

## SCHEDULE 2

### The Constitution of the Turks and Caicos Islands

## PART VI

### THE PUBLIC SERVICE

#### **Overriding duty of public officers**

**88.** Subject to this Constitution, all public officers must act in accordance with the best interests of the Turks and Caicos Islands and not in their own private interests.

#### **Public Service Commission**

**89.**—(1) There shall be a Public Service Commission for the Turks and Caicos Islands, which shall consist of a Chairman and four other members.

(2) Of the members of the Public Service Commission—

- (a) the Chairman shall be appointed by the Governor, acting in his or her discretion;
- (b) one member shall be appointed by the Governor, acting after consultation with the Premier;
- (c) one member shall be appointed by the Governor, acting after consultation with the Leader of the Opposition;
- (d) one member shall be appointed by the Governor, acting after consultation with the Civil Servants Association; and
- (e) one member shall be appointed by the Governor, acting after consultation with the Premier, the Leader of the Opposition and the Civil Servants Association.

(3) The members of the Public Service Commission shall be appointed by instrument under the public seal for such period, not being less than one year 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 or she is a public officer or if he or she is or has been within the preceding three years—

- (a) a member of the House of 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 or she was appointed;
- (b) if he or she resigns his or her office by writing under his or her hand addressed to the Governor;
- (c) if he or she becomes a member of the House of Assembly, the holder of any office in any political party, or a public officer; or
- (d) if the Governor, acting in his or her discretion, directs that he or she shall be removed from office for inability to discharge the functions of his or her office (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 of that office is for any reason unable to perform the functions of that office, such one of the other members of the Public Service Commission as the Governor, acting in his or her discretion, may appoint shall act in the office of the Chairman; and any person so appointed shall, subject to

*Status: This is the original version (as it was originally made).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

subsection (5), continue so to act until he or she is notified by the Governor, acting in his or her discretion, that the circumstances giving rise to the appointment have ceased to exist.

(7) If the office of a member of the Public Service Commission other than the Chairman is vacant or the holder of that office is acting as the Chairman or is for any other reason unable to perform the functions of his or her office, the Governor, acting in the manner prescribed by subsection (2) 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), continue so to act until he or she is notified by the Governor, acting in his or her discretion, that the circumstances giving rise to the appointment have ceased to exist.

(8) No business shall be transacted at any meeting of the Public Service Commission if there are less than three members of the Commission present.

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

(10) The Public Service Commission shall be served by a secretariat, the members of which shall be public officers.

(11) In the exercise of their functions the Public Service Commission and its members shall not be subject to the direction or control of any other person or authority.

(12) Subject to subsection (8), the Public Service Commission may act notwithstanding any vacancy in its membership.

### **Appointment, discipline and removal of public officers**

**90.**—(1) Power to make appointments to public offices except the office of any permanent secretary or head of department is vested in the Governor, acting in accordance with the advice of the Public Service Commission; but the Governor may act otherwise than in accordance with that advice—

- (a) if the Governor determines, acting in his or her discretion, that compliance with that advice would be inconsistent with the Statement of Governance Principles for the time being in effect; or
- (b) if so instructed by Her Majesty through a Secretary of State.

(2) Power to remove or exercise disciplinary control over persons holding or acting in any public office except the office of permanent secretary or head of department is vested in the Governor, acting in his or her discretion.

(3) Power to make appointments to the office of any permanent secretary or head of department is vested in the Governor, acting after consultation with the Public Service Commission.

(4) Power to remove or exercise disciplinary control over persons holding or acting in the office of any permanent secretary or head of department is vested in the Governor, acting in his or her discretion.

(5) The Governor, acting in his or her discretion, may, by regulations published in the *Gazette*—

- (a) delegate any of the powers vested in the Governor by subsection (1) to the Deputy Governor or to any permanent secretary;
- (b) delegate any of the powers vested in the Governor by subsection (2) to the Deputy Governor, to any permanent secretary or to any head of department; and
- (c) delegate any of the powers vested in the Governor by subsection (3) or (4) to the Deputy Governor,

to such extent and subject to such conditions as may be prescribed in the regulations.

