

SCHEDULE 2

The Constitution of the Turks and Caicos Islands

PART III

THE EXECUTIVE

Executive authority

26.—(1) The executive authority of the Turks and Caicos Islands is vested in Her Majesty.

(2) Subject to this Constitution, the executive authority of the Turks and Caicos Islands shall be exercised on behalf of Her Majesty by the Governor, either directly or through officers subordinate to him or her.

(3) Nothing in this section shall preclude persons or authorities other than the Governor from exercising such functions as are or may be conferred upon them by any law.

The Cabinet

27.—(1) There shall be a Cabinet for the Turks and Caicos Islands, which shall consist of—

- (a) the Governor;
- (b) a Premier appointed by the Governor in accordance with subsection (2);
- (c) six other Ministers appointed by the Governor, acting in accordance with the advice of the Premier, from among the elected or appointed members of the House of Assembly, one of whom may, in accordance with such advice, be appointed by the Governor as Deputy Premier; and
- (d) the Attorney General.

(2) The Governor shall appoint as Premier the elected member of the House of Assembly who demonstrates to the Governor in writing that he or she commands the support of a majority of the elected members of the House.

(3) Appointments of the Premier and the other Ministers shall be made by the Governor by instrument under the public seal.

(4) If occasion arises for making an appointment of any Minister between a dissolution of the House of Assembly and the polling in the next following general election, a person who was an elected or appointed member of the House immediately before the dissolution may be appointed as a Minister as if he or she were still a member of the House.

(5) The Governor shall, without delay, report to Her Majesty through a Secretary of State every appointment made under this section.

(6) The number of Ministers referred to in subsection (1)(c) may be increased by a law made in pursuance of section 41(2) which increases the number of elected members of the House of Assembly; but in no circumstances may the number of such Ministers, taken together with the Premier, exceed one third of the total number of members of the House of Assembly.

Oaths

28. The members of the Cabinet, other than the Governor, shall each, before entering upon the duties of his or her office as such member, make before the Governor oaths of allegiance and for the due execution of his or her office in the forms set out in the Schedule to this Constitution.

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Tenure of office by Premier

29.—(1) The Governor shall revoke the appointment of the Premier if a motion that the House of Assembly should declare a lack of confidence in the Government receives the affirmative votes of a majority of the elected members of the House; but before so revoking the Premier’s appointment, the Governor shall consult the Premier and if the Premier so requests, the Governor, acting in his or her discretion, may dissolve the House of Assembly instead of revoking the appointment.

(2) The Premier shall vacate his or her office if, after the polling in a general election and before the House of Assembly first meets thereafter, the Governor, acting in his or her discretion, informs the Premier that he or she is about to appoint another person as Premier under section 27(2).

Tenure of office by Ministers

30.—(1) Any Minister shall vacate his or her office—

- (a) if he or she ceases to be a member of the House of Assembly for any reason other than a dissolution;
- (b) if he or she is not a member of the House of Assembly when it first meets after a general election;
- (c) if he or she resigns his or her office by writing under his or her hand addressed to the Governor; or
- (d) if he or she is absent from the Islands or absent from three consecutive meetings of the Cabinet without—
 - (i) in the case of the Premier, having given the Governor prior notice of such absence; or
 - (ii) in the case of any other Minister, having obtained prior permission for such absence from the Premier.

(2) A Minister other than the Premier shall also vacate his or her office if—

- (a) the Premier vacates his or her office; or
- (b) his or her appointment is revoked by the Governor, acting in accordance with the advice of the Premier, by instrument under the public seal.

Performance of functions of Premier in certain events

31.—(1) If the Premier is unable, due to illness or his or her absence from the Islands, to perform the functions of his or her office, the Governor may authorise any other Minister to perform those functions.

(2) In exercising his or her powers under this section the Governor shall act in accordance with the advice of the Premier unless, in the Governor’s judgement, it is impracticable to obtain the Premier’s advice owing to his or her illness or absence, in which case the Governor shall exercise the power acting in his or her discretion.

(3) Any authority given under this section shall be conferred by the Governor by instrument under the public seal, and may be revoked in like manner.

