

APPENDIX 3

DRAFT CONSTITUTION FOR THE CAYMAN ISLANDS MARCH 2002

STATUTORY INSTRUMENTS

200_____ No. _____

CARIBBEAN AND NORTH ATLANTIC TERRITORIES

The Cayman Islands Constitution Order 200_____

Made

Laid before Parliament

Coming into force On a day to be appointed under section 1(2)

At the Court at Buckingham Palace, the day of 200_____

Present,

The Queen’s Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

- Citation,
construction and
commencement
- 1. -** (1) This Order may be cited as the Cayman Islands (Constitution) 200_____
- (2) This Order shall come into force on such day as the Governor, acting in his discretion, may appoint by proclamation published in a Government Notice.
- Interpretation
- 2. -** (1) In this Order –
- “the appointed day” means the date on which the Legislative Assembly is next dissolved after the coming into force of this Order;
- “the Constitution” means the Constitution set out in Schedule 2 to this Order.
- (2) The provisions of Part VIII section 107 of the Constitution shall apply for the purposes of interpreting sections 1 to 9 of this Order and otherwise in relation thereto as they apply for the purposes of interpreting and in relation to the Constitution.
- Revocations
- 3. -** The instruments specified in Schedule 1 to this Order are revoked with effect from the appointed day provided that the Executive Council then existing pursuant to the provisions of the said instruments shall continue in office until the next General Elections following the appointed day.
- Establishment
of Constitution
- 4. -** Schedule 2 to this Order shall have effect as the Constitution of the Cayman Islands from the appointed day.
- Existing laws
- 5. -** (1) Subject to the provisions of this section, the existing laws shall have effect on and after the appointed day as if they had been made in pursuance of the Constitution and shall be read and construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the provisions of the Constitution.
- (2) The Governor may, by regulations published in the Gazette, at any time within twelve months of the appointed day make such modifications or adaptations to any existing law as appear to him to be necessary or expedient for bringing that law into conformity with the provisions of the Constitution or otherwise for giving effect or enabling effect to be given to those provisions; and any existing law shall have effect accordingly from such day (not being earlier than the appointed day) as may be specified in any such regulations.
- (3) Regulations made under this section may be amended or revoked in relation to any existing law affected thereby by any authority competent to amend or revoke that law.

(4) In this section “existing laws” means laws and instruments (other than Acts of Parliament of the United Kingdom and instruments made thereunder) having effect as part of the law of the Cayman Islands immediately before the appointed day.

Existing offices
and officers

6. - (1) Any office established by or under the Cayman Islands (Constitution) Orders 1972, 1984, 1987, 1992 and 1993 and existing immediately before the appointed day shall on and after that day, so far as is consistent with the provisions of the Constitution, continue as if it had been established by or under the Constitution.

(2) Any person who immediately before the appointed day holds or is acting in any office referred to in subsection (1) of this section shall, on and after that day, continue to hold or act in that office as if he had been appointed to hold or to act in it in accordance with or under the provisions of the Constitution.

(3) Any person to whom subsection (2) of this section applies who, before the appointed day, has made any oath or affirmation required to be made before assuming the functions of his office shall be deemed to have made any like oath or affirmation so required by the Constitution or any other law.

Legislative
Assembly

7. - The Standing Orders of the Legislative Assembly as in force immediately before the appointed day shall, except as may be otherwise provided under section 52 of the Constitution, have effect on and after that day as if they had been made under that section but shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

Pending legal

8. - (1) Any cause, matter or appeal pending before the Grand Court proceedings or any appeal or application pending before the Court of Appeal immediately before the appointed day may, on or after that day, be continued, determined or appealed against as if such cause, matter or appeal had been instituted or was pending before the Grand Court, or such appeal or application made to the Court of Appeal, as the case may be, as those courts are respectively constituted by the Constitution.

(2) Any decree or order of the Grand Court or the Court of Appeal given or made before the appointed day, in so far as it has not been fully executed or enforced, may be executed or enforced on or after that day as if it were a decree or order of the Grand Court or the Court of Appeal, as the case may be, as those courts are respectively constituted by the Constitution.

Power reserved
by Her Majesty

9. - Her Majesty reserves to Herself power, with the advice and consent of Her Privy Council, to make laws for the peace, order and good government of the Cayman Islands.

Clerk of the Privy Council

SCHEDULE 1

- (1) The Cayman Islands (Constitution) Order 1972
- (2) The Cayman Islands (Constitution) (Amendment) Order 1984
- (3) The Cayman Islands (Constitution) (Amendment) Order 1987
- (4) The Cayman Islands (Constitution) (Amendment) Order 1992
- (5) The Cayman Islands (Constitution) (Amendment) Order 1993

SCHEDULE 2

The Constitution of the Cayman Islands

ARRANGEMENT OF SECTIONS

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FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

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3. Protection from inhuman treatment.
4. Protection from slavery and forced labour.
5. Protection of right to personal liberty.
6. Provisions to secure protection of law.
7. Protection of right of prisoners to humane treatment.
8. Protection for private and family life and the privacy of home and other property
9. Protection of the right to marry etc.
10. Protection of freedom of conscience.
11. Protection of freedom of expression.
12. Protection of freedom of assembly and association.
13. Protection of freedom of movement.
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16. Provision for periods of public emergency.
17. Enforcement of fundamental rights.
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FORMS OF OATHS AND AFFIRMATIONS

PART 1

FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Fundamental rights and freedoms of the individual.

1. Whereas every person in the Islands is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political or other opinion, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely:-

- (a) life, liberty, security of the person and the protection of the law;
- (b) freedom of conscience, of expression and of assembly movement and association; and
- (c) protection for his privacy and family life, the privacy of his home and other property and from deprivation of property except in the public interest and on payment of fair compensation,

the subsequent provisions of this Part shall have effect for the purpose of affording protection to the aforesaid rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Protection of right to life.

2. – (1) No person shall be deprived intentionally of his life.

(2) A person shall not be regarded, as having been deprived of his life in contravention of this section if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable-

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
- (d) in order to prevent the commission by that person of a criminal offence, or if he dies as a result of a lawful act of war.

Protection from inhuman treatment.

3. - (1) No person shall be subjected to torture or to inhuman or degrading treatment or punishment.

Protection from slavery and forced labour.

4. - (1) No person shall be held in slavery or servitude.

- (2) No person shall be required to perform forced labour.
- (3) For the purposes of this section, “forced labour” does not include -
 - (a) any labour required in consequence of the sentence or order of a court;
 - (b) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service in a naval, military or air force, any labour that that person is required by law to perform in place of such service;
 - (c) labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place in which he is detained; or
 - (d) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

Protection of
right to
personal
liberty.

5. – (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases –

- (a) in execution of the sentence or order of a court, whether established for the Islands or some other country, in respect of a criminal offence of which he has been convicted or in consequence of his unfitness to plead to a criminal charge;
- (b) in execution of an order of a court punishing him for contempt of that court or of another court or tribunal;
- (c) in execution of the order of a court made in order to secure the fulfillment of any obligation imposed on him by law;

provided that no person shall be deprived of his liberty merely on the ground of inability to fulfill a contractual obligation.
- (d) for the purpose of bringing him before a court in execution of the order of a court;
- (e) upon reasonable suspicion that he has committed, is committing or is about to commit a criminal offence;

- (f) in the case of a person who has not attained the age of eighteen years, under the order of a court or with the consent of his parent or guardian, for the purpose of his education or welfare;
- (g) for the purpose of preventing the spread of an infectious or contagious disease or in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;
- (h) for the purpose of preventing the unlawful entry of that person into the Islands or for the purpose of effecting the expulsion, extradition or other lawful removal from the Islands of that person or the taking of proceedings relating thereto.

(2) Any person who is arrested or detained shall be informed as soon as is reasonably practicable, in a language that he understands, of the reason for his arrest or detention.

(3) Any person who is arrested or detained in such a case as is mentioned in subsection (1)(d) or (e) of this section and who is not released shall be brought without undue delay before a court; and if any person arrested or detained in such a case as is mentioned in subsection (1)(e) of this section is not tried within a reasonable time he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person; from any person or authority on whose behalf that other person was acting or from them both.

Provided that a Judicial officer or an officer of a court or a police officer acting in pursuance of the order of a judicial officer shall not be personally liable to pay compensation under this subsection in respect of anything done by him in good faith in the discharge of the functions of his office and any liability to pay any such compensation in respect of that thing shall be a liability of the Crown.

(5) For the purposes of subsection (1) (a) of this section, a person charged with a criminal offence in respect of whom a special verdict has been returned that he was guilty of the act or omission charged but was insane when he did the act or made the omission shall be regarded as a person who has been convicted of a criminal offence, and the detention of that person in consequence of such a verdict shall be regarded as detention in execution of the order of a court.

6. – (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair and public hearing within a reasonable time by an independent and impartial court established by law.

- (2) Every person who is charged with a criminal offence –
- (a) shall be presumed to be innocent until he is proved or has pleaded guilty;
 - (b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;
 - (c) shall be given adequate time and facilities for the preparation of his defence;
 - (d) shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice or, where so provided by any law, by a legal representative at the public expense;
 - (e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution;
 - (f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge; and
 - (g) shall, when charged on indictment in the Grand Court, have the right to trial by jury;

and, except with his own consent, the trial shall not take place in his absence, unless he so conducts himself in the court as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence, or unless, having had reasonable notice of the hearing and of the nature of the offence charged, he is voluntarily absent from the proceedings.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or

description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence under a law for the time being in force in the Islands.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Every person who has been convicted by a court of a criminal offence shall have the right to appeal to a superior court against his conviction or his sentence or both:

Provided that –

- (a) nothing contained in any law shall be held to be inconsistent with or in contravention of this subsection –
 - i. to the extent that it precludes an appeal by a person against his conviction of an offence if he pleaded guilty to that offence at his trial; or
 - ii. to the extent that it makes reasonable provision with respect to the grounds upon which any such appeal may be made or with respect to the practice and procedure to be observed in relation to the making, hearing and disposal of any such appeal; and
 - iii. this subsection shall not apply in relation to the conviction of a person by a superior court, or in relation to his sentence upon such conviction, if he was convicted by that court on an appeal against his acquittal by a lower court.

(9) When a person has, by a final decision of a court, been convicted of a criminal offence and, subsequently, his conviction has been quashed, or he has been pardoned, on the ground that a newly-disclosed fact shows that there has been a miscarriage of justice, he shall be compensated out of public funds for any punishment that he has suffered as a result of the conviction unless it is proved that the non-disclosure in time of that fact was wholly or partly his fault.

(10) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be determined fairly within a reasonable time.

(11) All proceedings instituted in any court for the determination of the existence or extent of any civil right or obligation, including the announcement of the decision of the court, shall be held in public.

(12) Nothing in subsection (1) or (11) of this section shall prevent the court from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court –

- (a) may be empowered by law so to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interlocutory proceedings, or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of commercial confidence or of the private lives of persons concerned in the proceedings; or
- (b) may be empowered or required by law to do in the interests of defence, public safety, public order.

(13) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of –

- (a) subsection (2)(a) of this section, to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;
- (b) subsection (2)(e) of this section to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;
- (c) subsection (5) of this section to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, save that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(14) In this section, “legal representative” means a person entitled to practice in the Islands as an attorney.

Protection of
right of
prisoners to
humane
treatment.

7. – (1) All persons deprived of their liberty (in this section referred to as “prisoners”) have the right to be treated with humanity and with respect for the inherent dignity of the human person.

(2) Save where the interests of defence, public safety, public order, public morality, public health or the administration of justice otherwise require, unconvicted prisoners shall be segregated from convicted prisoners; and every unconvicted prisoner shall be entitled to be treated in a manner appropriate to his status as such.

(3) Juvenile prisoners shall be segregated from adult prisoners and every juvenile prisoner shall be treated in a manner appropriate to his age and legal status and, if he is an unconvicted prisoner and unless he is earlier released, to have any criminal proceedings against him pursued with the greatest possible expedition.

Protection for
private and
family life and
the privacy of
home and
other property.

8. – (1) Every person has the right to respect for his private and family life and his correspondence, and except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision –

(a) that is reasonably required –

(i) in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development of mineral resources, or the development or utilization of any other property in such a manner as to promote the public benefit; or

(ii) for the purpose of protecting the rights and freedoms of other persons;

(b) to enable an officer or agent of the Government, a local government authority or a body corporate established by law for a public purpose to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government or that authority or body corporate, as the case may be; or

(c) to authorise, for the purpose of enforcing the judgment or order of a court, the search of any person or property by order of a court or the entry upon any premises by such order,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of
the right to
marry etc.

9. – (1) Every man and woman of marriageable age (as determined by or under any law) has the right to marry a person of the opposite sex and found a family.

(2) No person shall be compelled to marry, that is to say, to do so without his free and full consent.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that the law makes provision that is reasonably required –

- (a) In the interests of public order, public morality or public health;
- (b) For regulating, in the public interest, the procedures and modalities of marriage; or
- (c) For protecting the rights and freedoms of others,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

(4) Spouses shall be entitled to equal rights and shall be subject to equal responsibilities as between themselves and as regards their children both during marriage and, if the marriage is dissolved, thereon and thereafter, but this equality of rights and responsibilities shall be subject to such arrangements or measures as may be agreed, or as may be ordered by a court, in the interests of their children.

Protection of
freedom of
conscience.

10. – (1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his consent (or, if he is a person who has not attained the age of eighteen years, the consent of his guardian) no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance that relates to a religion other than his own.