(6) Where a public officer is the subject of a removal or disciplinary decision, that officer may appeal the decision to the Public Service Commission.

(7) On receiving any appeal under subsection (6), the Public Service Commission shall review the matter and report to the Governor with such recommendations as it thinks fit, and the Governor, acting in his or her discretion, shall finally determine the case.

(8) This section shall not apply to—

- (a) any office to which section 91 applies;
- (b) any office mentioned in section 87; or
- (c) any office in the Police Force.

### **Particular offices**

**91.**—(1) Subject to subsections (3) and (4), power to make appointments to the offices to which this section applies and to remove or exercise disciplinary control over persons holding or acting in such offices is vested in the Governor, acting in his or her discretion.

(2) This section applies to the offices of—

- (a) Attorney General;
- (b) Permanent Secretary, Finance;
- (c) Auditor General;
- (d) Director of Public Prosecutions;
- (e) Supervisor of Elections; and
- (f) Commissioner of Police.

(3) Before making an appointment to the office of Director of Public Prosecutions the Governor shall consult the Premier, the Leader of the Opposition and the Judicial Service Commission, and before making an appointment to the office of Auditor General or Supervisor of Elections the Governor shall consult the Premier and the Leader of the Opposition.

(4) A person holding the office of Attorney General, Auditor General, Director of Public Prosecutions or Supervisor of Elections may be removed from office only for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and with the prior approval of a Secretary of State.

### **Functions of Public Service Commission**

**92.**—(1) The Public Service Commission shall uphold the principles of merit, neutrality and integrity in the public service, and to that end it shall from time to time issue and keep under review standards of conduct and ethics in the public service, monitor the implementation of such standards and provide advice on them.

(2) Any standards of conduct and ethics issued under subsection (1) must be consistent with the Statement of Governance Principles and the Code of Conduct for Persons in Public Life for the time being in effect.

(3) The Public Service Commission shall from time to time publish and keep under review a disciplinary policy for the public service, monitor its implementation and provide advice on it.

(4) The Public Service Commission shall exercise the following functions in addition to those conferred on it by this Constitution—

- (a) the supervision of, and the provision of advice on, the policies and programmes of the Government for the training of public officers at all levels;

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

- (b) the provision of advice of a general nature on questions relating to the pay and conditions of service of public officers; and
  - (c) such other functions as may be conferred on it by law or by regulations made by the Governor, acting after consultation with the Public Service Commission.
- (5) The Public Service Commission must be impartial and must exercise its functions without fear, favour or prejudice, in the interest of the maintenance of effective and efficient public administration and a high standard of professional ethics in the public service.
- (6) This section shall not apply in relation to any office mentioned in section 87.

### **Regulations regarding Public Service Commission**

**93.** The Governor, acting after consultation with the Public Service Commission, may, by regulations published in the *Gazette*, make provision for—

- (a) the organisation of the work of the Commission and the manner in which it performs its functions;
- (b) consultation by the Commission with persons or authorities other than members of the Commission;
- (c) 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;
- (d) the definition and trial of offences in relation to the functions of the Commission and the imposition of penalties for such offences; but no such penalty shall exceed a fine of 5,000 United States dollars or imprisonment for a term of one year or both such fine and imprisonment.

### **Applicability of pensions law**

**94.—**(1) Subject to section 96, the law applicable to the grant and payment to any officer, or to his or her widow or widower, children, dependants or personal representatives, of any pension, gratuity or other like allowance (in this section and in sections 95 and 96 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 an 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 or she 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 or she opts shall be taken to be more favourable to him or her than any other law for which he or she might have opted.

- (4) In this section “the appointed day” means the date of commencement of this Constitution.

### **Pensions, etc, charged on Consolidated Fund**

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

### **Grant and withholding of pensions, etc**

**96.—(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 respect contained in any such law, to withhold, reduce in amount or suspend any award payable under any such law is hereby vested in the Governor, acting in his or her discretion.

(2) In this section “pensions law” means any law relating to the grant to any person, or to the widow or widower, 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.