

SCHEDULE 2

The Constitution of the Turks and Caicos Islands

PART V

THE JUDICATURE

Judicial independence

Independence of the judiciary

83.—(1) The judges and magistrates appointed to preside or sit in any court of the Turks and Caicos Islands shall exercise their judicial functions independently from the legislative and executive branches of government.

(2) The Legislature and the Cabinet shall uphold the rule of law and judicial independence, and shall ensure that adequate funds are provided to support the judicial administration in the Islands.

Remuneration, terms and conditions of judges and magistrates

84.—(1) The remuneration and allowances of each judge of the Supreme Court, each judge of the Court of Appeal and each magistrate shall be determined by the Governor, are hereby charged on and shall be paid out of the Consolidated Fund, and shall not be diminished during his or her continuance in office.

(2) The terms and conditions of service of each judge of the Supreme Court, each judge of the Court of Appeal and each magistrate shall be determined by the Governor, and shall not be altered to his or her disadvantage during his or her continuance in office.

(3) The powers conferred on the Governor by this section shall be exercised by the Governor in accordance with the advice of the Judicial Service Commission, unless the Governor is instructed by Her Majesty through a Secretary of State to do otherwise.

Tenure of office of judges and magistrates

85.—(1) Subject to this section, a judge of the Supreme Court shall vacate his or her office when he or she attains the age of 65 years; but—

- (a) the Governor may permit a judge who attains the age of 65 years to continue in office until he or she has attained such later age, not exceeding the age of 70 years, as may have been agreed between the Governor and that judge; and
- (b) a judge who has attained the age at which he or she would otherwise vacate office under this subsection may continue in office for such period as may be necessary to enable him or her to deliver judgment or do any other thing in relation to any proceeding commenced before him or her before he or she attained that age.

(2) Subject to this section, a judge of the Court of Appeal shall vacate his or her office on the expiration of the period of his or her appointment to that office.

(3) Subject to this section, a magistrate shall vacate his or her office when he or she attains such age as may be prescribed by law.

(4) In the following subsections “judge” means a judge of the Supreme Court, an acting judge of the Supreme Court, a judge of the Court of Appeal or an acting judge of the Court of Appeal.

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

(5) A judge or a magistrate 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 shall not be so removed except in accordance with subsection (6).

(6) A judge or a magistrate shall be removed from office by the Governor by instrument under the public seal if the question of the removal of that judge or magistrate from office has, at the request of the Governor made in pursuance of subsection (7), been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833⁽¹⁾ or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge or magistrate ought to be removed from office for inability as aforesaid or for misbehaviour.

(7) If the Governor considers that the question of removing a judge or magistrate from office for inability as aforesaid or for 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 or she should request that the question of the removal of that judge or magistrate 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.

(8) The provisions of the Commissions of Inquiry Ordinance⁽²⁾ as in force on the date of commencement of this Constitution shall, subject to this section, apply as nearly as may be in relation to tribunals appointed under subsection (7) or, as the context may require, to their members as they apply in relation to Commissions or Commissioners appointed under that Ordinance.

(9) If the question of removing a judge or magistrate from office has been referred to a tribunal under subsection (7) the Governor may suspend the judge or magistrate from performing the functions of his or her 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 or she should not request that the question of the removal of the judge or magistrate from office should be referred by Her Majesty to the Judicial Committee; or
- (b) if the Judicial Committee advises Her Majesty that the judge or magistrate ought not to be removed from office.

(10) The powers conferred on the Governor by this section shall be exercised by the Governor in his or her discretion.

(1) 1833 c.41.

(2) Ordinance No. 7 of 1986.