(3) No religious community or denomination shall be prevented from or hindered in providing religious instruction for persons of that community or denomination in the course of any education provided by that community or denomination whether or not that community or denomination is in receipt of any government subsidy, grant or other form of financial assistance designed to meet, in whole or in part, the cost of such course of education.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required –

- (a) in the interests of public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practice any religion or belief without the unsolicited interference of persons professing any other religion or belief,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of
freedom of
expression.

11. – (1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence or other means of communication.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision –

- (a) that is reasonably required –
 - (i) in the interests of defence, public safety, public order, public morality; or
 - (ii) for the purpose of protecting the rights, reputations and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication or regulating, public exhibitions or public entertainments; or
- (b) that imposes restrictions upon public officers,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of
freedom of
assembly and
association.

(3) For the purposes of subsection (2)(b) of this section in so far as it relates to public officers, “law” in that subsection includes directions in writing regarding the conduct of public officers generally or any class of public officer issued by the Government.

12. – (1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of peaceful assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to political parties or to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-

- (a) that is reasonably required -
 - (i) in the interests of defence, public safety, public order, public morality or public health; or
 - (ii) for the purpose of protecting the rights and freedoms of other persons,
- (b) that imposes restrictions upon public officers,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

(3) For the purposes of subsection (2)(b) of this section, “law” in that subsection includes directions in writing regarding the conduct of public officers generally or any class of public officer issued by the Government.

Protection of
freedom of
movement.

13. – (1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of movement, that is to say, the right to move freely throughout the Islands, the right to reside in any part thereof, the right to enter the Islands and immunity from expulsion there from.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision –

(a) For the imposition of restrictions on the movement or residence within the Islands or on the right to leave the Islands of persons generally or any class of persons that are reasonably required –

- (i) in the interests of defence, public safety, public order, public morality or public health; or

- (ii) for the purpose of protecting the rights and freedoms of other persons,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

- (b) for the removal of a person from the Islands to be tried or punished in some other country for a criminal offence under the law of that country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law of the Islands of which he has been convicted;
- (c) for the imposition of restrictions on the movement or residence within the Islands or the right to leave the Islands of public officers that are reasonably required for the purpose of ensuring the proper performance of their functions;
- (d) for the imposition of restrictions on the entry, movement or residence within the Islands of any person who is not a Caymanian or who does not possess Caymanian status or the exclusion or expulsion there from of any such person;
- (e) for the imposition of restrictions on the acquisition or use by any person of land or other property in the Islands;
- (f) for the imposition of restrictions, by order of a court, on the movement or residence within the Islands of any person or on any person's right to leave the Islands either in consequence of his having been found guilty of a criminal offence under the law of the Islands or for the purpose of ensuring a fair trial or that he appears before a court at a later date for trial or for proceedings relating to his extradition or lawful removal from the Islands; or
- (g) for the imposition of restrictions on the right of any person to leave the Islands that are reasonably required in order to secure the fulfillment of any obligation imposed by law, except so far as the provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(3) For the purposes of subsection (2)(c) of this section, "law" in that subsection includes directions in writing regarding the conduct of public officers generally or any class of public officers issued by the Government.

(4) Any restriction on a person's freedom of movement, which is involved in his lawful detention, shall not be held to be inconsistent with or in contravention of this section.

14. – (1) Subject to subsections (4) and (5) of this section, no law shall make any provision which is discriminatory either of itself or in its effect.

(2) Subject to subsection (6) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority.

(3) In this section, “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political or other opinion, colour, creed, sex or the developmentally or physically challenged whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision-

- (a) for the appropriation of revenues or other funds of the Islands or for the imposition of taxation (including the levying of fees for the grants of licences);
- (b) with respect to the entry into or exclusion from, or the employment, engaging in any business or profession, movement or residence within, the Islands of persons who are not Caymanian or who do not possess Caymanian status;
- (c) for the application, in the case of persons of any such description as is mentioned in subsection (3) of this section (or of persons connected with such persons) of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law applicable to persons of that description; or
- (d) whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is objectively and reasonably justifiable in a democratic society and there is a reasonable proportionality between the means employed and the purpose sought to be realized.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it requires a person to be a Caymanian or to possess Caymanian status, or to possess any other qualification (not being a qualification specifically relating to race, place of origin, political or other opinion, colour creed or sex) in order to be eligible for appointment to any office in the public service or in a disciplined force or any office in the service of a local government authority or of a body corporate established directly by any law for public purposes.

(5) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorized to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

(6) No person shall be treated in a discriminatory manner in respect of access to any of the following places to which the general public have access, namely, shops, hotels, restaurants, eating-houses, licensed premises, places of entertainment or places of public resort.

Protection
from
deprivation of
property.

15. – (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say-

- (a) the taking of possession or acquisition is necessary or expedient in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of any property in such manner as to promote the public benefit or the economic well-being of the community; and
 - (b) there is reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and
 - (c) provision is made by a law applicable to that taking of possession or acquisition-
 - (i) for the prompt payment of adequate compensation; and
 - (ii) securing to any person having an interest in or right over the property a right of access to the Grand Court, whether direct or on appeal from any other authority, for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation; and
 - (iii) giving to any party to proceedings in the Grand Court relating to such a claim the same rights of appeal as are accorded generally to parties to civil proceedings in that Court sitting as a court of original jurisdiction.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section-
- (a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest or right-
 - (b) in satisfaction of any tax, rate or due;

- (i) by way of penalty for breach of any law or forfeiture in consequence of a breach of any law;
- (ii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
- (iii) by way of taking of a sample for the purposes of any law;
- (iv) where the property consists of an animal upon its being found trespassing or straying;
- (v) in the execution of judgments or orders of a court;
- (vi) by reason of its being in a dilapidated or dangerous state or injurious to the health of human beings, animals or plants;
- (vii) in consequence of any law with respect to prescription or the limitation of actions: or
- (viii) for so long only as may be necessary for the purposes if any examination, investigation, trial or inquiry, or, in the case of land, for the purposes of carrying out thereon work of reclamation, drainage, soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has, without reasonable and lawful excuse, refused or failed to carry out),

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

- (c) to the extent that the law in question makes provision for the taking possession or acquisition of any of the following property (including an interest in or right over property), that is to say:-
 - (i) enemy property;
 - (ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;
 - (iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or

- (iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that the law in question makes provision for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no moneys have been invested other than moneys provided from public funds.

Provision for periods of public emergency.

16. - (1) Nothing contained in or done under the authority of any regulation made under

- (a) the Emergency Powers Orders in Council 1939 to 1973 or
- (b) the Emergency Powers Law shall be held to be inconsistent with or in contravention of section 5, section 6 other than subsections (4) and (6) thereof or any provision of sections 8 and sections 10 to 14 (inclusive) of this Constitution to the extent that the regulation in question makes in relation to any period of public emergency provision, or authorizes the doing during any such period of anything, that is reasonably justifiable in the circumstances of any situation arising or existing during that period for the purpose of dealing with that situation.

(2) Where any person who is lawfully detained in pursuance of such a regulation as is referred to in subsection (1) of this section so requests at any time during the period of that detention (but if he has already made such a request during that period not earlier than six months after he last made such a request during that period), his case shall within one month of making the request be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice.

(3) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise prescribed, that authority shall not be obliged to act in accordance with any such recommendations.

Enforcement of fundamental rights.

17. - (1) If any person alleges that any of the foregoing provisions of this Part has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Grand Court for redress.

- (2) The Grand Court shall have original jurisdiction-

- (a) to hear and determine any application made by any person in pursuance of subsection (1) of this section; and
- (b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section,

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcing or securing the enforcement of any of the foregoing provisions of this Part to the protection of which the person concerned is entitled:

Provided that the Grand Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.

(3) If, in any proceedings in any court established in the Islands other than the Grand Court or the Court of Appeal, any question arises as to the contravention of any of the foregoing provisions of this Part, the court in which the question has arisen shall refer the question to the Grand Court, unless, in its opinion, the raising of the question is merely frivolous or vexatious.

(4) An appeal shall lie as of right to the Court of Appeal from any final determination of any application or question by the Grand Court under this section, and an appeal shall lie as of right to Her Majesty in Council from the final determination by the Court of Appeal of the appeal in any such case:

Provided that no appeal shall lie from a determination by the Grand Court under this section dismissing an application on the ground that is frivolous or vexatious.

(5) A law made under this Constitution may confer upon the Grand Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by this section.

(6) Any such law may make, or provide for the making of, provision with respect to the practice and procedures-

- (a) of the Grand Court in relation to the jurisdiction and powers conferred upon it by or under this section;
- (b) of the Grand Court or the Court of Appeal in relation to appeals under this section from determinations of the Grand Court or the Court of Appeal; and
- (c) of other courts in relation to references to the Grand Court under subsection (3) of this section;

including provision with respect to the time within which any application, reference or appeal shall or may be made or brought and provision whereby such an application, reference or appeal may be brought on behalf of a person referred to in subsection (1) by some other person.

18. - (1) In this Part, unless it is otherwise expressly provided or required by the context-

“contravention” in relation to any requirement includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

“court” means any court of law having jurisdiction in the Islands, including Her Majesty in Council, but excepting, save in sections 2 and 4 of this Constitution, a court constituted by or under disciplinary law;

“disciplinary law” means a law regulating the discipline of any disciplined force;

“disciplined force” means-

- (a) a naval, military or air force;
- (b) any police force or prison service of the Islands;

“member” in relation to a disciplined force includes any person who, under the law regulating the discipline of that force, is subject to that discipline;

“period of public emergency” means any period during which-

- (a) Her Majesty is at war; or
- (b) there is in force in the Islands a proclamation of emergency under the Emergency Powers Orders in Council 1939 to 1973 or under the Emergency Powers Law.

(2) In relation to any person who is a member of a disciplined force raised under the law of the Islands, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of the provisions of this Part other than sections 2, 3 or 4.

(3) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in the Islands, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Part.

PART II
THE GOVERNOR

The Governor. **19.** – (1) There shall be a Governor of the Cayman 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, for the purpose of administering the government of the Islands, have such powers and duties as are conferred or imposed on him by this Constitution or any other law and such other powers as Her Majesty may from time to time be pleased to assign to him, and, subject to the provisions of this Constitution and of any other law by which any such powers or duties are conferred or imposed, shall do and execute all things that belong to his office according to such Instructions, if any, as Her Majesty may from time to time see fit to give him; but no court shall enquire whether or not he has complied with any such Instructions.

(3) A person appointed to the office of Governor shall, before entering upon the functions of that office, make before the Chief Justice oaths of allegiance and for the due execution of that office in the forms set out in the First Schedule of this Constitution.

Acting Governor. **20.** – (1) During any period when the office of Governor is vacant or the Governor is absent from the Islands or is for any other reason unable to perform the functions of his office those functions shall, during Her Majesty's pleasure, be assumed and performed by-

- (a) such person as Her Majesty may designate in that behalf by Instructions given under Her Sign Manual and Signet or through a Secretary of State; or
- (b) if there is no person in the Islands so designated and able to perform those functions, such public officer being a Caymanian as the Governor, acting in his discretion, shall by writing under his hand appoint.

(2) Before assuming the functions of the office of Governor, any such person as aforesaid shall make the oaths directed by section 19 of this Constitution to be made by the Governor.

(3) Any such person as aforesaid shall not continue to perform the functions of the office of Governor after the Governor or some other person having a prior right to perform the functions of that office has notified him that he is about to resume or assume those functions.

Governor’s Deputy. **21.** - (1) Whenever the Governor-

- (a) has occasion to be absent from the seat of government but not from the Islands; or
- (b) has occasion to be absent from the Islands for a period which he has reason to believe will be of short duration; or
- (c) is suffering from an illness which he has reason to believe will be of short duration,

he may, by instrument under the public seal, acting in his discretion, appoint any person in the Islands being a Caymanian to be his deputy during such absence or illness and in that capacity to perform on his 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 the appointment of a deputy under this section, and a deputy shall conform to and observe all instructions that the Governor, acting in his discretion, may from time to time address to him; but no court shall enquire whether or not he has complied with any such instructions.

(3) A person appointed as a deputy under this section shall hold that appointment for such period as may be specified in the instrument by which he is appointed, and his appointment may be revoked or extended at any time by Her Majesty by instructions given through a Secretary of State, or by the Governor, acting in his discretion.

Emoluments,
personal staff
and
expenditure of
the Governor.

22. - (1) The 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 and shall be provided for in a law made under this Constitution.

(2) A law made under this Constitution may prescribe the offices that are to constitute the personal staff of the Governor, the salaries and allowances that are to be paid to the members of that staff and the other sums that are to be paid in respect of the expenditure attaching to the office of Governor provided that said law shall not apply to such members of the personal staff of the Governor as are recruited and paid under the authority of a Secretary of State.

(3) Any emoluments, salaries, allowances or other sums prescribed, under subsection (2) of this section shall also be a charge on and shall be paid out of the consolidated fund.

(4) The power to make appointments to the offices for the time being prescribed under subsection (2) of this section as being offices constituting the personal staff of the Governor, and to remove and to exercise disciplinary control over persons holding or acting in such offices, shall vest in the Governor, acting in his discretion.

23. - (1) The Governor shall, subject to the following provisions of this section, consult with the Executive Council in the formulation of policy and in the exercise of all powers conferred upon him by this Constitution or by any other law for the time being in force in the Islands, except in the exercise of -

- (a) any power conferred upon him by this Constitution which he is empowered to exercise in his discretion or in pursuance of Instructions given to him by Her Majesty.
- (b) any power conferred by this Constitution or any other law which he is empowered or directed, either expressly or by necessary implication, to exercise without consulting the Executive Council or to exercise on the recommendation or advice of, or after consultation with, any person or authority other than the Executive Council; or
- (c) the special responsibilities of the Governor, that is to say any power that in his opinion relates to-
 - (i) defence;
 - (ii) external affairs;
 - (iii) internal security including the police;

Provided that in exercising his powers in relation to the matters mentioned in this paragraph (c) the Governor shall keep the Executive Council informed of any matters that in his judgment may involve the economic or financial interests of the Cayman Islands or the enactment of laws under this Constitution and;

Provided further that the Governor, acting in his discretion, may assign to a Member of the Executive Council responsibility for the conduct on behalf of the Governor of any business of the Legislative Assembly with respect to any of the said matters.

