

SCHEDULE 2

The Constitution of the Turks and Caicos Islands

PART X

MISCELLANEOUS

Powers of pardon, etc

127.—(1) There shall be a Mercy Committee for the Islands comprising the Governor, the Attorney General and not less than two nor more than four other members appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition.

(2) Any appointment made under subsection (1) may be revoked by the Governor, acting after consultation with the Premier and the Leader of the Opposition.

(3) The Governor may, in Her Majesty's name and on Her Majesty's behalf—

- (a) grant to any person convicted of any offence against the law in force in the Islands a pardon, either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period, from the execution of any punishment imposed on him or her for such an offence;
- (c) substitute a less severe form of punishment for that imposed by any sentence for such an offence; or
- (d) remit the whole or any part of any sentence passed for such an offence or of any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.

(4) The Governor shall exercise the powers conferred on him or her by subsection (3) after consultation with the Mercy Committee unless in any particular case the matter is in his or her judgement too urgent to permit such consultation, in which case the Governor may act in his or her own judgement.

(5) The Mercy Committee shall not be summoned except by the authority of the Governor, acting in his or her discretion; and the Governor shall preside at all meetings of the Committee.

(6) No business shall be transacted at any meeting of the Mercy Committee unless there are at least three members present, of whom one shall be the Attorney General.

(7) The Mercy Committee shall not be disqualified for the transaction of business by reason of any vacancy in its membership, and the validity of the transaction of any business by the Committee shall not be affected by reason only of the fact that some person who was not entitled to do so took part in its proceedings.

(8) Subject to this section the Mercy Committee may regulate its own procedure.

Constitution of offices

128. Subject to this Constitution and any other law, the Governor, in Her Majesty's name and on Her Majesty's behalf, may constitute offices for the Islands.

Freedom of information

129. Subject to this Constitution, an Ordinance shall provide for a right of access to information held by public authorities, for the conditions for the exercise of that right, and for restrictions and exceptions to that right in the interests of international relations, the security of the Islands or the United Kingdom, public safety, public order, public morality or the rights or interests of individuals.

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Local government

130. Subject to this Constitution, an Ordinance shall provide for the establishment and functions of local councils to contribute to effective local government in the Islands.

Interpretation

131.—(1) In this Constitution, unless the context otherwise requires—

“Appropriations Committee” means the Committee established by section 114;

“Code of Conduct for Persons in Public Life” means a Code adopted and published by the Integrity Commission under section 102(3)(b);

“Court of Appeal” means the Court of Appeal constituted by section 80;

“Deputy Speaker” means the member of the House of Assembly elected by the House as Deputy Speaker under section 44;

“financial year” means the period of twelve months beginning on the first day of April in any year or such other day as the Legislature may prescribe by law;

“functions” includes powers and duties;

“*Gazette*” means the official *Gazette* of the Turks and Caicos Islands;

“Government” means the Government of the Turks and Caicos Islands;

“Governor” means the person for the time being appointed as Governor of the Islands, and includes any person performing the functions of the Governor in pursuance of section 26 and, to the extent to which a person appointed under section 27 is authorised to act, that person;

“high judicial office” means the office of judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or Ireland or a court having jurisdiction in appeals from such a court;

“institution protecting good governance” means an institution established by section 97(1);

“the Islands” means the Turks and Caicos Islands;

“law” includes any subsidiary instrument;

“Leader of the Opposition” means the person appointed as such under section 56;

“Legislature” means, subject to section 72, the Legislature established by section 42;

“meeting” in relation to the House of Assembly means any sitting or sittings of the House commencing when the House first meets after being summoned at any time and terminating when the House is adjourned *sine die* or at the conclusion of a session;

“Minister” means a person appointed as Premier or other Minister under section 31;

“Minister of Finance” means the Minister for the time being responsible for finance;

“Ordinance” means a law enacted by the Legislature or in pursuance of section 72;

“political party” means a political party formed in accordance with the Ordinance regulating political parties for the time being in force in the Islands;

“Premier” means the person appointed as such under section 31(2);

“Public Accounts Committee” means the Committee established by section 122;

“public office” means, subject to section 133, an office of emolument in the public service;

“public officer” means the holder of any public office, and includes a person appointed to act in any public office;

“public service” means the service of the Crown in a civil capacity in respect of the government of the Islands;

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“session” in relation to the House of Assembly means the sittings of the House commencing when the House first meets after its prorogation or dissolution at any time, and terminating when the House is next prorogued or dissolved without having been prorogued;

“sitting” in relation to the House of Assembly means a period during which the House is sitting continuously without adjournment, and includes any period during which the House is in committee;

“Speaker” means the person elected by the House of Assembly as Speaker under section 44;

“Standing Orders” means the Standing Orders of the House of Assembly made under section 63;

“Statement of Governance Principles” means a Statement issued under section 28;

“subsidiary instrument” means any proclamation, regulation, order, rule or other like instrument having the force of law;

“Supreme Court” means the Supreme Court constituted by section 77;

“Turks and Caicos Islander” has the meaning prescribed in section 132(1).

