

**UNITED KINGDOM STATUTORY INSTRUMENT**

**SI 1968 No. 182**

**THE CONSTITUTION OF BERMUDA**

**BERMUDA CONSTITUTION ORDER 1968**

*[made by Her Majesty-in-Council under the Bermuda Constitution Act  
1967 of the United Kingdom [title 2 item 9]*

**Citation and Commencement**

1 (1) This Order may be cited as the Bermuda Constitution Order 1968.

(2) This Order shall come into force on 21st February 1968.

*[but 2 June 1968 is the "appointed day"]*

**Interpretation**

2 (1) In this Order—

"the Constitution" means the Constitution of Bermuda set out in Schedule 2 to this Order;

"the appointed day" means such day after the return of the writs of election in the general election referred to in section 7 of this Order as may be appointed by the Governor by proclamation published in the Gazette;

*[2 June 1968 was appointed by proclamation of the Governor  
SR&O 55/1968]*

"the existing instruments" means the instruments revoked by section 3 of this Order;

"the existing laws" means any laws (including Resolves) made before the appointed day by any legislature for the time being constituted as the legislature of Bermuda and having effect as part of the law of Bermuda immediately before the appointed day *[2 June 1968]* (whether or not they have then come into operation) and any rules, regulations, orders or other instruments made in pursuance of such laws and having such effect.

(2) The provisions of sections 102, 103 and 108 of the Constitution shall apply for the purposes of interpreting sections 1 to 10 of

## **BERMUDA CONSTITUTION ORDER 1968**

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this Order and otherwise in relation thereto as they apply for the purpose of interpreting and in relation to the Constitution.

### **Revocations**

3 The instruments set out in Schedule 1 to this Order are revoked with effect from the appointed day [2 June 1968].

### **Establishment of Constitution**

4 Subject to the provisions of this Order the Constitution shall come into operation on the appointed day [2 June 1968].

### **Existing laws**

5 (1) Subject to the provisions of this section, the existing laws shall have effect on and after the appointed day [2 June 1968] 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 Constitution.

(2) The Governor may, by order published in the Gazette, at any time within twelve months after the commencement of this Order make such amendments in any existing law as may 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 date (not being earlier than the appointed day) as may be specified in the order.

(3) An order made under this section may be amended or revoked by the Legislature or, in relation to any existing law affected thereby, by any other authority having power to amend, repeal or revoke that existing law.

(4) Where any matter that falls to be prescribed or otherwise provided for the purposes of the Constitution by the Legislature or by any other person or authority is prescribed or provided for by or under any existing law (including any amendment of any such law made under this section) or is otherwise prescribed or provided for, immediately before the appointed day, by or under the existing instruments, that prescription or provision shall, as from the appointed day, have effect as if it had been made for those purposes by the Legislature or, as the case may be, by the other person or authority.

(5) The provisions of this section shall be without prejudice to any powers conferred by the Constitution or any other law upon any

person or authority to make provision for any matter, including the amendment or repeal of any existing law.

(6) For the avoidance of doubts it is hereby declared that nothing in section 55 of the Constitution shall affect any register of electors subsisting under any existing law immediately before construed as applying in relation to any subsequent revision of any such register.

**Existing officers**

6 (1) Any person who, immediately before the appointed day [2 June 1968] holds or is acting in any office to which this section applies shall be deemed as from that day to have been appointed to or to act in that office or the corresponding office in accordance with the provisions of the Constitution and to have made any necessary oaths or affirmation under the Constitution:

Provided that any person who under the existing instruments or any existing law would have been required to his office at the expiration of any period or on the attainment of any age shall vacate his office at the expiration of that period or on the attainment of that age.

(2) This section applies to the offices of the Governor, judges of the Supreme Court and the Court of Appeal and the personal staff of the Governor and to any public office.

(3) The provisions of this section shall be without prejudice to the power of any person or authority to abolish any office or to remove from office any person holding or acting in any office.