(2) The Governor shall not be required to consult with the Executive Council in any case in which in his judgment-

- (a) the service of Her Majesty would sustain material prejudice thereby;
- (b) the matters to be decided are too unimportant to require such consultation; or
- (c) the urgency of the matter requires him to act before the Council can be consulted.

(3) In every case falling within paragraph (c) of the last foregoing subsection the Governor shall, as soon as practicable, communicate to the Executive Council the measures which he has adopted and the reasons for those measures.

(4) The question whether the Governor has exercised any power after consultation with or in accordance with the advice of the Executive Council shall not be enquired into by any court.

Governor may act contrary to the advice of Executive Council.

24. - (1) Subject to the provisions of this Constitution, in any case where the Governor is required by the last foregoing section to consult with the Executive Council he shall act in accordance with the advice given him by the Council unless he considers it expedient in the interests of public order, public faith or good government not to do so:

Provided that he shall not so act against the advice of the Council without first obtaining the approval of a Secretary of State, unless in his judgment the matter is so urgent that it is necessary for him to act before obtaining such approval, in which case he shall forthwith report his action to a Secretary of State with the reasons therefor.

(2) Whenever the Governor acts otherwise than in accordance with the advice given to him by the Council, any member of the Council may require that there be recorded in the minutes the grounds of any advice or opinion which he may have given on the question.

Powers of Pardon, etc.

25. - (1) The Governor may, in Her Majesty's name and on Her Majesty's behalf-

- (a) grant to any person concerned in or convicted of any offence against any 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 sentence passed on that person 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 any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.

(2) In the exercise of his powers under this section the Governor shall consult the Committee established under section 26 of this Constitution, but he shall decide whether to exercise any of those powers in any case in his discretion, whether the members of the Committee concur in his decision or otherwise.

Establishment and procedure of Advisory Committee.

26. - (1) There shall be for the Islands an Advisory Committee on the Prerogative of Mercy (in this section and section 25 referred to as the Committee), which shall consist of the Attorney-General, the Chief Medical Officer and four other members of which two shall be appointed by the Governor after consultation with the Chief Minister and two

after consultation with the Leader of the Opposition.

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

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

(4) The office as a member of the Committee of any member appointed by the Governor under subsection (1) of this section shall become vacant if the Governor acting after consultation with the Chief Minister and the Leader of the Opposition revokes his appointment as a member of the Committee.

(5) Subject to subsection (3) of this section, the Committee shall not be disqualified for the transaction of business by reason of any vacancy in the membership of the Committee 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 the proceedings.

(6) Subject to the provisions of this section the Committee may regulate its own proceedings.

Powers to dispose of land.

27. Subject to the provisions of any law for the time being in force in the Islands, the Governor or any person duly authorized by him in writing under his hand may, in Her Majesty's name and on Her Behalf, make and execute under the public seal grants and dispositions of any land or other immovable property within the Islands that may be lawfully granted or disposed of by Her Majesty.

Public seal.

28. The Governor shall keep and use the public seal for sealing all things that should pass that seal.

Offices and appointments.

29. Subject to the provisions of this Constitution and of any other law, the Governor, in Her Majesty's name and on Her Majesty's behalf, may –

- (a) constitute offices for the Islands and make appointments, to be held during Her Majesty's pleasure thereto; and
- (b) remove any person so appointed or take such other disciplinary action in relation to him as the Governor may think fit.

PART III

THE EXECUTIVE

Executive authority.

30. – (1) The executive authority of the Cayman Islands is vested in Her Majesty.

(2) Subject to the provisions of this Constitution, the executive authority of the Islands shall be exercised on behalf of Her Majesty by the Governor, either directly or through officers subordinate to him.

(3) Nothing in this section shall preclude persons or authorities other than the Governor from exercising such functions as are or may be conferred upon them by any law.

The Executive Council.

31. - (1) There shall be an Executive Council for the Islands, which shall consist of-

(a) the Governor;

(b) a Chief Minister appointed by the Governor in accordance with subsection (2) of this section;

(c) six other Ministers appointed by the Governor, acting in accordance with the advice of the Chief Minister from among the elected members of the Legislative Assembly;

(d) The Attorney General appointed in accordance with the provisions of section 93 of this Constitution.

(2) If a political party gains a majority of the seats of elected members of the Legislative Assembly, the Governor shall appoint as Chief Minister the elected member of the Legislative Assembly recommended by a majority of the elected members of the Legislative Assembly who are members of that party.

(3) In the event that sub-section (2) of this section does not apply the Governor shall cause a ballot to be held among the elected members of the Legislative Assembly to determine which elected member commands the support of the majority of such members, and shall record the vote of each member voting;

and, where such a ballot is held, the Governor shall appoint as Chief Minister the elected member who obtains a majority of the votes of the elected members.

(4) Appointments of the Chief Minister 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 dissolution of the Legislative Assembly and the polling in the next following general

election, a person who was an elected member of the Legislative Assembly immediately before the dissolution may be appointed as a Minister as if he were still a member of the Legislative Assembly.

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

(7) The members of the Executive Council, other than the Governor, shall each before entering upon the duties of his office as such member, make before the Governor oaths of allegiance and for the due execution of his office in the form set out in the first Schedule to this Constitution.

32. - (1) The Governor shall subject to the provisions of subsection (2) of this section revoke the appointment of the Chief Minister if a motion that the Legislative Assembly should declare a lack of confidence in the Government of the Islands receives the affirmative vote of not less than ten of the elected members thereof:

In revoking the Chief Minister's appointment, the Governor shall immediately thereafter dissolve the Legislative Assembly.

(2) The Chief Minister and all other Ministers shall, notwithstanding the provisions of section 32(1) and 33(2) (a) of this Constitution continue in office until the next General Election following the dissolution of the Legislative Assembly under subsection (1) of this section.

(3) The Chief Minister shall vacate his office if, after the polling in a general election and before the Legislative Assembly first meets thereafter, the Governor, acting in his discretion, informs him that he is about to appoint another person as Chief Minister.

33. - (1) Any Minister shall vacate his office-

- (a) if he ceases to be a member of the Legislative Assembly for any reason other than a dissolution thereof;
- (b) if he is not a member of the Legislative Assembly when it first meets after a general election;
- (c) if he resigns his office by writing under his hand addressed to the Governor; or
- (d) if he is absent from the Islands or absent from three consecutive meetings of the Executive Council without-
 - (i) in the case of the Chief Minister, having given the Governor prior notice of such absence; or

Tenure of office of Chief Minister.

Tenure of office by Ministers.

(ii) in the case of any other Minister, having obtained written permission for such absence from the Governor, acting in accordance with the advice of the Chief Minister.

- (2) A Minister other than the Chief Minister shall also vacate his office if-
- (a) the Chief Minister's appointment is revoked in accordance with section 32 of this Constitution; or
 - (b) his appointment is revoked by the Governor, acting in accordance with the advice of the Chief Minister by instrument under the public seal.

34. - (1) If the Chief Minister is unable, due to illness or his absence from the Islands, to perform the functions of his office, the Governor may authorise some other Minister to perform those functions.

(2) In exercising his powers under this section the Governor shall act in accordance with the advice of the Chief Minister unless, in the Governor's judgment, it is impracticable to obtain the Chief Minister's advice owing to his infirmity of body or mind or absence in which case he shall exercise the power acting in his discretion.

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

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

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:

Provided that, if occasion arises for the making of an appointment under paragraph (a) between a dissolution of the Legislature and the next following general election, the preceding provisions of this section shall have effect for the purpose as if the Legislature had not been dissolved.

- (4) Subject to the provisions of 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 (3) of this section or, where no period was so specified, until he is notified by the Governor in writing that he shall cease to hold that office or to perform those functions.

(5) Any authority given under this section shall be conferred by the Governor by instrument under the public seal, and may be revoked in like manner.

Allocation of portfolios to Ministers.

35. - (1) The Governor, acting in accordance with the advice of the Chief Minister, may by directions in writing –

- (a) charge the Chief Minister or any other Minister with responsibility for the conduct (subject to the provisions of this Constitution and of any other law) of any business of the Government including responsibility for the administration of any department of government;
- (b) designate the style by which any Minister so charged shall be known:

Provided that a Minister appointed from among the elected members of the Legislative Assembly shall be charged with responsibility for finance and shall be styled “Minister of Finance”.

(2) Nothing in this section shall empower the Governor to confer on any Minister authority to exercise any powers or discharge any duty that is conferred or imposed by this Constitution or any other law on the Governor or any person or authority other than a Minister.

(3) Without prejudice to the generality of subsection (2) of this section, except for the purpose of submitting questions relating to such matters to the Executive Council and conducting government business relating to such matters in the Legislative Assembly, a Minister shall not be charged under this section with responsibility for –

- (a) any matter for which the Governor, acting in his discretion, is responsible under section 23 of this Constitution;
- (b) the discharge by the courts of the Islands of their judicial functions;
- (c) the initiation, conduct and discontinuance of criminal proceedings;
- (d) the audit of the accounts of the Islands;
- (e) the making of appointments to public offices, the removal or disciplinary control of persons holding or acting in such offices and the grant of any benefits in relation to pensions and gratuities in pursuance of the provisions of this Constitution.

(4) It shall be the duty of a Minister charged under subsection (1) of this section to act in the exercise thereof in accordance with the policies of the Government as

decided in the Executive Council and in accordance with the principles of collective responsibility, and to support in the Legislative Assembly any measure decided upon in the Executive Council unless he has received the prior permission of the Governor to act otherwise or not to support such a measure.

(5) A Minister charged under subsection (1) of this section with responsibility for the conduct of any business of the Government may be assisted in the discharge of that responsibility by a board, committee or other similar body consisting wholly or partly of persons who are not public officers and established by a law enacted by the Legislature or by directions in writing given by the Minister concerned; any such body shall have advisory, consultative and administrative functions as may be conferred on it by such a law or directions, but, in exercising any such functions, the body shall be subject to the directions of the Minister concerned.

(6) Where a Minister has been charged under subsection (1) of this section with responsibility for the administration of any department of government, the Minister shall (subject to the provisions of this Constitution and of any other law) exercise general direction and control over the department, and, subject to such direction and control, the department shall be under the supervision of a public officer (whose office is referred to in this Constitution as the office of a Permanent Secretary):

Provided that two or more departments of government may be placed under the supervision of one Permanent Secretary.

Summoning of Executive Council.

36. The Executive Council shall be summoned by the Governor acting in his discretion:

Provided that the Governor shall summon the Council if requested to do so by the Chief Minister or a majority of Ministers.

Proceedings in and quorum of Executive Council.

37. - (1) The Governor shall so far as is practicable attend and preside at meetings of the Executive Council.

(2) In the absence of the Governor from any meeting of the Council, the person for the time being performing the functions of the Governor pursuant to the provisions of this Constitution shall preside at the meeting.

(3) No business shall be transacted at any meeting of the Council if there are less than five members present, in addition to the person presiding.

(4) Subject to subsection (3) of this section, the Council shall not be disqualified for the transaction of business by reason of any vacancy in the membership of the Council (including any vacancy not filled when the Council is first constituted or reconstituted at any time) and the validity of the transaction of business in the Council shall not be affected by reason only of the fact that some person who was not entitled so to do took part in the proceedings.

Attendance of other persons at meetings.

38. The Governor, or any person presiding over a meeting of the Executive Council in his absence, may, acting in his discretion, summon any public officer or other person to a meeting of the Executive Council whenever the business before the Council renders the presence of that officer or other person desirable.

Secretary to the Executive Council.

39. - (1) There shall be a Secretary to the Executive Council, whose office shall be a public office.

(2) The Secretary of the Executive Council shall have charge of the Executive Council office and shall be responsible, in accordance with such instructions as may be given to him by the Governor, for arranging the business for, and keeping the minutes of, the meetings of the Executive Council or any committee thereof and for conveying the conclusions reached at the meetings to the appropriate person or authority, and shall have such other functions as the Governor after consultation with the Chief Minister may from time to time direct.

(3) The Secretary to the Council shall –

- (a) transmit copies of all papers submitted for consideration by the Executive Council or any committee thereof to the members of the Executive Council;
- (b) inform all members of the Executive Council of the summoning of any meeting of the Executive Council or any committee thereof and of the matters to be discussed at any meeting of the Executive Council or any committee thereof; and
- (c) furnish the Governor and all members of the Executive Council, as soon as practicable after each meeting of the Executive Council or any committee thereof, with a copy of the confirmed minutes of the previous meeting showing the matters discussed and the conclusions reached at the meeting.

Powers of Attorney General.

40. - (1) The Attorney General shall have power, in any case in which he considers it desirable so to do-

- (a) to institute and undertake criminal proceedings against any person before any court in respect of any offence against any law in force in the Islands;
- (b) to take over and continue any such criminal proceedings that have been instituted by any other person or authority; and
- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(2) The powers of the Attorney General under subsection (1) of this section may be exercised by him in person or by officers subordinate to him acting under and in accordance with his general or specific instructions.

(3) The powers conferred upon the Attorney General by subsection (1)(b) and (c) of this section shall be vested in him to the exclusion of any other person or authority:

Provided that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted or has been charged before the court.

