

SCHEDULE 2

The Constitution of the Turks and Caicos Islands

PART II

THE GOVERNOR

The Governor

23.—(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 on 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 on the Governor 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 in his or her judgement) according to such instructions, if any, as may be given to him or her by Her Majesty through a Secretary of State; 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

24. 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 Consolidated Fund.

Deputy Governor

25.—(1) There shall be a Deputy Governor who shall be a Turks and Caicos Islander 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 26 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 Turks and Caicos Islander to act as Deputy Governor and any such person shall continue so to act until his or her appointment is revoked by the Governor, acting in his or her discretion.

(3) The Deputy Governor shall act in support of the Governor and, under the authority of the Governor, shall be the head of the public service.

(4) The Governor, acting in his or her discretion, may give directions to the Deputy Governor as to the exercise of the responsibilities referred to in subsection (3), and the Deputy Governor shall comply with any such directions.

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Acting Governor

26.—(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—

- (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 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 131(3)), 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 under section 27.

Temporary exercise of certain functions of Governor

27.—(1) Whenever the Governor—

- (a) has occasion to be absent from the seat of government but not from the Islands;
- (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,

the Governor may, by instrument in writing, appoint one of the persons holding one of the offices mentioned in paragraph (a), (b) or (c) of section 26(1), in that order, or if no such person is available, such other person as he or she may designate, during such absence or illness 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 an appointment under this section and, subject to this Constitution and any other law, a person so appointed 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 that person has in any matter complied with any such instructions shall not be inquired into by any court.

(3) A person appointed 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 under subsection (1), has notified him or her that he or she is about to resume or assume those functions.

(4) Subject to subsection (3), a person appointed under this section shall hold that appointment 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 person appointed under this section.

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

Statement of Governance Principles

28.—(1) A Secretary of State may at any time issue a Statement of Governance Principles and amend or replace any such Statement.

(2) Before issuing any Statement of Governance Principles or any amendment of such a Statement, a Secretary of State shall allow four weeks to expire during which—

- (a) the Government and the Leader of the Opposition shall be consulted on a draft of the Statement or amendment; and
- (b) the House of Assembly shall debate a draft of the Statement or amendment,

and the Secretary of State shall give due consideration to any changes to the draft proposed as a result of such consultation or debate.

(3) Any Statement of Governance Principles, and any amendment of such a Statement, shall be issued by instrument in writing which shall be published in the *Gazette* and in any other way that the Governor, acting in his or her discretion, thinks fit.

(4) In exercising their functions, all organs of government in the Islands have a duty to give effect to the Statement of Governance Principles for the time being in effect.

(5) No court shall find that any act or omission of an organ of government was unlawful on account only of a failure to give effect to the Statement of Governance Principles for the time being in effect.

(6) Subject to subsection (5), the Supreme Court may enquire, but only on an application for judicial review, whether or not any organ of government has acted rationally and with procedural propriety in relation to giving effect to the Statement of Governance Principles for the time being in effect.

(7) The Premier or the House of Assembly may at any time request a Secretary of State to amend a Statement of Governance Principles following the procedure set out in subsection (2), and the Secretary of State shall provide reasons in writing if he or she declines such a request.

Exercise of Governor's functions

29.—(1) Subject to this section, the Governor shall consult the Cabinet on the formulation of policy and in the exercise of all functions conferred on 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 on 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 37(5), in any case which, in his or her judgement, involves a matter for which he or she is responsible under section 37(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 37(5), act in accordance with the advice given to him or her by the Cabinet unless—

- (a) the Governor is instructed by Her Majesty through a Secretary of State to do otherwise; or
- (b) the Governor, acting in his or her discretion, decides to do otherwise in order to ensure compliance with the Statement of Governance Principles for the time being in effect.

(3) In any case where the Governor proposes not to act in accordance with the advice of the Cabinet on the ground specified in subsection (2)(b), he or she shall within seven days notify the

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Cabinet and inform the Cabinet in writing of his or her reasons for not so acting and the respects in which the advice is inconsistent with the Statement of Governance Principles for the time being in effect.

(4) The Governor may decide not to act in accordance with the advice of the Cabinet on the ground specified in subsection (2)(b) only with the prior approval of a Secretary of State unless, in the Governor's judgement, the matter is so urgent that it is necessary to do so without such approval; and in that case the Governor shall, as soon as practicable, report his or her action and the reasons for it to a Secretary of State.

(5) A Secretary of State shall respond as soon as practicable to any request by the Governor for approval under subsection (4).

(6) The Premier shall have the right to submit to a Secretary of State comments in writing on the Governor's reasons for not acting in accordance with the advice of the Cabinet under subsection (2)(b).

(7) 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 to it with a view to possible instructions under subsection (2)(a) or approval under subsections (2)(b) and (4), until the Governor notifies the Cabinet that no such instructions will be issued or, as the case may be, no such approval will be given.

(8) 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.

(9) 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 or not he or she has so exercised that function shall not be inquired into by any court.