of the revenues of the Islands.

Deputy Governor

22.—(1) There shall be a Deputy Governor who shall be a Belonger and shall be appointed by the Governor in pursuance of instructions given by Her Majesty through a Secretary of State, and who shall hold office during Her Majesty's pleasure.

(2) If the office of Deputy Governor is vacant or the person holding that office is acting in the office of Governor under section 23 or is for any reason unable to perform the functions of the office of Deputy Governor, then the Governor, acting in his or her discretion, may appoint a person who is a Belonger to act as Deputy Governor and any such person shall continue to act until his or her appointment is revoked by the Governor, acting in his or her discretion.

(3) The Deputy Governor shall assist the Governor in the exercise of his or her functions, and shall have such functions, not of a ministerial nature, as (subject to this Constitution and any other law) may be assigned to him or her by the Governor, acting in his or her discretion.

Acting Governor

23.—(1) During any period when the office of Governor is vacant or the Governor is absent from the Islands or is for any reason unable to perform the functions of that office, those functions shall, during Her Majesty's pleasure, be assumed and performed by the person holding the office of—

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- (a) Deputy Governor; or
- (b) Attorney General; or
- (c) Permanent Secretary, Finance,

in that order, or by such other person as Her Majesty may designate in that behalf by instructions given through a Secretary of State.

(2) Before assuming the functions of the office of Governor, any such person shall make oaths of allegiance and for the due execution of that office in the forms set out in the Schedule to this Constitution.

(3) A person shall not continue to perform the functions of the office of Governor under this section after the person holding that office or some other person having a prior right to perform those functions has notified him or her that he or she is about to assume or resume those functions.

(4) For the purposes of this section (and without prejudice to section 99(11)), the Governor shall not be regarded as absent from the Islands or as unable to perform the functions of his or her office at any time when there is a subsisting appointment of a deputy under section 24.

Governor's deputy

24.—(1) Whenever the Governor—

- (a) has occasion to be absent from the seat of government but not from the Islands; or
- (b) has occasion to be absent from the Islands for a period which he or she has reason to believe will be of short duration; or
- (c) is suffering from an illness which he or she has reason to believe will be of short duration,

he or she may, by instrument in writing, appoint one of the persons holding one of the offices mentioned in paragraph (a), (b) or (c) of section 23(1), in that order, or if no such person is available, such other person as he or she may designate, to be his or her deputy during such absence or illness and in that capacity to perform on his or her behalf such of the functions of the office of Governor as may be specified in that instrument.

(2) The power and authority of the Governor shall not be abridged, altered or in any way affected by the appointment of a deputy under this section and, subject to this Constitution and any other law by or under which any function which a deputy is authorised to perform is conferred, the deputy shall comply with all instructions that may from time to time be given to him or her by Her Majesty through a Secretary of State or by the Governor; but the question whether or not the deputy has in any matter complied with any such instructions shall not be inquired into by any court.

(3) A person appointed as a deputy under this section shall not continue to perform his or her functions as such after the Governor, or some other person with a prior right of appointment as deputy, has notified him or her that he or she is about to assume or resume those functions.

(4) Subject to subsection (3), a person appointed as deputy under this section shall hold that office for such period as may be specified in the instrument by which he or she is appointed, but his or her appointment may be revoked at any time by Her Majesty through a Secretary of State or by the Governor.

(5) In this section “the Governor” does not include a deputy appointed under this section.

(6) In the exercise of any power conferred upon him or her by this section the Governor shall act in his or her discretion.

Exercise of Governor's functions

25.—(1) Subject to this section, the Governor shall consult the Cabinet on the formulation of policy and in the exercise of all functions conferred upon him or her by this Constitution or any other law, except—

- (a) when acting under instructions given to him or her by Her Majesty through a Secretary of State;
- (b) when exercising any function conferred upon the Governor by this Constitution or any other law which is expressed to be exercisable by the Governor in his or her discretion or in his or her judgement or in accordance with the recommendation or advice of, or after consultation with, any person or authority other than the Cabinet; or
- (c) subject to section 33(5), in any case which, in his or her judgement, involves a matter for which he or she is responsible under section 33(1).

(2) In any case in which the Governor is required by this section to consult the Cabinet, he or she shall, subject to section 33(5), act in accordance with the advice given to him or her by the Cabinet unless he or she is instructed by Her Majesty through a Secretary of State to do otherwise.

(3) For the avoidance of doubt, no proposed decision of the Cabinet shall be taken where the Governor has referred to a Secretary of State the advice given to him or her in relation thereto with a view to the possibility of instructions under subsection (2), until the Governor notifies the Cabinet that no such instructions will be issued.

(4) Where the Governor is by this Constitution or any other law directed to exercise any function after consultation with any person or authority other than the Cabinet he or she shall not be obliged to exercise that function in accordance with the advice of that person or authority.

(5) Where the Governor is by this Constitution or any other law directed to exercise any function in accordance with the recommendation or advice of, or after consultation with, any person or authority, the question whether he or she has so exercised that function shall not be inquired into by any court.