(4) For the purposes of this section, any appeal from any determination in any criminal proceedings before any court, or any case stated or question of law reserved for the purpose of any such proceedings, to any other court or to Her Majesty in Council shall be deemed to be part of those proceedings:

Provided that the powers conferred on the Attorney General by subsection (1)(c) of this section shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved at the instance of such a person.

(5) In the exercise of the powers conferred upon him by this section, section 47 and section 48 of this Constitution the Attorney General shall not be subject to the direction or control of any other person or authority.

PART IV
THE LEGISLATURE

The Legislative Assembly

Composition
of the
Legislative
Assembly.

- 41.** - (1) There shall be a Legislative Assembly for the Islands.
- (2) Subject to the provisions of this Constitution, the Assembly shall consist of-
- (a) a Speaker, who shall be elected as provided in section 46 of this Constitution;
- (b) Seventeen elected members, who shall be persons qualified for election in accordance with the provisions of this Constitution, and elected in the manner provided for in a law enacted for the purposes of sections 67 and 73 of this Constitution;
- (c) the Attorney General, ex-officio.
- (3) No member of the Legislative Assembly shall be permitted to take part in the proceedings of the Assembly other than proceedings necessary for the purposes of this subsection or the election of a Speaker, until he has made and subscribed before the Assembly an oath of allegiance and for the due execution of his office in the form set out in the First Schedule to this Constitution.

Qualifications
for elected
membership.

- 42.** - (1) Subject to the provisions of section 41, a person shall be qualified to be elected as a member of the Assembly if, and shall not be qualified to be so elected unless:
- (a) he is a Caymanian; and
- (b) he has attained the age of twenty-one years; and
- (c) he is, at the date of his nomination for election, domiciled and resident in the Islands.
- (2) In determining whether a person is resident in the Islands for the purposes of subsection (1) of this section any period of absence by reason of the following shall be disregarded-
- (a) the performance of duty on behalf of the Government of the Islands;
- (b) attendance as a pupil at any educational establishment;
- (c) attendance as a patient at any hospital, clinic or other medical institution;

Disqualifications
for elected
membership.

**43. -
who-**

- (d) employment as a seaman aboard an ocean going vessel; or
 - (e) employment as a crewmember on any aircraft.
- (1) No person shall be qualified to be elected as a member of the Assembly
- (a) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;
 - (b) holds, or is acting in, any public office;
 - (c) has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged;
 - (d) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in the Islands;
 - (e) subject to the provisions of subsection (2), is under sentence of death imposed on him by any court in any country, or is serving or has served a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended or has been convicted by any court in any country of an offence involving dishonesty;
 - (f) is disqualified for election by any law in force in the Islands by reason of his holding, or acting in, any office the functions of which involve-
 - (i) any responsibility for, or in connection with, the conduct of any election; or
 - (ii) any responsibility for the compilation or revision of any electoral register;
 - (g) is a party to, or a partner in a firm or a director or manager of a company, which is a party to, any contract with the Government of the Islands for or on account of the public service and has not, within the period of one month immediately preceding the date of an election in which he is a candidate, published in a government notice setting out the nature of such contract and his interests, or the interest of any such firm or company, therein; or
 - (h) is disqualified for membership of the Assembly by any law in force in the Islands relating to offences connected with elections.

(2) For the purposes of paragraph (e) of subsection (1) of this section and paragraph (h) of section 44-

- (a) where a person is serving two or more sentences of imprisonment that are required to be served consecutively he shall, throughout the whole time during which he so serves, be regarded as serving a sentence exceeding twelve months if (but not unless) any one of those sentences exceeds that term; and
- (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

Tenure of
office of
elected
members.

44. - (1) The seat of an elected member of the Assembly shall become vacant-

- (a) upon a dissolution of the Assembly;
- (b) if he is absent from the sittings of the Assembly for such period and in such circumstances as may be prescribed in the Standing Orders of the Assembly;
- (c) if he ceases to be a Caymanian;
- (d) if he ceases to be resident in the Islands;
- (e) if he resigns his seat by writing under his hand addressed to the Governor;
- (f) if he becomes a party to any contract with the Government of the Islands for or on account of the public service, or if any firm in which he is a partner or any company of which he is a director or manager becomes a party to any such contract, or if he becomes a partner in a firm or a director or manager of a company which is a party to any such contract:

Provided that, if in the circumstances it appears to it to be just to do so, the Assembly may exempt any elected member from vacating his seat under the provisions of this paragraph, if the member before or as soon as practicable after becoming a party to the contract, or before or as soon as practicable after becoming otherwise interested in the contract (whether as a partner in a firm or as a director or manager of a company), discloses to the Assembly or, if that is impractical, to the Clerk to the Assembly the nature of the contract and his interest or the interest of the firm or company therein;

- (g) if he is sentenced by a court in any country to death or to imprisonment (by whatever name called) (i) for a term exceeding twelve months or (ii) if he is convicted by a court in any country of an offence involving dishonesty.

- (h) subject to section 45 of this Constitution, if any circumstances arise that, if he were not a member of the Assembly, would cause him to be disqualified for election thereto by virtue of any provision of section 43 (1) of this Constitution other than paragraph (g).

Delay in
vacation of
seat to allow of
an appeal.

45. - (1) If circumstances such as are referred to in paragraph (h) of section 44 of this Constitution arise because a member is adjudged or declared bankrupt, certified insane or adjudged of unsound mind, is under sentence of death or imprisonment or is convicted or reported guilty of an offence relating to elections, and it is open to the member to appeal against the decision (either with or without the leave of a court or other authority), he shall forthwith cease to perform his functions as a member of the Legislative Assembly, but, subject to subsection (2) of this section, he shall not vacate his seat in the Assembly until the expiration of a period of thirty days thereafter:

Provided that the Governor, acting in his discretion, may, at the request of the member, from time to time, extend that period to enable the member to pursue the appeal against the decision, save that extensions of time exceeding one hundred and fifty days shall not be given without the approval of the Legislative Assembly.

(2) If, on the determination of any appeal, such circumstances as aforesaid continue to exist and no further appeal is open to the member, or if for any reason, including the refusal of leave to appeal or the expiration of any time for entering an appeal, it ceases to be open to the member to appeal, he shall forthwith vacate his seat.

(3) If at any time before the member vacates his seat such circumstances as aforesaid cease to exist, his seat shall not become vacant on the expiration of the period referred to in subsection (1) and he may resume the performance of his functions as a member.

Speaker and
Deputy
Speaker.

46. - (1) At the first sitting of the Legislative Assembly after a general election, and as soon as practical after a vacancy occurs in the relevant office otherwise than on a dissolution of the Assembly, the elected members of the Assembly shall by majority vote elect a Speaker and Deputy Speaker from among persons who are not elected members of the Assembly but who are qualified to be elected as members of the Legislative Assembly and are not disqualified in any way for elected membership and the election of the Speaker and Deputy Speaker shall take precedence over any other business of the Assembly.

- (2) A person shall vacate the office of Speaker or Deputy Speaker-
 - (a) on dissolution of the Legislative Assembly;
 - (b) if he informs the Legislative Assembly, by writing under his hand addressed to the Assembly and received by the Clerk of the Assembly, that he resigns his office;

- (c) in any circumstances which, would cause him to vacate his seat if he were, an elected member;
- (d) if on the date of his election as Speaker or Deputy Speaker he is a party to, or a partner in a firm or a director or manager of a Company which is a party to any contract with the Government of the Islands or, if on any date after such election he or a firm in which he is a party or a Company of which he is a director or manager becomes a party to any such contract, or if he becomes a partner in a firm or a director or manager of a company which is a party to any such contract, and he does not, before the expiration of thirty days from the date in question, disclose to the Assembly or, if that is impracticable, to the Clerk of the Assembly in writing, the nature of such contract and his interest, or the interest of such firm or company, therein and the Assembly does not exempt him from vacating his office under this paragraph;
- (e) on the passing, by the votes of ten of the elected members, of a motion expressing no confidence in him as Speaker or Deputy Speaker, as the case may be.

Determination of questions as to membership of Assembly.

47. - (1) Any question whether a person has been validly elected as a member of the Assembly, or whether an elected member of the Assembly has vacated his seat therein, shall be determined by the Grand Court, whose decision shall be final and not subject to any appeal.

(2) An application to the Grand Court for the determination of any question whether a person has been validly elected as a member to the Assembly may be made by-

- (a) a person who voted or had the right to vote at the election to which the application relates;
- (b) a person claiming to have had the right to be returned at such election;
- (c) a person alleging himself to have been a candidate at such election; or
- (d) the Attorney-General.

(3) An application to the Grand Court for the determination of any question whether an elected member of the Assembly has vacated his seat therein may be made by-

- (a) any elected member of the Assembly; or
- (b) the Attorney-General.

(4) If any application referred to in subsection (2) or (3) of this section is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

- (5) A law made under this Constitution may make provision with respect to-
 - (a) the time within which, the circumstances and manner in which and the imposition of conditions under which, any application may be made to the Grand Court for the determination of any question under this section;
 - (b) the powers, practice and procedure of the Grand Court in relation to any such application.

Penalty for sitting or voting in the Assembly when unqualified.

48. - (1) Any person who sits or votes in the Assembly knowing or having reasonable grounds for knowing that he is not entitled to do so shall be liable to a penalty not exceeding five hundred dollars for each day upon which he so sits or votes.

(2) Any such penalty shall be recoverable by civil action in the Grand Court at the Suit of the Attorney General.

Leader of the Opposition.

49. - (1) Subject to the provisions of this section, there shall be a Leader of the Opposition who shall be appointed by the Governor.

- (2) The Governor shall appoint as the Leader of the Opposition-
 - (a) the elected member of the Legislative Assembly who, in the opinion of the Governor, is the leader in the Assembly of any opposition party or group whose numerical strength in the Assembly is greater than that of any other opposition party or group; or
 - (b) if it appears to the Governor that there is no such party but an elected member of the Assembly who would be acceptable as Leader of the Opposition to a majority of the members of the Assembly in opposition to the Government, that member.

(3) Whenever the office of Leader of the Opposition is vacant by reason of the fact that the Governor is of the opinion that there is no member of the Assembly whom he can appoint thereto in accordance with the provisions of subsection (2) of this section-

- (a) the function conferred upon the Governor by section 68 of this Constitution shall be exercised by him after consultation with the Chief Minister and the leader in the Assembly of the opposition party or group whose numerical strength in the Assembly is greatest; and
- (b) the function conferred upon the Governor by paragraph (c) of section 68(2) and, in any case in which, but for the provisions of this subsection, it would be exercisable in accordance with the advice of the Leader of the Opposition, the function conferred upon him by paragraph (c) of section 68(5) of this Constitution shall be exercised by him in accordance with such advice as may be given to him jointly by the leaders aforesaid;

(c) in any case in which the functions conferred on the Governor by sections 88 and 106 would be exercisable by him after consultation with the Leader of the Opposition, those functions shall be exercised by him after consultation with the leaders aforesaid.

(4) If at any time between the polling in a general election and the next following dissolution of the Assembly the Governor is satisfied that, if the office of the Leader of the Opposition were then vacant, he would appoint thereto a person other than the person then holding that office, the Governor shall revoke the appointment of the Leader of the Opposition.

(5) The office of the Leader of the Opposition shall also become vacant-

(a) if for any reason other than dissolution of the Assembly the holder thereof ceases to be a member of the Assembly; or

(b) when the Assembly first meets after a general election; or

(c) if the holder thereof becomes a member of the Executive Council.

(6) In this section. "opposition party" includes a group of members of the Legislative Assembly in opposition to the Government who are prepared to support one of their number as their leader.

(7) In the exercise of his functions under this section the Governor shall act in his discretion.

Powers and Procedure in the Legislative Assembly

Power to make laws.

50. - (1) Subject to the provisions of this Constitution, the Governor with the advice and consent of the Legislative Assembly, may make laws for the peace, order and good government of the Islands.

(2) Without prejudice to the generality of subsection (1), a law may make provision to enable the holding of a referendum amongst persons qualified as electors in elections to the Assembly on a question declared by resolution, adopted by a majority of the Elected Members of the Assembly, to be a matter of national importance provided that the question of whether the Islands should seek any amendment to this Constitution that may result in their independence shall be deemed to be a matter of national importance.

Royal Instructions.

51. Subject to the provisions of this Constitution, the Governor and the Assembly shall, in the transaction of business and the making of laws, conform as nearly as may be to the directions contained in any instructions under Her Majesty's Sign Manual and Signet which may from time to time be addressed to the Governor in that behalf.

52. - (1) Subject to the provisions of this Constitution and of any Instructions under Her Majesty's Sign Manual and Signet, the Assembly may from time to time make, amend and revoke Standing Orders for the regulation and orderly conduct of its own proceedings and the dispatch of business, and for the passing, intituling and numbering of Bills and for the presentation thereof to the Governor for assent; but no such Standing Orders or amendment or revocation thereof shall have effect unless they have been approved by the Governor.

(2) Subject to the provisions of this Order, the Standing Orders pursuant to the Order of 1972 which are in force immediately before the appointed day shall be the Standing Orders of the Assembly constituted pursuant to this Order, with such adaptations and modifications as may be necessary, and those Standing Orders may be amended or revoked by Standing Orders made under subsection (1) of this section.

(3) In any matter not provided for in the Standing Orders, resort shall be had to the usage and practice of the Commons House of Parliament of Great Britain and Northern Ireland, which shall be followed as far as the same may be applicable to the Assembly and not inconsistent with the Standing Orders nor with the practice of the Assembly.

(4) In cases of doubt, the Standing Orders shall be interpreted in the light of the relevant usage and practice of the House of Commons, but no restrictions which the House of Commons has introduced by standing order after the making of such Standing Orders shall be deemed to extend to the Assembly or its members until the Assembly has by the Standing Orders provided for such restriction.