(2) Unless it is otherwise provided or the context otherwise requires, a reference in this Constitution to the holder of an office by the term designating his or her office shall be construed as a reference to any person for the time being lawfully performing the functions of that office.

(3) For the purposes of this Constitution, a person shall not be regarded as absent from the Islands or as unable to perform the functions of his or her office by reason only that he or she is in passage from one part of the Islands to another.

Turks and Caicos Islander

132.—(1) For the purposes of this Constitution, a person shall be regarded as a Turks and Caicos Islander if that person—

- (a) had immediately before the commencement of this Constitution the status of Belonger or Turks and Caicos Islander by virtue of any law then in force in the Islands; or
- (b) has the status of Belonger or Turks and Caicos Islander under any law for the time being in force in the Islands.

(2) An Ordinance shall prescribe the conditions under which a person may be granted the status of Turks and Caicos Islander, and (except in the case of a person who has a family connection with a Turks and Caicos Islander) those conditions shall include, but need not be limited to, the conditions set out in subsection (3).

(3) The conditions referred to in subsection (2) are that—

- (a) an applicant is a British overseas territories citizen by virtue of a connection with the Islands or a British citizen who either—
 - (i) has held a permanent residence certificate for a period of at least five years; or
 - (ii) has been legally resident in the Islands for a period of at least ten years; and
- (b) an applicant is neither serving a sentence imposed by a court for an offence against the law in force in any country nor has been adjudged or otherwise declared bankrupt under any law in force in any country and has not been discharged.

References to public office

133.—(1) In this Constitution, references to public offices shall not be construed as including—

- (a) references to the office of Speaker, Deputy Speaker or member of the House of Assembly, Premier or other Minister, Leader of the Opposition, member of the Public Service

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Commission, the Judicial Service Commission, the Integrity Commission, the Human Rights Commission or the Mercy Committee, or Complaints Commissioner; or

- (b) except in sections 94 and 96, references to the office of judge of the Supreme Court or the Court of Appeal or magistrate.

(2) For the purposes of this Constitution, a person shall not be considered as holding or acting in a public office by reason only that he or she—

- (a) is in receipt of a pension or other like allowance in respect of service under the Crown; or
- (b) is on leave of absence pending relinquishment of a public office.

(3) A provision of any law that a person shall not be disqualified for election as a member of the House of Assembly by reason of his or her holding or acting in any public office or class of public office specified in that law shall have effect as if it were included in this Constitution.

Appointments

134.—(1) In this Constitution, unless it is otherwise provided or the context otherwise requires, any reference to power to make appointments to any public office shall be construed as including a reference to power to make appointments on promotion and transfer, appointments on contract and appointments to act in an office during any period when it is vacant or the holder of that office is absent from the Islands or is for any other reason unable to perform the functions of the office.

(2) Where the holder of any office constituted by or under this Constitution is on leave of absence pending the relinquishment of that office, the person or authority having power to make appointments to that office may appoint another person to that office; and where two or more persons concurrently hold the same office by virtue of an appointment made in pursuance of this subsection, the person last appointed shall, in respect of any function conferred on the holder of that office, be deemed to be the sole holder of that office.

(3) Where by this Constitution any person is directed, or power is conferred on any person or authority to appoint a person, to act in an office if the holder of that office is unable to perform the functions of that office, the validity of any performance of those functions by the person so directed or of any appointment made in exercise of that power shall not be called in question in any court on the ground that the holder of the office is not unable to perform the functions of the office.

Re-election or reappointment

135. Any person who has vacated his or her seat in the House of Assembly or has vacated any office constituted by or under this Constitution may, if qualified, again be elected to the House or appointed to that office, as the case may be, from time to time.

Removal from office

136. In this Constitution, unless it is otherwise provided or the context otherwise requires, any reference to power to remove a public officer from office shall be construed as including a reference to any power conferred by any law to require or permit that officer to retire from the public service and to any power or right to terminate a contract on which a person is employed as a public officer and to determine whether any such contract shall or shall not be renewed.

Resignations

137. For the purposes of this Constitution, the resignation of a member of the House of Assembly or the holder of any office constituted by this Constitution that is required to be addressed to any person shall, unless otherwise expressly provided, be deemed to have effect from the time at which it is received by that person.

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Oaths and affirmations

138. Where a person is required by this Constitution to make an oath he or she shall, if he or she so desires, be permitted to comply with that requirement by making an affirmation in the form provided for in the Schedule to this Constitution.

Power to amend or revoke instruments

139. Any power conferred by this Constitution to make any subsidiary instrument or to give any instructions or directions or make any designation shall be construed as including a power exercisable in like manner to amend or revoke any such instrument, instructions, directions or designation.