

SCHEDULE 2

The Constitution of the Turks and Caicos Islands

PART VI

THE JUDICATURE

The Supreme Court

Constitution of Supreme Court

73.—(1) There shall be a Supreme Court for the Turks and Caicos Islands which shall have such jurisdiction and powers as may be conferred upon it by this Constitution and any other law.

(2) The judges of the Supreme Court shall be a Chief Justice and such number of other judges not exceeding two as may be determined by the Governor, acting in his or her discretion; but the office of a judge shall not, without the consent of that judge, be abolished during his or her continuance in office.

(3) The judges of the Supreme Court shall be persons qualified for appointment under subsection (4) and shall be appointed by the Governor, acting in accordance with section 82, by instrument under the public seal.

(4) A judge of the Supreme Court must be—

- (a) a barrister or solicitor of the United Kingdom, of any other part of the Commonwealth, or of Ireland;
- (b) a member of the Faculty of Advocates or a Writer to the Signet of Scotland; or
- (c) an attorney of the Supreme Court admitted under the Legal Profession Ordinance⁽¹⁾ or under any law for the time being in force in the Islands making like provision,

and of at least ten years' standing as such.

(5) It shall be lawful for a person qualified for appointment as a judge of the Supreme Court to be so appointed (regardless of his or her age) for such term as may be specified in the instrument of appointment, and section 74 shall have effect in relation to any person so appointed as if he or she would attain the retiring age applicable to that office on the day on which the specified term expires.

Tenure of office of judges of Supreme Court

74.—(1) Subject to this section, a judge of the Supreme Court shall vacate his or her office when he or she attains the age of sixty-five years; but—

- (a) the Governor may permit a judge who attains the age of sixty-five years to continue in office until he or she has attained such later age, not exceeding the age of seventy years, as may have been agreed between the Governor and that judge; and
- (b) a judge who has attained the age at which he or she would otherwise vacate office under this subsection may continue in office for such period as may be necessary to enable him or her to deliver judgment or to do any other thing in relation to any proceeding commenced before him or her before he or she attained that age.

(2) A judge of the Supreme Court may be removed from office only for inability to discharge the functions of his or her 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 subsection (3).

(1) Ordinance No. 5 of 1997.

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(3) A judge of the Supreme Court shall be removed from office by the Governor by instrument under the public seal if the question of the removal of that judge from office has, at the request of the Governor made in pursuance of subsection (4), been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833⁽²⁾ or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or misbehaviour.

(4) If the Governor considers that the question of removing a judge of the Supreme Court from office for inability as aforesaid or misbehaviour ought to be investigated, then—

- (a) the Governor shall appoint a tribunal, which shall consist of a Chairman and not less than two other members selected by the Governor from among persons who hold or have held high judicial office;
- (b) the tribunal shall inquire into the matter and report on the facts thereof to the Governor and advise the Governor whether he or she should request that the question of the removal of that judge should be referred by Her Majesty to the Judicial Committee; and
- (c) if the tribunal so advises, the Governor shall request that the question should be referred accordingly.

(5) The provisions of the Commissions of Inquiry Ordinance⁽³⁾ as in force on the date of commencement of this Constitution shall, subject to this section, apply as nearly as may be in relation to tribunals appointed under subsection (4) or, as the context may require, to their members as they apply in relation to Commissions or Commissioners appointed under that Ordinance.

(6) If the question of removing a judge of the Supreme Court from office has been referred to a tribunal under subsection (4) the Governor may suspend the judge from performing the functions of his or her office, and any such suspension may at any time be revoked by the Governor, and shall in any case cease to have effect—

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

(7) The powers conferred upon the Governor by this section shall be exercised by the Governor in his or her discretion.

Acting judges of Supreme Court

75.—(1) If the office of Chief Justice is vacant, or if the holder of that office is for any reason unable to perform the functions of that office, then, until some other person has been appointed to, and has assumed the functions of, that office, or until the holder of that office has resumed those functions, as the case may be, such one of the other judges of the Supreme Court or such other person qualified for appointment as a judge of the Supreme Court as the Governor, acting in accordance with section 82, may appoint for that purpose shall act in that office.

(2) If the office of a judge of the Supreme Court other than the Chief Justice is vacant, or if any such judge is acting as Chief Justice or is for any reason unable to perform the functions of his or her office, the Governor, acting in accordance with section 82, may appoint a person qualified for appointment as a judge of the Supreme Court to act as such a judge.

(3) A person may be appointed under subsection (1) or (2) notwithstanding that he or she has attained the age of sixty-five years.

(2) 1833 c. 41.

(3) Ordinance No. 7 of 1986.

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(4) Any person appointed under this section to act as a judge of the Supreme Court shall, unless he or she is removed from office under section 74, continue to act for the period of his or her appointment or, if no such period is specified, until his or her appointment is revoked by the Governor, acting in his or her discretion; but a person whose appointment so to act has expired or been revoked may, with the permission of the Governor, acting in his or her discretion, continue so to act for such period as may be necessary to enable him or her to deliver judgment or to do any other thing in relation to any proceeding commenced before him or her previously thereto.

Oaths to be taken by judges of Supreme Court

76. Before assuming the functions of his or her office, every judge of the Supreme Court shall make and subscribe before the Governor, or some other person authorised by the Governor, acting in his or her discretion, oaths of allegiance and for the due execution of his or her office in the forms set out in the Schedule to this Constitution.