(5) The Standing Orders of the Legislative Assembly shall make provisions for the establishment of a Finance Committee thereof to consider in detail the estimates of revenue and expenditure of the Islands laid before the Legislative Assembly by the Minister of Finance pursuant to Part VII section 101 of this Constitution. The Finance Committee shall be comprised of all the elected members of the Legislative Assembly and shall be chaired by the Minister of Finance who shall not vote on any question unless the votes are equal in which event he shall have and exercise a casting vote. In addition to the functions herein before mentioned the Finance Committee shall also examine and consider all financial bills and such other matters relating to the finances of the Islands as may from time to time be referred to it by the Legislative Assembly and to report thereon to the Legislative Assembly.

(6) The Standing Orders of the Legislative Assembly may also establish one or more other standing committees of the Legislative Assembly each of which may be charged with responsibility for the conduct of such business of the government as may be assigned to it by the Legislative Assembly or for monitoring the conduct of business of the government for which responsibility has been assigned to a Minister under section 35 of this Constitution. The composition of all such Standing Committees shall, so far as possible, reflect proportionate, the numerical strength of all parties or groups making up the elected membership in the Legislative Assembly. Any standing Committees so

established shall have power to summon any Minister or any public officer of a department of government for which a Minister is responsible to appear before it and to require any Minister or other person so summoned to answer questions and provide information about the conduct of business of the government by the Minister or department concerned and to report upon its activities to the Legislative Assembly.

Presiding in
Assembly.

- 53.** At sittings of the Assembly there shall preside-
- (a) the Speaker; or
 - (b) in the absence of the Speaker, the Deputy Speaker; or
 - (c) in the absence of the Speaker and the Deputy Speaker, such of the elected members (other than a member of the Executive Council) as may be elected by the elected members.

Assembly may
transact business
notwithstanding
vacancies.

54. The Assembly shall not be disqualified for the transaction of business by reason of any vacancy in the membership thereof (including any vacancy not filled when the Assembly is first constituted or is reconstituted at any time) and any proceedings therein shall be valid notwithstanding that some person who was not entitled to do so sat or voted in the Assembly or otherwise took part in those proceedings.

Quorum.

55. - (1) If at any sitting of the Assembly a quorum is not present and any member of the Assembly who is present objects on that account to the transaction of business and, after such interval as may be prescribed in the Standing Orders of the Assembly, the person presiding at the sitting ascertains that a quorum is still not present, he shall adjourn the Assembly.

(2) For the purposes of this section a quorum shall consist of nine elected members of the Assembly in addition to the person presiding.

Voting.

56. - (1) Save as otherwise provided in this Constitution, all questions proposed for decision in the Assembly shall be determined by a majority of votes of the members present and voting.

(2) The Speaker or other member presiding shall not vote unless on any question the votes are equally divided, in which case he shall, if he is an elected member of the Assembly, have and exercise a casting vote.

(3) Subject to subsection (2) of this section, in the event of an equality of votes on any question the motion shall be lost.

Summoning of
persons to assist
Assembly.

57. - (1) The Speaker or other person presiding may, when in his opinion the business before the Assembly makes it desirable, summon any person to a meeting of the Assembly notwithstanding that that person is not a member of the Assembly.

(2) Any person so summoned shall be entitled to take part as if he were a member in the proceedings of the Assembly relating to the matter in respect of which he was summoned, except that he may not vote.

Introduction of Bills.

58. - (1) Subject to the provisions of this Constitution and of the Standing Orders of the Assembly, any member may introduce any Bill or propose any motion for debate in, or may present any petition to, the Assembly, and the same shall be debated and disposed of according to the Standing Orders of the Assembly.

(2) (a) except in a case of emergency (which shall be a matter to be determined by the Speaker, acting in his discretion), every Bill introduced by the Government shall be published at least one month before the commencement of the meeting at which it is scheduled to be Introduced; and

(b) Regulations introduced pursuant to the provisions of any law shall cease to have any legal effect whatever after the expiration of sixty days from the date they shall have been published in a Government Notice unless in the meantime they shall have been approved by the Assembly, provided that no action taken under the authority of such regulations shall be invalidated or give rise to any cause of action by reason only that they shall not have been approved within that period.

(3) Except on the recommendation of the Minister of Finance, the Assembly shall not-

(a) proceed upon any Bill (including any amendment to a Bill) which, in the opinion of the person presiding in the Assembly, makes provision for imposing or increasing any tax, for imposing or increasing any charge on the revenues or other funds of the Islands or for altering any such charge otherwise than by reducing it or for compounding or remitting any debt due to the Islands;

(b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding in the Assembly, is that provision would be made for any of the purposes aforesaid; or

(c) receive any petition which, in the opinion of the person presiding in the Assembly, requests that provision be made for any of the purposes aforesaid.

Governor's reserved power.

59. - (1) If the Governor considers that it is expedient-

(a) in the interests of public order public faith or good government (which expressions shall, without prejudice to their generality, include

the responsibility of the Islands as a territory within the Commonwealth and all matters pertaining to the creation or abolition of any public office or to the salary or other conditions of service of any public officer); or

- (b) in order to secure detailed control of the finances of the Islands during such time as, by virtue of the receipt of financial assistance by the Islands from Her Majesty's Exchequer in the United Kingdom for the purpose of balancing the annual budget such control rests with Her Majesty's Government;

that any Bill introduced, or any motion proposed, in the Assembly should have effect, then, if the Assembly fail to pass the Bill or to carry the motion within such time and in such form as the Governor thinks reasonable and expedient, the Governor may, at any time that he thinks fit, and notwithstanding any provision of this Constitution or of any other law in force in the Islands or of any Standing Orders of the Assembly, declare that the Bill or motion shall have effect as if it had been passed or carried by the Assembly either in the form in which it was introduced or proposed or with such amendments as the Governor thinks fit which have been moved or proposed in the Assembly or any committee thereof; and the Bill or the motion shall be deemed thereupon to have been so passed or carried, and the provisions of this Constitution, and in particular the provisions relating to assent to Bills and disallowance of laws, shall have effect accordingly.

(2) The Governor shall not make any declaration under this section except in accordance with the following conditions-

- (a) the question whether the declaration should be made shall first be submitted in writing by the Governor to the: Executive Council and if, upon the question being so submitted to it, the Executive Council advises him that the declaration should be made, the Governor may make the declaration;
- (b) if, when the question whether the declaration should be made is submitted to it as aforesaid, the Executive Council does not, within such time as the Governor thinks reasonable and expedient, advise him that the declaration should be made, then-
 - (i) the Governor may submit the said question to a Secretary of State and may make the declaration if, upon the question being so submitted to him, a Secretary of State authorises the Governor to make the declaration; or
 - (ii) the Governor may make the declaration without submitting the said question to a Secretary of State if, in the: Governor's judgment, urgent necessity requires that the declaration be made without obtaining the authority of a Secretary of State; in which case he shall, at the time of making the declaration, certify in

writing that urgent necessity requires that the declaration be made without obtaining such authority.

- (3) (a) Whenever the Governor, in accordance with subsection (2)(b) of this section, submits to a Secretary of State the question whether a declaration should be made, or makes a declaration without submitting the said question to a Secretary of State, he shall inform the Executive Council in writing of his reasons for so doing.
- (b) Whenever the Governor makes a declaration under this section, other than a declaration made with the authority of a Secretary of State, he shall forthwith report to a Secretary of State the making of, and the reasons for, the declaration and, in the case of a declaration made in accordance with subsection (2)(b)(ii) of this section, the grounds of urgency.

(4) If any member of the Executive Council so desires, he may, within thirty days of the date of the making of a declaration under this section, submit to the Governor a statement in writing of his comments on the making of such declaration, and the Governor shall forward such statement, or a copy thereof as soon as practicable to a Secretary of State.

(5) Any declaration made under this section that relates to a motion may be revoked by a Secretary of State, and the Governor shall cause notice of such revocation to be published in a Government Notice; and from the date of such publication any motion which has effect by virtue of the declaration shall cease to have effect, and section 16(1) of the Interpretation Act 1978 shall apply to the revocation as it applies to the repeal of an Act of Parliament.

- (6) This section applies to any motion-
- (a) relating to or for the purposes of a bill;
 - (b) proposing or amending a resolution which, if passed by the Legislative Assembly, would have the force of law; or
 - (c) proposing or amending a resolution upon which the coming into force or continuance in force of any subsidiary instrument depends.

(7) The powers conferred upon the Governor by subsections (1) and (2) of this section shall be exercised by him in his discretion

Assent to Bills.

- 60.** - (1) A Bill shall not become a law until-
- (a) the Governor has assented to it in Her Majesty's name and on Her Majesty's behalf and has signed it in token of his assent; or

- (b) Her Majesty has given Her assent to it through a Secretary of State and the Governor has signified Her assent by Proclamation.

(2) When a Bill is presented to the Governor for his assent, he shall, subject to the provisions of this Constitution and of any Instructions addressed to him under Her Majesty's Sign Manual and Signet or through a Secretary of State, declare that he assents or refuses to assent to it or that he reserves the Bill for the signification of Her Majesty's pleasure:

Provided that the Governor shall reserve for the signification of Her Majesty's pleasure-

- (a) any Bill which is in any way repugnant to, or inconsistent with, the provisions of this Constitution; and
- (b) any Bill, which determines or regulates the privileges, immunities or powers of the Assembly or of its members,

unless he has been authorized by a Secretary of State to assent to it.

Disallowance of laws.

61. - (1) Any law to which the Governor has given his assent may be, disallowed by Her Majesty through a Secretary of State.

(2) Whenever a law has been disallowed by Her Majesty the Governor shall, as soon as practicable, cause notice of the disallowance to be published by Government Notice and the law shall be annulled with effect from the date of the publication of that notice.

(3) The provisions of section 16(1) of the Interpretation Act 1978, shall apply to the annulment of any law under this section as they apply to the repeal of an Act of Parliament, save that any enactment repealed or amended by or in pursuance of that law shall have effect as from the date of the annulment as if that law had not been made.

Privileges of Assembly and members.

62. A law enacted under this Constitution may determine and regulate the privileges, immunities and powers of the Assembly and its members, but no such privileges, immunities or powers shall exceed those of the Commons' House of Parliament of the United Kingdom or of the members thereof.

Sessions of the Legislative Assembly.

63. - (1) Subject to the provisions of this Constitution, the sessions of the Assembly shall be held at such places, and begin at such times as the Governor may from time to time by Proclamation appoint.

(2) The first session of the Assembly shall begin within twelve months after the appointed day; and thereafter there shall be at least one session of the Assembly in every year, so however that there shall be an interval of less than twelve months between the last sitting in one session and the first sitting in the next sessions.

Prorogation and dissolution.

- 64.** - (1) The Governor-
- (a) after consulting the Chief Minister, may at any time, by Proclamation, dissolve the Assembly;
 - (b) acting on the advice of the Chief Minister, may at any time, by Proclamation, prorogue the Assembly.
- (2) The Governor shall dissolve the Assembly at the expiration of four years from the date when the Assembly first meets after any general election unless it has been sooner dissolved pursuant to the provisions of this Constitution.

Recalling dissolved Assembly in case of emergency.

65. If, between a dissolution of the Legislative Assembly and the next ensuing general election, an emergency arises of such a nature that, in the opinion of the Governor it is necessary for the Assembly to be recalled, the Governor may, after consultation with the Chief Minister, summon the Assembly that has been dissolved and that Assembly shall thereupon be deemed (except for the purposes of section 66(1) of this Constitution) not to have been dissolved, but shall be deemed (except as aforesaid) to be dissolved on the date on which the next ensuing general election is held.

General elections and bye-elections.

66. - (1) A general election of members of the Legislative Assembly shall be held at such time within two months after every dissolution of the Assembly as the Governor shall appoint by proclamation published in a Government Notice.

(2) Whenever any person vacates his seat as a member of the Assembly for any reason other than a dissolution thereof, an election to fill the vacancy shall be held within two months after the occurrence of the vacancy unless the Assembly is sooner dissolved or the date on which the Assembly will stand dissolved under the provisions of section 64(2) of this Constitution is less than four months after the occurrence of the vacancy-

Electoral Constituencies and Franchise

Electoral constituencies.

67. Subject to section 41(2) and to any order made under section 69(6) of this Constitution, the number of electoral constituencies into which the Islands are to be divided for the purpose of elections to the Legislative Assembly shall be seventeen. Pending review by the Electoral Boundaries Commission established under this Constitution the areas and localities of such constituencies shall be as set fourth in the Second Schedule to this Constitution. The number of elected members to be returned from each constituency shall be one.

Electoral Boundary Commission.

68. - (1) An Electoral Boundary Commission shall be appointed from time to time at such time as the Governor, after consultation with the Chief Minister and the Leader of the Opposition, may determine:

Provided that-

- (a) the first such Commission shall be appointed within twelve months of the appointed day; and
 - (b) each subsequent Commission shall be appointed not later than seven years after the last Commission submitted its report under section 69 of this Constitution.
- (2) An Electoral Boundary Commission shall consist of-
- (a) a Chairman who shall be a Caymanian appointed by the Governor, acting in his discretion;
 - (b) two members appointed by the Governor, acting in accordance with the advice of the Chief Minister; and
 - (c) two members appointed by the Governor, acting in accordance with the advice of the Leader of the Opposition.
 - (d) one member (in this section referred to as “the judicial member”) appointed by the Governor, acting in his discretion, from among persons who hold or have held high judicial office.
- (3) A person shall not be qualified to be appointed as the Chairman or the judicial member of an Electoral Boundary Commission if he is a member of the Legislative Assembly or a public officer.
- (4) The Chairman and the judicial member of an Electoral Boundary Commission shall vacate his office-
- (a) on the day following the date of submission under section 69 of this Constitution of the report of the Commission;
 - (b) if any circumstances arise that, if he were not such a member of the Commission, would cause him to be disqualified for appointment as such;
 - (c) if the Governor, acting in his discretion, directs that he shall be removed from office for inability to discharge the functions thereof (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.
- (5) Any other member of an Electoral Boundary Commission shall vacate his office-
- (a) on the day following the date of submission under section 69 of this Constitution of the report of the Commission;

- (b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such;
- (c) if his appointment is revoked by the Governor, acting, in the case of a member appointed under subsection (2)(b) of this section, in accordance with the advice of the Chief Minister or, in the case of the member appointed under subsection (2)(c) of this section, in accordance with the advice of the Leader of the Opposition.