**Holding of general election prior to the appointed day**

7 [omitted]

**First appointment of Secretary to Executive Council**

7A [omitted]

**Rules of procedure of Legislative Council and House of Assembly**

8 [transitional] [omitted]

**Legal proceedings**

9 [transitional] [omitted]

**Regulations for retirement, compensation, etc. of certain officers**

10 [transitional] [omitted]

## **BERMUDA CONSTITUTION ORDER 1968**

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### **SCHEDULE 1 TO THE ORDER**

#### INSTRUMENTS REVOKED

Letters Patent, dated 19th January 1888, passed under the Great Seal of the United Kingdom, constituting the office of Governor and Commander-in-Chief of the Bermudas or Somers Islands [*Rev.III, p. 119*].

The Bermuda (Amendment) Letters Patent 1953 [*S.I. 1953 II, p. 2777*].

The Bermuda (Amendment) Letters Patent 1955 [*S.I. 1955 II, p. 3179*].

The Bermuda Letters Patent 1962 [*S.I. 1962 I, p.1025*].

Instructions issued under the Royal Sign Manual and Signet to the Governor and Commander-in-Chief of the Bermudas or Somers Islands on 25th November 1915.

Additional Instructions issued as aforesaid on 9th June 1930.

Additional Instructions issued as aforesaid on 30th August 1943.

Additional Instructions issued as aforesaid on 16th May 1953.

### **SCHEDULE 2 TO THE ORDER**

#### **THE CONSTITUTION OF BERMUDA**

##### **CHAPTER I**

###### PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

###### **Fundamental rights and freedoms of the individual**

1 Whereas every person in Bermuda is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, whatever his race, place of origin, political opinions, 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 and association; and
- (c) protection for the privacy of his home and other property and from deprivation of property without compensation,

the subsequent provisions of this Chapter 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 save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the 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.

(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 authorises the infliction of any description of punishment that was lawful in Bermuda immediately before the coming into operation of this Constitution [2 June 1968].

**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—

## **BERMUDA CONSTITUTION ORDER 1968**

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- (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 (that is to say, a period to which section 14 of this Constitution applies) 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 from arbitrary arrest or detention**

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 Bermuda 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 the 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 fulfilment of any obligation imposed upon him by law;
- (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 twenty-one 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 Bermuda or for the purpose of effecting the expulsion, extradition or other lawful removal from Bermuda 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 reasons 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 the said paragraph (e) 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.

(5) Any person who is arrested shall be entitled to be informed, as soon as he is brought to a police station or other place of custody, of his rights as defined by a law enacted by the Legislature to remain silent, to seek legal advice, and to have one person informed by telephone of his arrest and of his whereabouts.

**Provisions to secure protection of law**

6 (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing

## **BERMUDA CONSTITUTION ORDER 1968**

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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 information or indictment in the Supreme 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.

(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.

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

(8) 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 given a fair hearing within a reasonable time.

(9) 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.

(10) Nothing in subsection (9) 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 the private lives of persons concerned in the proceedings; or

(b) may be empowered or required by law to do so in the interests of defence, public safety or public order.

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

## **BERMUDA CONSTITUTION ORDER 1968**

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- (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, so, however, 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.

(12) In this section, "legal representative" means a person entitled to practise in Bermuda as a barrister and attorney of the Supreme Court.

### **Protection for privacy of home and other property**

7 (1) Except with his 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 utilisation 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 in any civil proceedings, 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 freedom of conscience**

8 (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 or 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 twenty-one 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 if that instruction, ceremony or observance 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—

## **BERMUDA CONSTITUTION ORDER 1968**

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- (a) in the interests of defence, 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 practise 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**

9 (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.

(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, reputations and freedom 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 or teachers,

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 paragraph (b) of subsection (2) of this section in so far as that paragraph 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.

**Protection of freedom of assembly and association**

10 (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;
- (ii) for the purpose of protecting the rights and freedoms of other persons; 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.

(3) For the purposes of paragraph (b) of subsection (2) 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**

11 (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 Bermuda, the right to reside in any part thereof, the right to enter Bermuda and immunity from expulsion therefrom.