Assignment of responsibilities to members of Cabinet

32.—(1) Subject to subsections (2) and (3), the Governor, acting after full consultation with and on the advice of the Premier, may by directions in writing charge any member of the Cabinet with responsibility for the conduct (subject to this Constitution and any other law) of any business of the Government, including responsibility for the administration of any department of government.

(2) In exercising his or her functions under subsection (1), the Governor shall act in accordance with the advice of the Premier unless he or she is instructed by a Secretary of State to do otherwise.

(3) Without prejudice to section 33(3), a member of the Cabinet shall not be charged with responsibility under this section for any of the matters mentioned in section 33(1).

(4) A member of the Cabinet charged with responsibility for any matter under this section shall exercise his or her responsibility in accordance with the policies of the Government as determined by the Cabinet and in accordance with the principle of the collective responsibility of the members of the Cabinet for the policies and decisions of the Government.

(5) The Governor, acting in his or her discretion, may at any time call for any official papers or seek any official information or advice which is available to a member of the Cabinet with respect to any matter for which that member is charged with responsibility under this section.

Governor's special responsibilities

33.—(1) The Governor, acting in his or her discretion, shall be responsible for the conduct, subject to this Constitution, of any business of the Government with respect to the following matters—

- (a) defence;
- (b) external affairs;
- (c) the regulation of international financial services;
- (d) internal security, including the Police Force;
- (e) the appointment of any person to any public office, the suspension, termination of appointment, dismissal or retirement of any public officer, or the taking of any disciplinary action in respect of such an officer, the application to any public officer of the terms or conditions of employment of the public service for which financial provision has been made, or the organisation of the public service in so far as it does not involve new financial provision.

(2) The Governor, acting in his or her discretion, may assign to a member of the Cabinet responsibility for the conduct on behalf of the Governor of any business in the House of Assembly with respect to any of the matters mentioned in subsection (1).

(3) The Governor, acting in his or her discretion, may by directions in writing delegate, with the prior approval of a Secretary of State, to the Premier or any other Minister designated by him or her after consultation with the Premier such responsibility for matters relating to external affairs or internal security as the Governor may think fit upon such conditions as he or she may impose.

(4) Where the Governor, acting in his or her discretion, determines that the exercise of any function conferred upon any other person or authority (other than the House of Assembly) would involve or affect any matter mentioned in subsection (1), the Governor may, acting in his or her discretion, give directions as to the exercise of that function, and the person or authority concerned shall exercise the function in accordance with those directions.

(5) Before exercising any function with respect to any matter mentioned in subsection (1), paragraphs (a), (b), (c) and (d), the Governor shall consult the Cabinet but may, if he or she thinks it right to do so, act against any advice given to him or her by the Cabinet; but the Governor shall not be obliged to consult the Cabinet in any case in which, in his or her judgement—

- (a) it is in the public interest that he or she should act without consulting the Cabinet;
- (b) the matters to be decided are too unimportant to require the advice of the Cabinet; or
- (c) the matters to be decided are too urgent to admit obtaining the advice of the Cabinet by the time within which it may be necessary for him or her to act.

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Summoning of Cabinet

34. The Cabinet shall be summoned by the Governor acting in his or her discretion; but the Governor shall summon the Cabinet if requested to do so by the Premier or by four or more members.

Proceedings in, and quorum of, Cabinet

35.—(1) The Governor shall, so far as is practicable, attend and preside at meetings of the Cabinet.

(2) In the absence of the Governor from any meeting of the Cabinet, the Deputy Governor or the Attorney General, in that order, shall preside at the meeting.

(3) No business shall be transacted at any meeting of the Cabinet if there are less than five members present, including the person presiding, of whom three are Ministers.

(4) Subject to subsection (3), the Cabinet shall not be disqualified for the transaction of business by reason of any vacancy in its membership (including any vacancy not filled when the Cabinet is first constituted or reconstituted at any time) and the validity of the transaction of business in the Cabinet shall not be affected by reason only of the fact that some person who was not entitled to do so took part in the proceedings.