(6) An Electoral Boundary Commission may regulate its own procedure and, with the consent of the Governor, confer powers and impose duties on any public officer or on any authority of the Government for the purpose of the discharge of its functions.

(7) An Electoral Boundary Commission may act notwithstanding any vacancy in its membership (including any vacancy not filled when appointments of members are first made) and its proceedings shall be valid notwithstanding that some person who was not entitled so to do took part therein:

Provided that any decision of the Commission shall require the concurrence of not less than three members of the Commission.

(8) Subject to the provisions of subsection (7) of this section, any question before the Electoral Boundaries Commission may be determined by the vote of a majority of the members of the Commission present and voting;

Provided that in the event of an equality of votes, the Chairman shall have and shall exercise a casting vote.

(9) In the exercise of its functions under this Constitution, an Electoral Boundary Commission shall not be subject to the direction or control of any other person or authority.

69. - (1) An Electoral Boundary Commission shall, as soon as practicable after its appointment, review the boundaries of the electoral constituencies into which the Islands are divided and submit to the Legislative Assembly a report-

- (a) stating that, in the opinion of the Commission, no change in those boundaries is required; or
- (b) recommending the changes in those boundaries specified in the report; and

(2) In determining whether or not to recommend any changes in those boundaries, the Commission shall –

Review and alteration of electoral constituency boundaries.

- (a) take no account of the racial distribution of electors within an electoral constituency;
- (b) take account of the natural boundaries within each electoral constituency; and
- (c) subject to the foregoing provisions of this subsection, ensure that –
 - (i) the electoral constituencies shall contain, so far as is reasonably practicable, equal numbers of persons registered as electors; and
 - (ii) Cayman Brac and Little Cayman shall (between these two Islands) at all times have at least two elected members.

(3) As soon as may be after the Commission has submitted a report under subsection (1)(b) of this section, the Chief Minister shall lay before the Legislative Assembly for its approval the draft of an order by the Governor for giving effect, whether with or without modifications, to the recommendations contained in the report, and that draft may make provision for any matters which appear to the Chief Minister to be incidental to or consequential upon the other provisions of the draft.

(4) Where any draft order laid under this section would give effect to any such recommendations with modifications, the Chief Minister shall lay before the Assembly together with the draft a statement of the reasons for the modifications.

(5) If the motion for the approval of any draft order laid under this section is rejected by the Assembly or is withdrawn by leave of the Assembly, an amended draft shall be laid without undue delay by the Chief Minister before the Assembly.

(6) If any draft order laid under this section is approved by resolution of the Assembly, the Chief Minister shall submit it to the Governor who shall make an order (which shall be published in a Government Notice) in terms of the draft; and that order shall come into force for the determination of the boundaries of the electoral constituency to which it relates upon the next dissolution of the Assembly after it is made.

(7) The question of the validity of any order by the Governor purporting to be made under this section and reciting that a draft thereof has been approved by the Legislative Assembly shall not be inquired into in any court.

Qualifications
of electors.

70. - (1) Subject to the provisions of section 71, a person shall be entitled to be registered as an elector in one constituency only, but he shall not be entitled to be registered as an elector for elections to the Assembly unless:

- (a) he was, in accordance with the law in force on the appointed day registered or entitled to be registered as an elector; or
- (b) (i) he is a Caymanian; and

- (ii) he has attained the age of eighteen years; and
- (iii) he is a British Overseas Territories citizen by virtue of a connection with the Islands; and
- (iv) he is domiciled and resident in the Islands at the date of registration; and
- (v) either-
 - (a) he or one of his parents or grandparents was born in the Islands and he has been ordinarily resident in the Islands for a period or periods amounting to two years out of the three years immediately preceding the date of registration; or
 - (b) he has been ordinarily resident in the Islands for a period or periods amounting to seven years out of the nine years immediately preceding the date of registration, and in the three years immediately preceding the date of registration the number of days on which he was absent from the Islands does not exceed three hundred.

(2) The provisions of section 42(3) of this Constitution shall apply for the purpose of ascertaining whether a person has been absent from the Islands for the purposes of this section.

Disqualification of electors.

71. - (1) A person shall not be entitled to be registered as an elector in any electoral district who-

- (a) subject to the provisions of the next following subsection, is under sentence of death imposed on him by a court in any country, or is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;
- (b) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in the Islands; or
- (c) is disqualified for registration as an elector by any law in force in the Islands relating to offences connected with elections.

(2) The provisions of section 43(2) of this Constitution shall apply for the purposes of the last foregoing subsection as they apply for the purposes of paragraph (c) of subsection (1) of the said section 43.

Right to vote
at elections.

72. - (1) Any person who is registered as an elector in an electoral district shall, while so registered, be entitled to vote at any election in that district for an elected member of the Legislative Assembly, unless he is prohibited from so voting by any law in force in the Islands-

- (a) because he is a returning officer; or
 - (b) because he has been concerned in any offence connected with elections.
- (2) No person shall vote at any election for any constituency who-
- (a) is not registered as an elector in that constituency;
 - (b) has voted in another constituency at the same election;
 - (c) is in lawful custody; or
 - (d) is for any other reason unable to attend to vote in person (except in so far as it may be provided by law that such persons may vote).

Law as to
elections.

73. Subject to the provisions of the Constitution, a law enacted under this Constitution may provide for the election of members of the Assembly, including (without prejudice to the generality of the foregoing power) the following matters, that is to say:-

- (a) the registration of electors;
- (b) the ascertainment of the qualifications of electors and of candidates for election;
- (c) subject to section 41 and to any order made under section 69(6) of this Constitution, the division of the Islands into electoral constituencies for the purpose of elections;
- (d) the holding of elections;
- (e) the determination of any question whether any person has been validly elected a member of the Assembly or whether the seat of any elected member in the Assembly has become vacant;
- (f) the definition and trial of offences connected with elections and the imposition of penalties therefor, including the disqualification for membership of the Assembly, or for registration as an elector, or for voting at elections, of any person concerned in any such offence; and
- (g) the disqualification for election as members of the Assembly of persons holding or acting in any office the functions of which involve any

responsibility for, or in connection with, the conduct of any election or the compilation or revision of any electoral register.

PART V

THE JUDICATURE

The Grand Court

Constitution of
Grand Court.

74. - (1) There shall be a Grand Court for the Cayman Islands which shall be a superior Court of Record and shall have such jurisdiction and powers as may be conferred on it by this Constitution and any other law.

(2) The Court shall have and use a seal bearing the style of the Court and a device approved by the Chief Justice.

Composition
of
Grand Court.

75. - (1) The judges of the Grand Court shall be a Chief Justice and such number of other judges (if any) as may be prescribed by a law made under this Constitution:

Provided that the office of judge shall not, without his consent, be abolished during his continuance in office.

(2) The judges of the Grand court shall be persons holding such qualifications for appointment as a judge of the Grand Court as may be prescribed by a law made under this Constitution:

Provided that a person who has been appointed as a judge of the Grand Court may continue in office notwithstanding any subsequent variation in the qualifications so prescribed.

(3) The Chief Justice shall be appointed by the Governor by instrument under the public seal after prior approval by a Secretary of State.

(4) The judges of the Grand Court other than the Chief Justice shall be appointed by the Governor by instrument under the public seal in accordance with the recommendation of the Judicial Service Commission.

(5) Whenever the Governor proposes to exercise any power under subsection (4) of this section otherwise than in accordance with the recommendation received from the Judicial Service Commission, he shall first refer that recommendation back to the Commission, once, for reconsideration and shall hold further consultations on the matter with the Commission, but shall thereafter exercise the power in his discretion.

(6) If the Governor, having consulted the Judicial Service Commission in the exercise of any power in accordance with subsection (4) of this section, receives no recommendation from the Commission within such time as the Governor, acting in his discretion, considers reasonable he may exercise the power in his discretion forthwith.

(7) It shall be lawful for a person qualified for appointment as a judge of the Grand Court to be so appointed (regardless of his age) for such term as may be specified in the instrument of appointment, and section 76 of this Constitution shall have effect in relation to any person so appointed as if he would attain the retiring age applicable to that office on the day on which the specified term expires.

(8) The emoluments and allowances of a judge of the Grand Court shall be prescribed by law and shall be a charge on the Consolidated Fund, and the emoluments and allowances of a judge shall not, without his consent, be reduced during his continuance in office.

Tenure of
office of
judges of
Grand Court.

76. – (1) Subject to the provisions of this section, a judge of the Grand Court shall vacate his office when he attains the age of sixty-five years:

Provided that –

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

(2) A judge of the Grand Court may be removed from office only for inability to discharge the functions of his 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) of this section.

(3) A judge of the Grand 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) of this section, 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 Grand 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 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 Law as in force on the date of commencement of this Constitution shall, subject to the provisions of this section, apply as nearly as may be in relation to tribunals appointed under subsection (4) of this section or, as the context may require, to the members thereof as they apply in relation to Commissions or Commissioners appointed under that Law.

(6) If the question of removing a judge of the Grand Court from office has been referred to a tribunal under subsection (4) of this section the Governor may suspend the judge from performing the functions of his 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 should not request that the question of the removal of the judge from office 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 him in his discretion.

Acting judges
of Grand
Court.

77. - (1) If the office of Chief Justice is vacant, or if the holder thereof is for any reason unable to perform the functions of his 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 Grand Court or such other person qualified for appointment as a judge of the Grand Court as the Governor, acting after consultation with a Secretary of State, may appoint for that purpose shall act in that office.

(2) If the office of a judge of the Grand 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 office, the Governor, acting in accordance with the recommendation of the Judicial Service Commission, may appoint a person qualified for appointment as a judge of the Grand Court to act as such a judge.

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

(4) Any person appointed under this section to act as a judge of the Grand Court shall, unless he is removed from office under section 76 of this Constitution, continue so to act for such a period of his appointment or, if no such period is specified, until his appointment is revoked by the Governor, acting in his discretion:

Provided that a person whose appointment so to act has expired or been revoked may, with the permission of the Governor, acting in his discretion, continue so to act for such period as may be necessary to enable him to deliver judgment or to do any other thing in relation to any proceeding commenced before him previously thereto.

Oaths to be taken by judges of Grand Court.

78. Before assuming the functions of his office, every judge of the Grand Court shall make and subscribe before the Governor, or some other person authorized in that behalf by the Governor, acting in his discretion, oaths of allegiance and for the due execution of his office in the forms set out in the First Schedule to this Constitution.

The Court of Appeal

Constitution and jurisdiction of Court of Appeal.

79. – (1) There shall be a Court of appeal for the Cayman Islands which shall be a superior Court of Record and shall have jurisdiction and powers to hear and determine such appeals from the Grand Court as may be prescribed by any law in force in the Islands.

(2) The Court of Appeal shall, subject to the provisions of this Constitution and any law in force in the Islands, have all the powers and jurisdiction that are possessed by the Grand Court under any law in force in the Islands; and decisions of the Court of Appeal in respect of any appeal from the Grand Court shall, subject as aforesaid, be enforced in the Islands in the same way as decisions of that court.

(3) The provisions of subsection (1) of this section shall not apply to appeals relating to any matter in respect of which this Constitution or any other law provides that the decision of the Grand Court is to be final.

(4) The Court of Appeal shall have and use a seal bearing the style of the Court and a device approved by the President.

Composition of Court of Appeal.

80. – (1) The judges of the Court of Appeal shall be a President and not less than two Justices of Appeal.

(2) The judges of the Court of Appeal shall be appointed by the Governor by instrument under the Public Seal, in accordance with such instructions as he may receive from Her Majesty through a Secretary of State:

Provided that the office of a judge shall not, without his consent, be abolished during his continuance in office.

(3) 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 holds or has held high judicial office.

(4) A judge of the Grand Court may exercise any of the powers of a single judge of the Court of Appeal to such extent as a law made under this Constitution may prescribe.

81. – (1) The judges of the Court of Appeal shall be appointed for such period as may be specified in their respective instruments of appointment.

Provided that a person whose appointment as a judge of the Court of Appeal has expired may, with the permission of the Governor, acting in his discretion, continue in office for such period as may be necessary to enable him to deliver judgment or to do anything in relation to proceedings which were commenced before him previously thereto.

(2) A judge of the Court of Appeal may be removed from office only for inability to discharge the functions of his 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 provisions of subsection (3) of this section.

(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) of this section, 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;
- (b) the tribunal shall inquire into the matter and report on the facts thereof to the Governor and advise the Governor whether he 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 Enquiry Law shall, subject to the provisions of this section, apply as nearly as may be in relation to tribunals appointed under subsection (4) of this section or, as the context may require, to the members thereof as they apply in relation to Commissions appointed under that Law.

(6) If the question of removing a judge of the Court of Appeal from office has been referred to a tribunal under subsection (4) of this section, the Governor may suspend the judge from performing the functions of his 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 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 him acting in his discretion.