(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 in Bermuda or on the right to leave Bermuda

## **BERMUDA CONSTITUTION ORDER 1968**

---

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 Bermuda 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 Bermuda of which he has been convicted;
- (c) for the imposition of restrictions on the movement or residence within Bermuda or the right to leave Bermuda 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 movement or residence within Bermuda of any person who does not belong to Bermuda or the exclusion or expulsion therefrom of any such person;
- (e) for the imposition of restrictions on the acquisition or use by any person of land or other property in Bermuda;
- (f) for the imposition of restrictions, by order of a court, on the movement or residence within Bermuda of any person or on any person's right to leave Bermuda either in consequence of his having been found guilty of a criminal offence under the law of Bermuda or for the purpose of ensuring that he appears before a court at a later date for trial of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or lawful removal from Bermuda; or
- (g) for the imposition of restrictions on the right of any person to leave Bermuda that are reasonably required in

order to secure the fulfilment of any obligations 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 paragraph (c) of subsection (2) 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.

(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.

(5) For the purposes of this section, a person shall be deemed to belong to Bermuda if that person—

(a) possesses Bermudian status;

(b) is a citizen of the United Kingdom and Colonies by virtue of the grant by the Governor of a certificate of naturalisation under the British Nationality and Status of Aliens Act 1914 [1914 c.17] or the British Nationality Act 1948 [1948 c.56];

*[NOTE by the British Nationality Act 1981 section 51 without prejudice to subsection (3)(c) thereof in any UK statutory instrument made before 1 January 1983 "British subject" and "Commonwealth citizen" have the same meaning and in relation to any time after 1 January 1983 means a person who has the status of a Commonwealth citizen under the British Nationality Act 1981]*

(c) is the wife of a person to whom either of the foregoing paragraphs of this subsection applies not living apart from such person under a decree of a court or a deed of separation; or

(d) is under the age of eighteen years and is the child, stepchild or child adopted in a manner recognised by law of a person to whom any of the foregoing paragraphs of this subsection applies.

**Protection from discrimination on the grounds of race, etc.**

12 (1) Subject to the provisions of subsections (4), (5) and (8) of this section, no law shall make any provision which is discriminatory either of itself or in its effect.

## **BERMUDA CONSTITUTION ORDER 1968**

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(2) Subject to the provisions of subsections (6), (8) and (9) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed 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 Bermuda or for the imposition of taxation (including the levying of fees for the grant 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, Bermuda of persons who do not belong to Bermuda for the purposes of section II of, this Constitution;
- (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 reasonably justifiable in a democratic society.

(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 possess Bermudian status or belong to Bermuda for the purposes of section 11 of this Constitution or to possess any other qualification (not being a qualification specifically

relating to race, place of origin, political opinions, colour or creed) 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.

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

(7) Subject to the provisions of subsection (8) of this section, 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 resort.

(8) 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 whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by section 7, 8, 9, 10 and 11 of this Constitution, being such a restriction as is authorised by section 7(2)(a), 8(5), 9(2), 10(2) or 11(2)(a), as the case may be.

(9) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

**Protection from deprivation of property**

13 (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 utilisation 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

## **BERMUDA CONSTITUTION ORDER 1968**

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- (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 Supreme 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
  - (d) giving to any party to proceedings in the Supreme 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 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—
    - (i) in satisfaction of any tax, rate or due;
    - (ii) by way of penalty for breach of any law or forfeiture in consequence of a breach of any law;
    - (iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
    - (iv) by way of the taking of a sample for the purposes of any law;
    - (v) where the property consists of an animal upon its being found trespassing or straying;
    - (vi) in the execution of judgments or orders of a court;
    - (vii) by reason of its being in a dilapidated or dangerous state or injurious to the health of human beings, animals or plants;

- (viii) in consequence of any law with respect to prescription or the limitation of actions; or
- (ix) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of 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

- (b) 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 twenty-one 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

## **BERMUDA CONSTITUTION ORDER 1968**

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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.