Attendance of other persons at meetings

36. The Governor, or any person presiding over a meeting of the Cabinet in his or her absence, may, acting in his or her discretion, summon any public officer or other person to a meeting of the Cabinet whenever the business before the Cabinet renders the presence of that officer or other person desirable.

Cabinet Secretary

37.—(1) There shall be a Cabinet Secretary, whose office shall be a public office and who shall be appointed in accordance with section 86.

(2) The Cabinet Secretary shall attend meetings of the Cabinet and be responsible for keeping the minutes of the meetings of the Cabinet and for conveying the conclusions reached at the meetings to the appropriate person or authority; and he or she shall have such other functions as the Governor, acting after consultation with the Premier, may from time to time direct.

(3) The Cabinet Secretary shall—

- (a) transmit copies of all papers submitted for consideration by the Cabinet to its members;
- (b) inform all its members of the summoning of any meeting of the Cabinet and of the matters to be discussed at any such meeting; and
- (c) furnish all its members, as soon as practicable after each meeting of the Cabinet, with a copy of the confirmed minutes of the previous meeting showing the matters discussed and the conclusions reached at the meeting.

(4) The Cabinet Secretary shall also have general responsibility, under the authority of the Governor and the Premier, for the coordination of Government business.

(5) In exercising his or her functions under subsection (3)(a) and (b) the Cabinet Secretary shall comply with any instructions given to him or her by the Governor, acting in his or her discretion.

(6) The functions conferred on the Cabinet Secretary by this section may be exercised by the Cabinet Secretary in person or by officers subordinate to him or her acting under and in accordance with his or her general or special instructions.

Advisory National Security Council

38.—(1) There shall be an Advisory National Security Council (in this section referred to as “the Council”) for the Turks and Caicos Islands which shall consist of—

- (a) the Governor, as Chairman;
 - (b) the Premier;
 - (c) the Attorney General;
 - (d) the Minister of Finance;
 - (e) one other Minister appointed in writing by the Governor, acting in accordance with the advice of the Premier.
- (2) A Minister appointed under subsection (1)(e) shall vacate his or her seat on the Council if—
- (a) his or her office becomes vacant under section 30; or
 - (b) the Governor so directs in writing, acting in accordance with the advice of the Premier.
- (3) The purpose of the Council is to make recommendations to the Governor on—
- (a) the matters mentioned in section 33(1)(a), (b), (c) and (d); and
 - (b) the exercise of the Governor’s functions during a period of public emergency as defined in section 19(1);

but the Governor shall not be obliged to act in accordance with the recommendations of the Council.

(4) In the absence of the Governor the Deputy Governor shall preside at any meeting of the Council.

(5) The Governor, acting in his or her discretion, may summon a meeting of the Council whenever he or she considers it desirable to do so, and shall summon such a meeting whenever the Premier or the Cabinet so requests.

(6) Subject to this section, the Council may regulate its own procedure.

(7) The Cabinet Secretary shall be the Secretary to the Council.

Powers of Attorney General

39.—(1) The Attorney General shall have power, in any case in which he or she considers it desirable to do so—

- (a) to institute and undertake criminal proceedings against any person before any court in respect of any offence against any law in force in the Islands;
- (b) to take over and continue any such criminal proceedings that have been instituted 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 herself or any other person or authority.

(2) The powers of the Attorney General under subsection (1) may be exercised by the Attorney General in person or by officers subordinate to him or her acting under and in accordance with his or her general or special instructions.

(3) The powers conferred upon the Attorney General by subsection (1)(b) and (c) shall be vested in him or her to the exclusion of any other person or authority; but 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 at any stage before the person against whom the proceedings have been instituted has been charged before the court.

(4) For the purposes of this section, any appeal from any determination in any criminal proceedings before any court, or any case stated or question of law reserved for the purpose of any

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such proceedings, to any other court or to Her Majesty in Council shall be deemed to be part of those proceedings.

(5) In the exercise of the powers conferred upon him or her by this section, section 52(2) and section 53(2) the Attorney General shall not be subject to the direction or control of any other person or authority.