

## SCHEDULE 2

### The Constitution of the Turks and Caicos Islands

## PART III

### THE EXECUTIVE

#### **Executive authority**

**30.**—(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 on them by any law.

#### **The Cabinet**

**31.**—(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) not more than 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 shall, in accordance with such advice, be appointed by the Governor as Deputy Premier; and
- (d) the Deputy Governor and 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) Notwithstanding subsection (2), the Governor shall not appoint as Premier a person who has held office as Premier during two consecutive parliamentary terms unless at least one parliamentary term has expired since he or she last held that office; and for the purposes of this subsection a parliamentary term shall be deemed to be a period commencing when the House of Assembly first meets after being constituted under this Constitution or after its dissolution at any time, and terminating when the House is next dissolved.

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

(5) 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 a 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.

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

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

## **Oaths**

**32.** The members of the Cabinet, other than the Governor, shall each, before entering on 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.

## **Tenure of office by Premier**

**33.—**(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 31(2).

## **Tenure of office by Ministers**

**34.—**(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;
- (d) if the Integrity Commission determines that he or she has breached the Code of Conduct for Persons in Public Life for the time being in effect;
- (e) if the Integrity Commission determines that he or she has on two separate occasions during any term of the House of Assembly failed to comply with the requirements, under section 103 and the legislation for the time being in force, for the registration of interests of persons in public life; or
- (f) 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 Ministers in certain events**

**35.—**(1) If the Premier is unable, due to illness or absence from the Islands, to perform the functions of his or her office, the Governor shall authorise the Deputy Premier to perform those functions; and in the absence or illness of the Deputy Premier, the Governor shall authorise another Minister to perform those functions, acting in accordance with the advice of the Premier or, if in the Governor's judgement it is impracticable to obtain the Premier's advice, acting in his or her discretion.

(2) Whenever a Minister other than the Premier is unable, by reason of illness or absence from the Islands or absence from his or her duties on leave, to perform the functions of his or her office, the Governor, acting in accordance with the advice of the Premier, may—

- (a) appoint a person who is a member of the House of Assembly to be a temporary Minister; or
- (b) assign responsibility for the performance of the functions of that Minister to another Minister (including the Premier),

and may specify the period for which such person shall be a temporary Minister or for which such other Minister shall perform the functions of that Minister.

(3) If occasion arises for making an appointment under subsection (2)(a) between a dissolution of the House of Assembly and the next following general election, subsection (2) shall have effect for the purpose as if the House had not been dissolved.

(4) Subject to this Constitution—

- (a) a temporary Minister shall hold office; and
- (b) a Minister assigned to perform the functions of another Minister shall perform those functions,

until the expiry of the period specified under subsection (2) or, where no period was so specified, until he or she is notified by the Governor in writing, acting in his or her discretion, that he or she shall cease to hold that office or to perform those functions.

(5) Any authorisation, appointment or assignment under this section shall be made by the Governor by instrument under the public seal, and may be revoked in like manner.

### **Assignment of responsibilities to members of Cabinet**

**36.—**(1) Subject to subsections (2) and (3), the Governor shall 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 37(3), a member of the Cabinet shall not be charged with responsibility under this section for any of the matters mentioned in section 37(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—

- (a) the Statement of Governance Principles for the time being in effect;
- (b) the policies of the Government as determined by the Cabinet; and
- (c) 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, and any such papers, information or advice shall as soon as practicable be provided to the Governor.

### **Governor's special responsibilities**

**37.—**(1) The Governor, acting in his or her discretion, shall be responsible for the conduct, subject to this Constitution and any other law, of any business of the Government, including the administration of any department of government, with respect to the following matters—

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (a) defence;
- (b) external affairs;
- (c) the regulation of international financial services;
- (d) internal security, including the Police Force; and
- (e) the appointment of any person to any public office, the suspension, termination of appointment, dismissal or retirement of any public officer, 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, and 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 on 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 on any 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.

(6) The question of whether a matter falls within the scope of subsection (1) shall be determined by the Governor acting in his or her discretion.

### **Summoning of Cabinet**

**38.**—(1) Subject to subsection (2), 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 of the Cabinet.

(2) The Cabinet shall meet at least once a fortnight.

### **Proceedings and quorum of Cabinet**

**39.**—(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 at least 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 is 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.

(5) After consulting the Cabinet, the Governor shall publish a summary of the business conducted at each meeting of the Cabinet within fifteen days after that meeting was held.

#### **Attendance of other persons at Cabinet meetings**

**40.** 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.

#### **Attorney General**

**41.—**(1) There shall be an Attorney General of the Turks and Caicos Islands, whose office shall be a public office.

(2) The Attorney General shall be the Legal Adviser to the Government and the House of Assembly, and—

- (a) these functions 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; and
- (b) in the exercise of these functions the Attorney General shall not be subject to the direction or control of any other person or authority, and any such subordinate officer shall not be subject to the direction or control of any person or authority other than the Attorney General.