### **Provisions for time of war or emergency**

14 (1) This section applies to any period when—

(a) Her Majesty is at war; or

(b) there is in force a proclamation (in this section referred to as a "proclamation of emergency") made under subsection (3) of this section.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of section 5, any provision of section 6 other than subsections (4) and (6) thereof, or any provision of sections 7 to 12 (inclusive) of this Constitution to the extent that the law in question makes in relation to any period to which this section applies provision, or authorises the doing during any such period of anything, which is reasonably justifiable in the circumstances of any situation arising or existing during that period for the purpose of dealing with that situation.

(3) The Governor may, by proclamation published in the Gazette, declare that a state of emergency exists for the purposes of this section.

(4) Where any proclamation of emergency has been made, copies thereof shall as soon as is practicable be laid before both Houses, and if for any cause those Houses are not due to meet within five days of the making of that proclamation the Governor shall, by proclamation published in the Gazette, summon them to meet within that period and they shall accordingly meet and sit upon the day appointed by the proclamation and shall continue to sit and act as if they had stood adjourned or prorogued to that day:

Provided that if the proclamation of emergency is made during the period between a dissolution of the Legislature and the next ensuing general election—

(a) the Houses to be summoned as aforesaid shall be the Houses referred to in section 50 of this Constitution unless the Governor is satisfied that it will be practicable

to hold that election within seven days of the making of the proclamation of emergency; and

- (b) if the Governor is so satisfied, he shall (instead of summoning the Houses so referred to to meet within five days of the making of the proclamation) summon the Houses of the new Legislature to meet as soon as practicable after the holding of that election.

(5) A proclamation of emergency shall, unless it is sooner revoked by the Governor, cease to be in force at the expiration of a period of fourteen days beginning on the date on which it was made or such longer period as may be provided under subsection (6) of this section, but without prejudice to the making of another proclamation of emergency at or before the end of that period.

(6) If at any time while a proclamation of emergency is in force (including any time while it is in force by virtue of the provisions of this subsection) a resolution is passed by each House approving its continuance in force for a further period, not exceeding three months, beginning on the date on which it would otherwise expire, the proclamation shall, if not sooner revoked, continue in force for that further period.

(7) Where any person is lawfully detained in pursuance only of such a law as is referred to in subsection (2) of this section—

- (a) he may from time to time request that his case shall be reviewed under paragraph (b) of this subsection but, where he has made such a request during the period of that detention, no subsequent request shall be made during that period before the expiration of six months from the making of the previous request; and
- (b) where a request is made under paragraph (a) of this subsection, the case shall within one month of the making of the request be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice.

(8) On any review by a tribunal in pursuance of subsection (7) 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 provided by law, that authority shall not be obliged to act in accordance with such recommendations.

## **BERMUDA CONSTITUTION ORDER 1968**

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(9) The functions conferred upon the Governor by this section shall be exercised by him after consultation with the Premier:

Provided that if in the judgment of the Governor it is impracticable for him to consult with the Premier, those functions shall be exercised by the Governor acting in his discretion.

### **Enforcement of fundamental rights**

15 (1) If any person alleges that any of the foregoing provisions of this Chapter 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 Supreme Court for redress.

(2) The Supreme 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 enforcement of any of the foregoing provisions of this Chapter to the protection of which the person concerned is entitled:

Provided that the Supreme 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 for Bermuda other than the Supreme Court or the Court of Appeal, any question arises as to the contravention of any of the foregoing provisions of this Chapter, the court in which the question has arisen shall refer the question to the Supreme 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 Supreme 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 Supreme Court under this section dismissing an application on the ground that it is frivolous or vexatious.

(5) The Legislature may by law confer upon the Supreme 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) The Legislature may by law make, or provide for the making of, provision with respect to the practice and procedure—

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

**Interpretation**

16 (1) In this Chapter, 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 Bermuda, 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 of Bermuda;
- (c) the prison service of Bermuda;

"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.

## **BERMUDA CONSTITUTION ORDER 1968**

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(2) In relation to any person who is a member of a disciplined force raised under the law of Bermuda, 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 Chapter other than sections 2, 3 and 4.

(3) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Bermuda 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 Chapter.

