STATUTORY INSTRUMENTS

1973 No. 599

CARIBBEAN AND NORTH ATLANTIC TERRITORIES

The Turks and Caicos Islands (Constitution) (Amendment) Order 1973

Made - - - -	*29th March* 1973
Laid before Parliament	*4th April* 1973
Coming into Operation	
Sections 15 *and* 16 -	*On a date to be appointed by the Governor*
All other sections -	*25th April* 1973

At the Court at Buckingham Palace, the 29th day of March 1973

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers conferred upon Her by section 5 of the West Indies Act 1962(**a**), 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:

1.—(1) This Order may be cited as the Turks and Caicos Islands (Constitution) (Amendment) Order 1973 and shall be construed as one with the Turks and Caicos Islands (Constitution) Order 1969(**b**) (hereinafter referred to as " the principal Order ").

(2) The principal Order and this Order may be cited together as the Turks and Caicos Islands (Constitution) Orders 1969 and 1973.

(3) This Order shall come into operation on 25th April 1973:

Provided that sections 15 and 16 of this Order shall come into operation on such later date as the Governor shall appoint.

2. The Interpretation Act 1889(**c**) shall apply with the necessary adaptations for the purpose of interpreting and otherwise in relation to this Order as it applies for the purpose of interpreting and in relation to an Act of Parliament.

3. In section 2 of the principal Order the definition of " Governor " in subsection (1) is deleted and the following definition is inserted in its proper alphabetical place—

" ' 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 any such court ; ".

4. Part II of the principal Order is revoked.

5. In section 5 of the principal Order: —

(*a*) subsection (1) is revoked and the following subsection is substituted for it: —

" (1) There shall be a Governor of the Turks and Caicos Islands who shall be appointed by Her Majesty by Commission

(**a**) 1962 c. 19.
(**b**) S.I. 1969/736 (1969 II, p. 1992).
(**c**) 1889 c. 63.

under Her Sign Manual and Signet and shall hold office during Her Majesty's pleasure." ;

(*b*) subsection (2) is revoked ;

(*c*) in subsection (4) the words " or the Governor " and " or by the Governor " are deleted.

6. In section 7 of the principal Order:—

(*a*) in subsection (1) the words " or, subject thereto, by the Governor by instrument in writing under his hand," are deleted ;

(*b*) subsection (5) is revoked.

7. In section 8 of the principal Order:—

(*a*) in subsection (2) the words " or the Administrator " are deleted ;

(*b*) in subsection (3) the words " or the Administrator " are deleted.

8. In section 9 of the principal Order:—

(*a*) paragraph (*a*) of subsection (2) is revoked and the following paragraph is substituted for it:—

" (*a*) the Chief Secretary and the Financial Secretary ; " ;

(*b*) paragraph (*c*) of subsection (2) is revoked ;

(*c*) subsection (4) is revoked and the following subsection is substituted for it:—

" (4) In subsection (2) of this section " the Chief Secretary " and " the Financial Secretary " respectively include any person for the time being acting in either of those offices.".

9. In section 15 of the principal Order the words " and to the Governor " in subsection (3) are deleted.

10. In section 16 of the principal Order the words " , but with the prior approval of the Governor," in subsection (1) are deleted.

11. In section 22 of the principal Order:—

(*a*) in paragraph (*a*) of subsection (2) the words " or by the Governor " are deleted ;

(*b*) in subsection (4) the words " or the Governor " are deleted.

12. In section 26 of the principal Order:—

(*a*) in subsection (2) the words " or the Governor " are deleted ;

(*b*) in subsection (3) the words " and to the Governor " are deleted.

13. In section 27 of the principal Order the words " or by the Governor " in subsection (2) are deleted.

14. In section 33 of the principal Order:—

(*a*) subsection (4) is revoked ;

(*b*) subsection (5) is revoked and the following subsection is substituted for it:—

" (5) The Governor shall, so far as is practicable, attend the sittings of the State Council held in private and when he does so he shall preside ; if the Governor is absent from any such sitting there shall preside such member of the Council as the Governor, acting in his discretion, may either generally or specially appoint.".

15. The following new PART is inserted after section 40 of the principal Order.

" PART VII.A

THE JUDICIARY

The Supreme Court

Constitution of Supreme Court.

41A.—(1) There shall be a Supreme Court for the Islands which shall have such jurisdiction and powers as may be conferred upon it by this Constitution and any other law.

(2) The Supreme Court shall consist of one or more judges, as may be prescribed by any law having effect in the Islands (whether enacted before or after the commencement of this Order) :

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

(3) The judges of the Supreme Court shall be persons qualified for appointment under subsection (4) of this section and shall be appointed by the Governor, acting in his discretion, by instrument under the Public Seal.

(4) The qualifications for appointment as a judge of the Supreme Court shall be such as may be prescribed by any law having effect in the Islands (whether enacted before or after the commencement of this Order) :

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

(5) It shall be lawful for a person qualified for appointment as a judge of the Supreme Court to be so appointed (regardless of his age) for such term (not being less than two years) as may be specified in the instrument of appointment, and the provisions of section 41B. 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.

Tenure of office of judges of Supreme Court.

41B.—(1) Subject to the following provisions of this section, a judge of the Supreme Court shall vacate his office when he attains the age of sixty-five years :

Provided that—

(*a*) 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 the Governor and that judge ; and

(*b*) a judge who has attained the age at which he would otherwise vacate office under this sub-section 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 Supreme 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 the provisions of subsection (3) of this section.

(3) A judge of the Supreme 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(a) 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 Supreme 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 Enquiry Ordinance as in force of 24th April 1973 shall, subject to the provisions of this section, apply as nearly as may be in relation to tribunals appointed under sub-section (4) in this section or, as the context may require, to the members thereof as they apply in relation to Commissions or Commissioners appointed under that Ordinance.