Acting judges
of Court of
Appeal.

82. – (1) If the office of the President of the Court of Appeal is vacant, or if the holder thereof is for any reason unable to perform the functions of his office, then, until some other person has been appointed to, and has assumed the functions of that office or until the holder thereof 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 his discretion, may appoint for that purpose shall act in the office of the 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 office the Governor, acting in his discretion, may appoint a person possessing such legal qualifications and experience as he, after consultation with the President, or acting President, may deem appropriate to act as a Justice of Appeal.

(3) Any person appointed under this section to act as a Justice of Appeal shall, unless he is removed from office under section 81, continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the Governor, acting in his discretion:

Provided that a person whose appointment so to act has expired or been revoked may, with the permission of the Governor, acting in his discretion, continue so to act for such period as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

Oaths to be taken by judges of Court of Appeal.

83. Before assuming the functions of his office every judge of the Court of Appeal shall make and subscribe before the Governor, or some other person authorized in that behalf by the Governor, acting in his discretion, oaths of allegiance and for the due execution of his office in the forms set out in the First Schedule to this Constitution.

Subordinate Courts

Other courts

84. - (1) A law made under this Constitution may establish courts subordinate to the Grand Court.

(2) The Grand Court shall have jurisdiction to supervise the proceedings before any subordinate court and may make such orders, issue such process and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by any such courts.

Judicial Service Commission

Composition of Judicial Service Commission.

85. There shall be for the Islands a Judicial Service Commission which shall consist of –

- (a) the Chief Justice, who shall be Chairman;
- (b) a judge of the Court of Appeal nominated by the Chief Justice after consultation with the Governor; and
- (c) the Chairman of the Public Service Commission.

Powers of Judicial Service Commission.

86. - (1) Power to make appointments to the offices to which this section and section 75(4) of this Constitution applies and to remove and exercise disciplinary control over persons holding or acting in the offices to which this section applies shall vest in the Governor, acting in accordance with the recommendation of the Judicial Service Commission.

(2) This section applies to the office of a magistrate or any registrar or other officer of the Grand Court who is required to possess legal qualifications.

PART VI

THE PUBLIC SERVICE

Appointment, discipline and removal

Public Service
Commission.

87. - (1) There shall be a Public Service Commission for the Islands, which shall consist of a Chairman and not less than four or more than six other members.

(2) Of the members of the Public Service Commission, the Chairman shall be appointed by the Governor acting in his discretion and an equal number of the other members shall be appointed by the Governor acting after consultation with the Chief Minister and by the Governor acting after consultation with the Leader of the Opposition.

(3) The members of the Public Service Commission shall be appointed by instrument under the public seal for such period, not being less than two nor more than four years, as may be specified in their respective instruments of appointment.

(4) No person shall be qualified to be appointed as a member of the Public Service Commission if he is a public officer or if he is or has been within the preceding three years-

- (a) an elected member of the Legislative Assembly; or
- (b) the holder of any office in any political party.

(5) The office of a member of the Public Service Commission shall become vacant-

- (a) at the expiration of the period specified in the instrument by which he was appointed;
- (b) if he resigns his office by writing under his hand addressed to the Governor;
- (c) if he becomes an elected member of the Legislative Assembly, the holder of any office in any political party, or a public officer; or
- (d) if the Governor, acting in his discretion, directs that he shall be removed from office for inability to discharge the functions thereof (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(6) Whenever the office of the Chairman of the Public Service Commission is vacant or the holder thereof is for any reason unable to perform the functions of his

office, such one of the other members of the Public Service Commission as the Governor, acting in his discretion, may appoint shall act in the office of the Chairman.

(7) If the office of a member of the Public Service Commission other than the Chairman is vacant or the holder thereof is acting as the Chairman or is for any other reason unable to perform the function of his office, the Governor, acting in the manner prescribed by subsection (2) of this section for the appointment of that member, may appoint a person who is qualified for appointment as a member of the Commission to act as a member of the Commission; and any person so appointed shall, subject to subsection (5) of this section continue so to act until he is notified by the Governor, acting in his discretion, that the circumstances giving rise to the appointment have ceased to exist.

88. – (1) Subject to the provisions of this Constitution, power to make appointments to public offices, and to transfer, remove or exercise disciplinary control over persons holding or acting in such offices, is vested in the Governor acting in accordance with the recommendation of the Public Service Commission.

(2) Before the Public Service Commission recommends to the Governor the appointment of a person to the office of a permanent secretary or head of department of government the Commission shall consult the Chief Minister.

(3) Whenever the Governor proposes to exercise any power under subsection (1) of this section otherwise than in accordance with the recommendation received from the Public Service Commission, he shall first refer that recommendation back to the Commission, once, for reconsideration and shall hold further consultations on the matter with the Commission, but shall thereafter exercise the power in his discretion.

(4) If the Governor, having consulted the Public Service Commission in the exercise of any power in accordance with subsection (1) of this section, receives no recommendation from the Commission within such time as the Governor, acting in his discretion, considers reasonable, he may exercise the power in his discretion forthwith.

(5) The Legislative Assembly may by law make, or provide for the making of, provision with respect to offences against the discipline of any police force or the prison service of the Islands and the punishment that may be imposed for any such offence; and the power to exercise disciplinary control (including the power to remove a person from office) over members of any such force or the prison service vested in the Governor, acting in accordance with the recommendation of the Public Service Commission, by this section shall be exercised in accordance with any such provision relating to the force or service concerned.

(6) The provisions of this section shall not apply in relation to –

(a) the office of the Attorney-General, Commissioner of Police and the Auditor General; or

Appointment
etc., of public
officers.

- (b) any office to which Part V of this Constitution applies.

Delegation of
Governor's
powers.

89. - (1) The Governor, acting in accordance with the recommendation of the Public Service Commission, may by regulations delegate, to such extent and subject to such conditions as may be specified in the regulations, the powers vested in him by section 88 of this Constitution (other than powers in relation to the offices referred to in subsection (6) thereof to the Chairman of the Commission or to such public officers as may be specified.

(2) Except in so far as regulations made under this section otherwise provide, any power delegated by such regulations may be exercised by any person to whom it is delegated without reference to the Public Service Commission.

Performance
of functions of
Public Service
Commission.

90. - (1) No business shall be transacted at any meeting of the Public Service Commission unless the Chairman and not less than two other members of the Commission are present.

(2) Subject to the provisions of subsection (1) of this section, the Public Service Commission may act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall be valid notwithstanding that some person who was not entitled so to do took part therein.

(3) Any question proposed for decision at any meeting of the Commission shall be determined by a majority of the votes of the members present and voting, and if on any such question the votes are equally divided the Chairman shall have and exercise a casting vote.

(4) When the Public Service Commission is meeting to consider the appointment of any person to an office in the Police Force (other than the office of Commissioner of Police) or the removal of, or the exercise of disciplinary control over, any person holding or acting in such an office, the Commissioner of Police shall be entitled to attend and express his views on the matter to the Commission.

(5) Subject to the provisions of this Constitution, the Governor, acting after consultation with the Chief Minister and the Public Service Commission, may by regulations published by government notice make provision for regulating and facilitating the performance by the Commission of its functions under this Constitution, including (without prejudice to the generality of the foregoing power) provision for any of the following matters –

- (a) conferring powers and imposing duties on any public officer or any authority of the Government for the purpose of facilitating the performance by the Commission of those functions;
- (b) the protection and privileges of members of the Commission in respect of the performance of their functions and the privilege of

communications to and from the Commission and its members in the case of legal proceedings;

- (c) the definition and trial of offences in relation to the functions of the Commission and the imposition of pecuniary penalties for such offences:

Provided that no such penalty shall exceed a fine of one thousand dollars.

(6) Subject to the provisions of this Constitution and of any regulations made under subsection (5) of this section, the Public Service Commission may regulate its own procedure.

(7) Subject to the provisions of subsection (5) of this section and of any regulations made thereunder, in the performance of its functions under this Constitution the Public Service Commission shall not be subject to the direction or control of any other person or authority.

91. The Public Service Commission shall exercise the following additional functions-

- (a) the provision of advice upon, the policies and programmes of the Governor for the training of public officers at all levels;
- (b) the issue from time to time of guidelines on the conduct and ethics of the public service;
- (c) the provision of advice of a general nature upon questions relating to the pay and conditions of service of public officers;
- (d) such other functions as may be conferred upon it by law or by regulations made by the Governor, acting after consultation with the Public Service Commission.

92. - (1) There shall be an Attorney General who shall be the principal legal adviser to the Government.

(2) The Attorney General shall be either an elected member of the Legislative Assembly entitled to practice as an Attorney-at-Law in the Islands in which case he shall be appointed by the Governor in accordance with the advice of the Chief Minister or a public officer.

(3) Power to appoint a public officer to the office of Attorney General is vested in the Governor acting in his discretion:

Provided that before making such an appointment, the Governor shall consult the Chief Minister.

Additional
functions of
Public Service
Commission.

Attorney
General.

(4) Subject to the following provisions of this section, the Attorney-General if a public officer shall vacate his office when he attains the age of 55 years:

Provided that the Governor may permit an Attorney-General who attains the age of 55 years to continue in office until he has attained such later age, not exceeding the age of 65 years, as may have been agreed between the Governor and that Attorney-General.

(5) The appointment of a public officer as Attorney General shall be for such term as may be specified in the instrument of appointment and the following provisions of this section shall have effect in relation to any person so appointed as if he would attain the retiring age applicable to that office on the day on which the specified term expires.

(6) The Attorney-General may be removed from office prior to the day on which the specified term expires only for inability to discharge the functions thereof (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 the provisions of subsection (6) of this section.

(7) The Attorney-General shall be removed from office by the Governor if the question of his removal from office has been referred to a tribunal appointed under subsection (7) of this section and the tribunal has advised the Governor that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(8) If the Governor, acting in his discretion, considers that the question of removing the Attorney-General from office for inability as aforesaid or for misbehaviour ought to be investigated, or the Chief Justice and the other Judges of the Grand Court collectively represent to the Governor that the Attorney General 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, acting in his discretion, from among persons who hold or have held high judicial office; and

(b) that tribunal shall inquire into the matter and report on the facts thereof to the Governor and advise the Governor whether the Attorney-General ought to be removed from office for inability as aforesaid or for misbehaviour.

(9) The provisions of the Commissions of Inquiry Law shall, subject to the provisions of this section, apply as nearly as may be in relation to tribunals appointed under subsection (7) of this section or, as the context may require, to the members thereof as they apply in relation to Commissions or Commissioners appointed under that Law.

(10) If the question of removing the Attorney-General from office has been referred to a tribunal under subsection (7) of this section, the Governor, acting in his discretion, may suspend the Attorney-General from performing the functions of his office, and any such suspension may at any time be revoked by the Governor, acting in his discretion, and shall in any case cease to have effect if the tribunal advises the Governor that the Attorney-General should not be removed from office.

(11) References in subsections (3) to (10) of this section to the Attorney-General do not include references to a person appointed to act in the office of Attorney-General during any period when it is vacant or the holder thereof is unable to perform the functions thereof; and the appointment of such a person may be revoked by the Governor, acting in his discretion, at any time before the expiration of that period.

Solicitor
General

93. At any time when the office of Attorney General is held by an elected member of the Legislative Assembly;

- (a) there shall be a public office called Solicitor General;
- (b) the following provisions of this Constitution shall have effect as if references therein to the Attorney General were references to the Solicitor General that is to say, sections 40, 88(6) and 92.
- (c) the Solicitor General shall perform all of the functions of the Attorney-General if the latter is unable by reason of illness or absence from the Islands to perform such functions.

Auditor
General

94. - (1) The office of Auditor-General shall be a public office and power to make appointments to the office of the Auditor-General is vested in the Governor acting in his discretion.

(2) Subject to the following provisions of this section, the Auditor-General shall vacate his office when he attains the age of 55 years:

Provided that the Governor, acting after consultation with the Chief Minister, may permit an Auditor-General who attains the age of 55 years to continue in office until he has attained such later age, not exceeding the age of 65 year, as may have been agreed between the Governor and that Auditor-General.

(3) It shall be lawful to make an appointment of an Auditor-General for such term as may be specified in the instrument of appointment and the following provisions of this section shall have effect in relation to any person so appointed as if he would attain the retiring age applicable to that office on the day on which the specified term expires.

(4) The Auditor-General may be removed from office only for inability to discharge the functions of his office (whether arising from inability of body or mind or

any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of subsection (5) of this section.

(5) The Auditor-General shall be removed from office by the Governor if the Governor, acting in his discretion, is satisfied that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(6) During any period when the question of removing the Auditor-General from office for inability as aforesaid or for misbehaviour is being investigated by, or in pursuance of directions given by, the Governor, the Governor, acting in his discretion, may suspend the Auditor-General from performing the functions of his office.

(7) References in subsection (2) to (6) of this section to the Auditor-General do not include references to a person appointed to act in the office of Auditor-General during any period when it is vacant or the holder thereof is unable to perform the functions thereof; and the appointment of such a person may be revoked by the Governor, acting in his discretion, at any time before the expiration of that period.

Applicability
of pensions
law.

95. - (1) Subject to section 97 of this Constitution, the law applicable to the grant and payment to any officer, or to his widow, children, dependants or personal representatives, of any pension, gratuity or other like allowance (in this section and in sections 96 and 97 of this Constitution referred to as “an award”) in respect of the service of that officer in a public office shall be that in force on the relevant day or any later law not less favourable to the person concerned.