### **CHAPTER II**

#### **THE GOVERNOR**

##### **The Governor**

17 (1) There shall be a Governor and Commander-in-Chief of Bermuda 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 have such functions as are conferred on him by or under this Constitution or any other law and such other functions as Her Majesty may be pleased to assign to him, and, subject to the provisions of this Constitution and of any law by which any such functions are conferred, shall do and execute all things that belong to his office (including the exercise of any functions that are expressed to be exercisable in his discretion) according to such instructions, if any, as Her Majesty may from time to time see fit to give him under Her Sign Manual and Signet or through a Secretary of State:

Provided that the question whether or not the Governor has in any matter complied with any such instructions shall not be inquired into in any court.

(3) A person appointed to the office of Governor shall, before assuming the functions of that office, make oaths or affirmations of allegiance and for the due execution of that office in the forms set out in the Schedule to this Constitution.

##### **Office of Deputy Governor**

18 (1) There shall be a Deputy Governor who shall be appointed by the Governor in pursuance of instructions given by Her Majesty

through a Secretary of State and shall hold office during Her Majesty's pleasure.

(2) If the office of Deputy Governor is vacant or the person holding that office is acting in the office of Governor under section 19 of this Constitution or is for any other reason unable to perform the functions of the office of Deputy Governor, then the Governor, acting in his discretion, may appoint a person to act as Deputy Governor and any such person shall continue to act until his appointment is revoked by the Governor, acting in his discretion.

**Acting Governor**

19 (1) During any period when the office of Governor is vacant or the Governor is absent from Bermuda or is for any other reason unable to perform the functions of his office—

(a) the Deputy Governor; or

(b) if the office of Deputy Governor is vacant or the Deputy Governor is absent from Bermuda or is for any other reason unable to perform the functions of the office of Governor, such person as Her Majesty may designate in that behalf by instructions given through a Secretary of State (in this section referred to as "the person designated"),

shall, during Her Majesty's pleasure, act in the office of Governor and shall perform the functions of that office accordingly.

(2) Before assuming the functions of the office of Governor, the Deputy Governor or the person designated shall make the oaths or affirmations directed by section 17(3) of this Constitution to be made by the Governor.

(3) The Deputy Governor shall not continue to act in the office of Governor after the Governor has notified him that he is about to assume or resume the functions of that office and the person designated shall not continue to act in that office after the Governor or Deputy Governor has so notified him.

(4) The salary and allowances payable by or under any law enacted by the Legislature to any person while he is acting in the office of Governor under this section shall be a charge on the Consolidated Fund.

(5) In this section "the Governor" means the person holding the office of Governor and "the Deputy Governor" means the person holding the office of Deputy Governor.

## **BERMUDA CONSTITUTION ORDER 1968**

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### **Functions of Deputy Governor**

19A (1) Subject to the provisions of subsection (2) of this section, the Deputy Governor shall—

- (a) assist the Governor in the exercise of his functions relating to matters for which he is responsible under section 62 of this Constitution;
- (b) assist the Governor in the exercise of such of his other functions, being functions in the exercise of which the Governor is not obliged to act in accordance with the advice of some other person or authority, as the Governor, acting in his discretion, may direct; and
- (c) perform such other functions, not of a ministerial nature, as (subject to the provisions of this Constitution and of any other law) may be assigned to the Deputy Governor, at the request of the Premier, by the Governor acting in his discretion.

(2) The Governor, acting in his discretion, may by writing under his hand, authorise the Deputy Governor to exercise for and on behalf of the Governor, subject to such exceptions and conditions as the Governor may from time to time specify, any or all of the functions of the office of Governor.

(3) The powers and authority of the Governor shall not be affected by any authority of the Deputy Governor under subsection (2) of this section and, subject to the provisions of this Constitution and of any law by which any function which the Deputy Governor is authorised to exercise is conferred, the Deputy Governor shall comply with such instructions relating to the exercise of that function as the Governor, acting in his discretion, may from time to time address to him:

Provided that the question whether or not the Deputy Governor has in any matter complied with any such instructions shall not be enquired into in any court of law.

