

SCHEDULE 2

The Constitution of the Turks and Caicos Islands

PART VI

THE JUDICATURE

The Court of Appeal

Constitution of Court of Appeal

77.—(1) There shall be a Court of Appeal 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) For the purposes of hearing and determining appeals the Court of Appeal may sit either in the Islands or in such places outside the Islands as the President of the Court may from time to time direct.

(3) The judges of the Court of Appeal shall be a President and two Justices of Appeal, or such other number of Justices of Appeal, not being less than two, as may be determined by the Governor, acting in his or her discretion; but the office of a Justice of Appeal shall not, without the consent of that Justice of Appeal, be abolished during his or her continuance in office.

(4) The judges of the Court of Appeal shall be appointed by the Governor, acting in accordance with section 82, by instrument under the public seal, for such period as may be specified in their respective instruments of appointment.

(5) A person shall be qualified to be appointed as a judge of the Court of Appeal if, and shall not be qualified to be so appointed unless, he or she holds or has held high judicial office and is qualified for appointment as a judge of the Supreme Court under section 73(4).

(6) A judge of the Supreme Court may exercise any of the powers of a single judge of the Court of Appeal to such extent as may be prescribed by any law relating to the Court of Appeal.

Tenure of office of judges of Court of Appeal

78.—(1) Subject to this section, the office of a judge of the Court of Appeal shall become vacant upon the expiration of the period of his or her appointment to that office.

(2) A judge of the Court of Appeal 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).

(3) A judge of the Court of Appeal 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 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 Court of Appeal 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;

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- (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 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 Court of Appeal 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 Court of Appeal

79.—(1) If the office of the President of the Court of Appeal 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 Justices of Appeal or such other person qualified for appointment as a judge of the Court of Appeal as the Governor, acting in accordance with section 82, may appoint for that purpose shall act in the office of President.

(2) If the office of a Justice of Appeal is vacant, or if any Justice of Appeal is acting as the President 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 possessing such legal qualifications and experience as he or she, after consultation with the President, may deem appropriate to act as a Justice of Appeal.

(3) Any person appointed under this section to act as a judge of the Court of Appeal shall, unless he or she is removed from office under section 78, 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 Court of Appeal

80. Before assuming the functions of his or her office, every judge of the Court of Appeal 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.