(6) If the question of removing a judge of the Supreme Court from office has been referred to a tribunal under sub-section (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 Supreme Court.

41C.—(1) If the office of a judge of the Supreme Court 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 for the Supreme Court or such other person qualified for appointment as a judge of the Supreme Court as the Governor, acting in his discretion, may appoint for that purpose shall act in his office.

(a) 1833 c. 41.

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

(3) Any person appointed under this section to act as a judge of the Supreme Court shall, unless he is removed from office under the preceding section, 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 Supreme Court.

41D. Before entering upon the functions of his office, every judge of the Supreme Court shall make and subscribe before the Governor, or some other person authorised in that behalf by the Governor, acting in his discretion, oaths or affirmations of allegiance and for the due execution of his office in the forms set out in the Schedule to this Constitution.

The Court of Appeal

Constitution of Court of Appeal.

41E.—(1) There shall be a Court of Appeal for the Islands which shall have such jurisdiction and powers as may be conferred upon it by this Constitution and any other law.

(2) For the purposes of hearing and determining appeals the Court of Appeal may sit either in the Islands or in such places outside the Islands as the President of the Court may from time to time direct.

(3) The judges of the Court of Appeal shall be a President and two Justices of Appeal, or such other number of Justices of Appeal, not being less than two, as the State Council may by law prescribe:

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

(4) The judges of the Court of Appeal shall be appointed by the Governor, acting in his discretion, by instrument under the Public Seal, for such period as may be specified in their respective instruments of appointment.

(5) A person shall be qualified to be appointed as a judge of the Court of Appeal if, and shall not be qualified to be so appointed unless, he holds or has held high judicial office.

(6) A judge of the Supreme Court of the Islands may exercise any of the powers of a single judge of the Court of Appeal to such extent as the State Council may by law prescribe.

Tenure of office of judges of Court of Appeal.

41F.—(1) Subject to the following provisions of this section, the office of a judge of the Court of Appeal shall become vacant upon the expiration of the period of his appointment to that office.

(2) A judge of the Court of Appeal may be removed from office only for inability to discharge the functions of his 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 the 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 ;

(*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 Ordinance as in force on 24th April 1973, 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 Act.

(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.

41G.—(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 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, 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 the preceding section, 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.

41H. Before entering upon the functions of his office every judge of the Court of Appeal shall make and subscribe before the Governor, or some other person authorised in that behalf by the Governor acting in his discretion, oaths or affirmations of allegiance and for the due execution of his office in the forms set out in the Schedule to this Constitution.".

16. Section 41 of the principal Order is revoked.

17. In section 45 of the principal Order subsections (2) and (3) are revoked.

18. In paragraph 3 of the Schedule to the principal Order the words " or the Administrator " are deleted.

19. The following paragraph is inserted after paragraph 3 in the Schedule to the principal Order:—

" 3A. Judicial Oath

I, ..., do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office of ..... and will do right to all manner of people after the laws and usages of the Turks and Caicos Islands without fear or favour, affection or ill will. So help me God."

20.—(1) Any reference in the principal Order to the Administrator or to the Governor and Commander-in-Chief of the Bahama Islands shall be construed as a reference to the Governor.

(2) The Turks and Caicos Royal Instructions 1962 to 1967(**a**) shall take effect as if they were addressed to the Governor, and any reference in those Instructions to the Administrator shall be construed accordingly.

21.—(1) Any reference to the Administrator in any existing law in force or otherwise having effect in, or in relation to, the Turks and Caicos Islands immediately before the commencement of this Order shall, in respect of any period commencing on or after the commencement of this Order, be construed as a reference to the Governor.

(**a**) 1962 (II, p. 2407); 1965 (III, p. 6438); 1967 (III, p. 5459).

(2) For the purpose of this section, the expression " existing law " means any Order in Council, Act, Ordinance, law, rule, regulation or other instrument made or having effect as part of the law of the Turks and Caicos Islands but does not include any Act of the Parliament of the United Kingdom or any Order in Council or other instrument made under such an Act except an Order in Council made under section 5 of the West Indies Act 1962.

22.—(1) Any person who immediately before the coming into operation of section 15 of this Order holds or is acting in the office of the Judge, or in any other office, of the existing Court shall be deemed as from that day to have been duly appointed to or to act in the office of Judge, or in such other office, of the Supreme Court, and to have made and subscribed any oaths or affirmations required by this Order.

(2) Any cause or matter pending before the existing Court immediately before the coming into operation of section 15 of this Order may be continued thereafter before the Supreme Court as if such cause or matter had been instituted in the Supreme Court.

(3) Any decree or order of the existing Court given or made before the coming into operation of section 15 of this Order may, in so far as it has not been fully executed or enforced, be executed or enforced as if it were a decree or order of the Supreme Court.

(4) Any appeal from the existing Court pending immediately before the coming into operation of section 15 of this Order may be continued and determined thereafter as if it were an appeal from the Supreme Court.

(5) In this section " the existing Court " means the Supreme Court of the Turks and Caicos Islands as constituted immediately before the coming into operation of section 15 of this Order, and " the Supreme Court " means the Supreme Court established by this Order.

W. G. Agnew.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order amends the Constitution of the Turks and Caicos Islands by constituting the office of Governor in place of the office of Administrator.

The provisions whereby the Governor and Commander-in-Chief of the Bahama Islands performed certain functions in relation to the Turks and Caicos Islands and the Court of Appeal for the Bahama Islands was constituted as the Court of Appeal for those Islands are revoked and new provision is made for the Supreme Court and Court of Appeal. The constitution of the State Council is altered by the inclusion of the Chief Secretary and Financial Secretary in place of the Treasurer and one additional official member.

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