(4) Any authority given under subsection (2) of this section may at any time be varied or revoked by Her Majesty by instructions given through a Secretary of State or by the Governor, acting in his discretion, by writing under his hand.

(5) In subsection (2) of this section the reference to any functions of the office of Governor does not include a reference to—

- (a) the functions conferred upon the Governor by this section; or

- (b) any functions conferred upon the Governor by any Act of the Parliament of the United Kingdom or by any Order of Her Majesty in Council or other instrument made under any such Act other than the Bermuda Constitution Act 1967 [*title 2 item 9*].

**Personal staff and expenditure of the Governor**

20 (1) The Legislature may, by law, 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.

(2) Any salaries, allowances or other sums prescribed under subsection (1) of this section shall be a charge on the Consolidated Fund.

(3) The power to make appointments to the offices for the time being prescribed under subsection (1) 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.

**Exercise of Governor's functions**

21 (1) In the exercise of his functions the Governor shall, subject to the provisions of this section, obtain and act in accordance with the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet.

(2) Subsection (1) of this section shall not apply to the exercise by the Governor of—

- (a) any function relating to any business of the Government for which he is responsible under section 62 of this Constitution;
- (b) any function conferred upon him by this Constitution which is expressed to be exercisable by him in his discretion, or in accordance with the recommendation or advice of, or after consultation with, any person or authority other than the Cabinet; or
- (c) any function conferred upon him by any other law which is expressed to be exercisable by him in his discretion or which he is otherwise authorised by such law to exercise without obtaining the advice of the Cabinet.

## **BERMUDA CONSTITUTION ORDER 1968**

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(3) Where the Governor is by this Constitution or any other law directed to exercise any function in accordance with the recommendation of any person or authority, then—

- (a) before he acts in accordance therewith, he may, acting in his discretion, once refer that recommendation back for reconsideration by the person or authority concerned; and
- (b) if that person or authority, having reconsidered the original recommendation under the preceding paragraph, substitutes therefor a different recommendation, the provisions of this subsection shall apply to that different recommendation as they apply to the original recommendation.

(4) Where the Governor is by this Constitution or any other law directed to exercise any function after consultation with any person or authority other than the Cabinet he shall not be obliged to exercise that function in accordance with the advice of that person or authority.

(5) Where the Governor has obtained the advice of the Cabinet or a Minister on any matter in pursuance of subsection (1) of this section, he may act otherwise than in accordance with that advice if in his judgment it is necessary or expedient so to act in the interests of any of the matters referred to in paragraphs (a), (b), (c) and (d) of section 62(1) of this Constitution.

(6) Where the Governor is by this Constitution or any other law directed to exercise any function in accordance with the recommendation or advice of, or after consultation with, any person or authority, the question whether he has so exercised that function shall not be inquired into in any court.

### **Powers of pardon, etc.**

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

- (a) grant a pardon, either free or subject to lawful conditions, to any person convicted by any court of Bermuda of an offence against any law in force in Bermuda;
- (b) grant to any person a respite, either indefinite or for a specified period, from the execution of any punishment imposed by such a court on that person for such an offence;

- (c) substitute a less severe form of punishment for that imposed by such a court for such an offence; or
- (d) remit the whole or any part of any sentence passed by such a court for such an offence or any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.

(2) In exercise of the powers conferred upon him by subsection (1) of this section, the Governor shall act after consultation with the Committee established under section 23 of this Constitution.

(3) Whenever any person has been sentenced to death by any court of Bermuda, other than a court-martial, for an offence against any law in force in Bermuda, the Governor shall call upon the judge who presided at the trial to make to him a written report of the case of such offender and shall cause such report, together with such other information derived from the record of the case or elsewhere as the Governor, acting in his discretion, may require, to be taken into consideration at a meeting of that Committee.

(4) In this section "court of Bermuda" includes Her Majesty in Council and any court having jurisdiction in Bermuda established by or under any Act of the Parliament of the United Kingdom.