(2) For the purposes of this section the relevant day is-

- (a) in relation to an award granted before the appointed day, the day on which the award was granted;
- (b) in relation to award granted or to be granted on or after the appointed day to or in respect of a person who was a public officer before that day, the day immediately before that day;
- (c) in relation to an award granted or to be granted to or in respect of a person who first becomes a public officer on or after the appointed day, the day on which he becomes a public officer.

(3) For the purposes of this section in so far as the law applicable to an award depends on the option of the person to or in respect of whom it is granted or to be granted, the law for which he opts shall be taken to be more favourable to him than any other law for which he might have opted.

Awards
charged on
revenues of
Islands.

96. Awards granted under any law in force in the Islands shall be charged on and paid out of the Consolidated Fund.

Granting and
withholding of
pensions, etc.

97. – (1) The power to grant any award under any pensions law in force in the islands (other than an award to which, under that law, the person to whom it is payable is entitled as of right) and, in accordance with any provisions in that behalf contained in any such law, to withhold, reduce in amount or suspend any award payable under any such law shall be as stated therein.

(2) In this section “pensions law” means any law relating to the grant to any person, or to the widow, children, dependants or personal representatives of that person, of an award in respect of the services of that person in a public office, and includes any instrument made under any such law.

PART VII

FINANCE

Consolidated
Fund.

98. All revenues or other moneys raised or received by or for the purposes of the Government (not being revenues) or other moneys that are payable by or under any law into some other fund established for any specific purpose or that may, by or under any law, be retained by the authority that received them for the purpose of defraying the expenses of that authority) shall be paid into and form a Consolidated Fund.

Withdrawal of
money from
the
Consolidated
Fund or other
public funds.

99. - (1) No money shall be withdrawn from the Consolidated Fund except upon the authority of a warrant under the hand of the Minister of Finance:

Provided that where, in the opinion of the Governor, acting in his discretion, moneys are required to enable him to discharge his responsibilities for the defence of the Islands, internal security or the police, such moneys may be withdrawn from the Consolidated Fund either –

- (a) upon the authority of a warrant under the hand of the Minister of Finance; or
- (b) upon the authority of a warrant under the hand of the Governor, acting in his discretion.

(2) No warrant shall be issued by the Minister of Finance for the purpose of meeting any expenditure unless –

- (a) the expenditure has been authorized for the financial year during which the withdrawal is to take place -
 - (i) by an Appropriation law; or
 - (ii) by a supplementary estimate approved by resolution of the Legislative Assembly;
- (b) the expenditure has been authorized in accordance with the provisions of section 101 of this Constitution; or
- (c) it is expenditure (in this part referred to as “statutory expenditure”) that is charged upon the Consolidated Fund by this Constitution or by any other law.

(3) No moneys shall be withdrawn from any public fund other than the Consolidated Fund unless the issue of those moneys has been authorized by or under any law.

100. - (1) The Minister of Finance shall cause to be prepared and laid before the Legislative Assembly as soon as practicable before the commencement of each financial year estimates of the revenues and expenditure of the Islands for that year:

Provided that, if the Legislative Assembly is dissolved less than three months before the commencement of any financial year, the estimates for that year may be laid before the Legislative Assembly as soon as practicable after the commencement of that year.

(2) The heads of expenditure contained in the estimates (other than statutory expenditure) shall be included in a bill to be known as an Appropriation bill which shall be introduced into the Legislative Assembly to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums to the purposes specified therein.

(3) If in respect of any financial year it is found –

(a) that the amount appropriated by the Appropriation law to any purpose is insufficient or that a need has arisen for expenditure for a purpose to which no amount has been appropriated by that law; or

(b) that any moneys have been expended for any purpose in excess of the amount appropriated to that purpose by the Appropriation law or for a purpose to which no amount has been appropriated by that law,

a supplementary estimate, showing the sum required or spent, shall be laid before the Legislative Assembly.

(4) Where in respect of any financial year any supplementary estimates have been laid before the Legislative Assembly in accordance with the provisions of subsection (3) of this section and approved by resolution of the Legislative Assembly, a supplementary Appropriation bill shall, as soon as practicable after the end of that year, be introduced in the Legislative Assembly providing for the appropriation to the purposes in question of the sums included in such estimates that have been expended for that year.

(5) Where in respect of any financial year moneys have been withdrawn from the Consolidated Fund upon the authority of a warrant issued by the Governor by virtue of the proviso to section 99(1) of this Constitution, the Minister of Finance shall, if the circumstances of the case so require, cause a statement of expenditure in respect of such moneys to be prepared and laid before the Legislative Assembly.

101. If the Appropriation law in respect of any financial year has not come into operation by the beginning of that financial year, the Legislative Assembly by resolution may empower the Minister of Finance to authorise the withdrawal of moneys from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on

the services of the Government up to the amount approved in the preceding year until the expiration of four months from the beginning of that financial year or the coming into operation of the Appropriation law, whichever is the earlier.

Contingencies
fund.

102. - (1) The Legislative Assembly may by law make provision for the establishment of a contingencies fund and for authorizing the Minister of Finance to make advances from that fund if he is satisfied that there is an urgent and unforeseen need for expenditure for which no other provision exists.

(2) When any advance is made from the contingencies fund a supplementary estimate shall, as soon as practicable, be laid before the Legislative Assembly for the purpose of authorizing the replacement of the amount so advanced.

Public debt.

103. - (1) All debt charges for which the Islands are liable shall be a charge on the Consolidated Fund.

(2) For the purposes of this section, debt charges include interest, sinking fund charges, the repayment or amortisation of the debt and all expenditure in connection with the raising of loan on the security of the revenues of the Islands or the Consolidated Fund and the service and redemption of debt thereby created.

(3) The Islands shall not (at any time after the appointed day) borrow money to a total amount larger than that which can be repaid as to both principal and interest (calculated from the date of drawn down on the loan, whether or not a moratorium on repayment is given) by not more than ten percent of the Islands annual recurrent revenue (excluding money actually received from loans) for the preceding financial year.

(4) No person shall on behalf of the Islands (at any time after the appointed day) enter into any contract, commitment or other obligation (legal or moral), unless the full sum of money (including all reasonably anticipated additional charges connected with such contract, commitment or other obligation) has first been accurately determined and appropriated.

Audit.

104. - (1) The accounts of the Legislative Assembly, all government departments and offices (including the Public Service Commission) all majority government owned statutory corporations and all courts of the Islands shall be audited and reported on annually by the Auditor General and for that purpose the Auditor General or any person authorized by him in that behalf shall have access to all books, records, returns and other documents relating to such accounts.

(2) The Auditor General shall submit his reports made under this section to the Speaker of the Legislative Assembly who shall cause them to be laid before the Legislative Assembly; and the Auditor General shall also send a copy of each report to the Governor.

(3) In the exercise of his functions under the provisions of this section, the Auditor General shall not be subject to the direction or control of any other person or authority.

PART VIII

MISCELLANEOUS

Complaints
Commissioner.

105. - (1) Subject to the provision of this Constitution, a law made under this Constitution may make provision for the office, functions and jurisdiction of a Complaints Commissioner, otherwise called an Ombudsman.

(2) The Complaints Commissioner shall be appointed by the Governor, acting after consultation with the Chief Minister and the Leader of the Opposition, by instrument under the public seal.

(3) No person shall be qualified to be appointed as Complaints Commissioner if he is or has been within the preceding three years-

(a) an elected member of the Legislative Assembly; or

(b) the holder of any office in any political party.

(4) The office of the Complaints Commissioner shall become vacant-

(a) at the expiration of the period specified in the instrument by which he was appointed;

(b) if he resigns his office by writing under his hand addressed to the Governor;

(c) if he becomes an elected member of the Legislative Assembly or the holder of any office in any political party; or

(d) if the Governor, acting in his discretion directs that he shall be removed from office for inability to discharge the functions thereof (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, or for contravention of subsection (5) of this section.

(5) Subject to such exceptions as the Governor, acting in his discretion, may authorise by directions in writing, the Complaints Commissioner shall not hold any other office of emolument either in the public service or otherwise nor engage in any occupation for reward other than the duties of his office.

(6) In the exercise of his functions, the Complaints Commissioner shall not be subject to the direction or control of any other person or authority.

Register of
Interests.

106. - (1) There shall be for the Islands a Register of Interests, which shall be maintained by a Registrar who shall be appointed, and may be removed from office, by the Governor acting in his discretion.

(2) It shall be the duty of any person to whom this section applies to declare to the Registrar, for entry in the Register of Interests, such interests, assets, income and

liabilities of that person, or of any other person connected with him, as may be prescribed by law.

(3) A person shall make a declaration under subsection (2) of this section upon assuming the functions of his office and at such intervals thereafter (being no longer than twelve months) as may be prescribed by law.

(4) This section applies to all members of the Legislative Assembly and the holders of such other offices (except that of the Governor) as may be prescribed by law.

(5) A law made under this Constitution shall make provision for giving effect to this section, including the sanctions which may be imposed for a failure to comply with subsection (2) or (3) and, notwithstanding any provision of Part IV of this Constitution, the sanctions which may be imposed may include the suspension of a member of the Legislative Assembly from sitting therein for such period as may be prescribed in such a law.

Interpretation.

107. - (1) In this Constitution, unless it is otherwise provided or required by the context-

“appointed day” means the date of commencement of this Constitution;

“Assembly” means Legislative Assembly;

“Caymanian” means a person who possesses British Overseas Territories Citizenship by virtue of a connection with the Islands and who;

- (a) was born in or outside of the Islands and at the date of his birth had at least one of his parents or grandparents who was Caymanian as herein defined and who was domiciled in the Islands at the date of such birth; and
- (b) possesses no other citizenship and is pursuing no claim to any other citizenship for which he may be eligible;

“Caymanian status” means Caymanian status as provided for under the Immigration Law (2001 Revision) (as from time to time amended) or any law repealing and replacing the same;

“Chief Minister” means a Chief Minister appointed under section 31 of this Constitution;

“Court of Appeal” means the court established by section 79 of this Constitution;

“financial year” shall have the same meaning as defined in the Public Management and Finance Law 2001, or any law amending or replacing the same;

“functions” includes jurisdiction, powers and duties;

“Government Notice” means a Cayman Islands Government Notice;

“Governor” means the person for the time being holding the office of Governor of the Islands, and includes any person for the time being lawfully performing the functions of that office and, to the extent to which a deputy appointed under section 20 of this Constitution is authorized to act (but except where the word “Governor” appears in that section), that deputy;

“Grand Court” means the court established by section 74 of this Constitution;

“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 a court having jurisdiction in appeals from such a court;

“the Islands” means the Cayman Islands;

“Judicial Service Commission” means the Judicial Service Commission established by Section 85 of this Constitution;

“law” includes any instrument having the force of law made in exercise of a power conferred by law;

“party” as it appears in sections 31 and 49 of this Constitution shall mean a group of persons who have united to contest election for membership to the Legislative Assembly;

“Minister” means a member of the Executive Council who is appointed a Minister under section 31 of this Constitution;

“public office” means, subject to the provision of subsection (2) of this section, an office of emolument in the public service;

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

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

“the Public Service Commission” means the Public Service Commission established under Section 87 of this Constitution;

“session” means the meetings of the Assembly commencing when the Assembly first meets after being constituted under this Constitution after it has been prorogued or dissolved without having been prorogued;

“sitting” means a period during which the Assembly is sitting continuously without adjournment and includes any period during which the Assembly is in committee.

(2) For the purposes of 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 Assembly, Chief Minister, minister, or Leader of the Opposition;
- (b) references to the office of judge of the Grand Court or Court of Appeal;
- (c) references to a member of the Public Service Commission, an Electoral Boundary Commission, the Advisory Committee on the prerogative of Mercy or the Complaints Commissioner;
- (d) references to any office the holder of which is declared by any law in force in the Islands not to be disqualified for election as a member of the Assembly,

and a person shall not be considered as holding a public office by reason only that he is in receipt of a pension or other like allowance in respect of service under the Crown.

(3) Any person who has vacated his seat in any body, or has vacated any office established by this Constitution may, if qualified, again be appointed or elected as a member of that body or to that office, as the case may be, from time to time.

(4) A reference in this Constitution to the holder of an office by the term designating his office shall be construed as a reference to any person for the time being acting in that office or otherwise lawfully performing the functions of that office.

(4) Without prejudice to the last foregoing subsection-

- (a) 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 thereto; and
- (b) where two or more persons concurrently hold the same office by virtue of the foregoing paragraph, the person last appointed shall in respect of any function conferred on the holder of that office be deemed to be the sole holder thereof.

(6) Any power conferred by this Constitution to make any proclamation, rules, regulations or order or to give any directions shall be construed as including a power exercisable in like manner to amend or revoke any such proclamation, rule, regulation, order or directions.

(7) Where a person is required by this Constitution to make an oath he shall if he so desires be permitted to comply with that requirement by making an affirmation in accordance with the provisions of the Schedule to this Constitution.

(8) For the purposes of this Constitution the resignation of a member of any body or holder of any office thereby established 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.

(9) For the purposes of this Constitution a person shall not be regarded as absent from the Islands or as unable to perform any of his functions thereunder by reason only that he is in passage between any one of the Islands and another or from one part of any Island to another part.

FIRST SCHEDULE TO THE CONSTITUTION

FORMS OF OATHS AND AFFIRMATIONS

1. Oath of Allegiance

I.....do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

2. Oath for due execution of office

I.....do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, and the people of the Cayman Islands in the office (here insert the description of the office). So help me God.

3. Oath for due execution of judicial office

I.....do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second in the office of (here insert the description of the office) and I will do right to all manner of people according to the law without fear or favour affection or ill-will. So help me God.

4. Affirmations

In the forms above respectively set forth, for the word “swear” there shall be substituted the words “solemnly and sincerely affirm and declare”, and the words “So help me God” shall be omitted.