**Establishment and procedure of Advisory Committee**

23 (1) There shall be for Bermuda an Advisory Committee on the Prerogative of Mercy (in this section referred to as "the of Committee") which shall consist of—

- (a) five members who shall be appointed by the Governor after consultation with the Premier; and
- (b) *[deleted by UK SI 1969 No. 1310 published in Bermuda as GN 525/1979]*

(2) The members appointed by the Governor under subsection (1)(a) of this section shall be appointed by instrument under the Public Seal.

(3) 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.

(4) No business shall be transacted at any meeting of the Committee unless there are at least three members present.

(5) The office as a member of the Committee of any member appointed under subsection (1)(a) of this section shall become vacant—

## **BERMUDA CONSTITUTION ORDER 1968**

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- (a) in the case of a person who at the date of his appointment was a Minister, if he ceases to be a Minister; or
- (b) if the Governor, acting after consultation with the Premier, revokes his appointment as a member of the Committee.

(6) Subject to subsection (4) 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.

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

### **Powers to dispose of land**

24 Subject to the provisions of this Constitution and of any other law, the Governor or any person authorised by him in that behalf, in Her Majesty's name and on Her Majesty's behalf, may, under the Public Seal, make grants and dispositions of lands or other immovable property in Bermuda or interests in such property that are vested in Her Majesty for the purposes of the Government and may exercise in relation to such property or interests any other powers that are lawfully exercisable by Her Majesty.

### **Powers to constitute offices and make appointments, etc.**

25 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 Bermuda 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.

**CHAPTER III**

**THE LEGISLATURE**

*Composition*

**Legislature of Bermuda**

26 There shall be a Legislature for Bermuda which shall consist of Her Majesty, a Senate and a House of Assembly.

**Composition of Senate**

27 (1) The Senate shall consist of eleven members who shall be appointed by the Governor by instrument under the Public Seal in accordance with the provisions of this section.

(2) Of the Senators-

- (a) five shall be appointed by the Governor acting in accordance with the advice of the Premier;
- (b) three shall be appointed by the Governor acting in accordance with the advice of the Opposition Leader; and
- (c) three shall be appointed by the Governor acting in his discretion.

**Composition of House of Assembly**

28 The House of Assembly shall consist of forty members who, subject to the provisions of this Constitution, shall be elected in the manner prescribed by any law in force in Bermuda.

**Qualifications for membership of Senate and House of Assembly**

29 Subject to the provisions of section 30 of this Constitution, a person shall be qualified to be appointed as a Senator or elected as a member of the House of Assembly if, and shall not be qualified to be so appointed or elected unless, he-

- (a) is a British subject of the age of twenty-one years or upwards; and
- (b) possesses Bermudian status;

and a person shall not be qualified to be elected as a member of the House of Assembly unless he is also ordinarily resident in Bermuda.

[NOTE by the British Nationality Act 1981 section 51 without prejudice to subsection (3)(c) thereof in any UK statutory instrument made before 1

## **BERMUDA CONSTITUTION ORDER 1968**

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*January 1983 "British subject" and "Commonwealth citizen" have the same meaning and in relation to any time after 1 January 1983 means a person who has the status of a Commonwealth citizen under the British Nationality Act 1981]*

### **Disqualification for membership of Senate and House of Assembly**

30 (1) No person shall be qualified to be appointed as a Senator or elected as a member of the House of Assembly who—

- (a) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or state;
- (b) has been adjudged or otherwise declared bankrupt under any law in force in Bermuda and has not been discharged;
- (c) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Bermuda;
- (d) is under sentence of death imposed on him by a court in any part of the Commonwealth, 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;
- (e) is disqualified for membership of the House of Assembly under any law in force in Bermuda by reason of his having been convicted of any offence relating to elections;
- (f) holds or is acting in the office of a judge of the Supreme Court or the Court of Appeal or, subject to the provisions of subsection (3) of this section, any public office, or is serving in any capacity in the armed forces of the Crown that is prescribed for the purposes of this subsection by any law enacted by the Legislature.

(2) A person shall not be qualified to be appointed as a Senator if he is a member of the House of Assembly or a person for the time being nominated, with his consent, as a candidate for election to the House of Assembly; and a person shall not be qualified to be elected as a Member of the House of Assembly if he is a Senator.

(3) The Legislature may by law provide—

- (a) that a person shall not be disqualified for appointment as a Senator or election as a member of the House of Assembly by virtue of his holding or acting in any public office specified (either individually or by reference to a class of office) by such law;
- (b) that a person may stand as a candidate for election to the House of Assembly notwithstanding that he holds or is acting in any public office specified (in the manner aforesaid) by such law if he undertakes to relinquish or, as the case may be, to cease to act in that office if he is elected as a member of that House; or
- (c) that any office specified (in the manner aforesaid) by such law, being an office the emoluments of which are paid, directly or indirectly, out of public funds, but which would not apart from the provisions of such law be a public office for the purposes of this section, shall be deemed to be a public office for those purposes.

(4) Any law made in pursuance of subsection (3)(b) of this section may contain incidental and consequential provisions, including provision that a member who has given such an undertaking as is referred to in that subsection shall be incapable of taking his seat in the House until he has fulfilled that undertaking and shall vacate his seat if he has not fulfilled it within such time as is specified by such law; and for the avoidance of doubts it is hereby declared that, where provision is made in pursuance of subsection (3)(c) of this section in respect of any office, provision may also be made in pursuance of subsection (3)(b) of this section in respect of that office.

(5) For the purposes of subsection (1)(d) of this section—

- (a) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds twelve months, but if any one of those sentences exceeds that term they shall be regarded as one sentence; 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.

(6) Subject to such exceptions and limitations as may be prescribed by the Legislature, a person shall not be qualified to be elected

## **BERMUDA CONSTITUTION ORDER 1968**

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as a member of the House of Assembly if he has an interest in any Government contract and has not, within seven days of his nomination as a candidate for election, disclosed the nature of the contract and his interest therein by means of a notice published in the Gazette or in a newspaper published and circulating in Bermuda.

(7) Subject to such exceptions and limitations as may be prescribed by the Legislature, a person shall not be qualified to be appointed as a Senator if he has an interest in any Government contract and has not, at least seven days before the date of his prospective appointment, disclosed the nature of the contract and his interest therein by means of a notice published in the Gazette or in a newspaper published and circulating in Bermuda.

(8) In subsections (6) and (7) of this section and subsection (1)(f) of the next following section "Government contract" means any contract made with the Government or with a department of the Government or with an officer of the Government contracting as such.

### **Tenure of seats of members of Senate and House of Assembly**

31 (1) The seat of a member of either House shall become vacant—

- (a) upon a dissolution of the Legislature;
- (b) if he resigns it by writing under his hand addressed, in the case of a Senator, to the President or, in the case of a member of the House of Assembly, to the Speaker;
- (c) if he ceases to be a British subject or to possess Bermudian status;

*[NOTE by the British Nationality Act 1981 section 51 without prejudice to subsection (3)(c) thereof in any UK statutory instrument made before 1 January 1983 "British subject" and "Commonwealth citizen" have the same meaning and in relation to any time after 1 January 1983 means a person who has the status of a Commonwealth citizen under the British Nationality Act 1981]*

- (d) if he is absent from the sittings of the House for such period and in such circumstances as may be prescribed in the rules of procedure of the House;
- (e) subject to the provisions of subsection (2) of this section, if any circumstances arise that, if he were not a member of the House, would cause him to be disqualified for appointment or, as the case may be,

election thereto by virtue of subsections (1) to (5) of section 30 of this Constitution or any law enacted in pursuance thereof.

- (f) subject to such exceptions and limitations as may be prescribed by the Legislature, if he acquires an interest in any Government contract and has not, within seven days of acquiring that interest, disclosed the nature of the contract and his interest therein by means of a notice published in the Gazette or in a newspaper published and circulating in Bermuda.

(1A) A Senator shall also vacate his seat in the Senate if the Governor, acting in accordance with the advice of the Premier in the case of a Senator appointed in accordance with that advice, or acting in accordance with the advice of the Opposition Leader in the case of a Senator appointed in accordance with that advice, or acting in his discretion in the case of a Senator appointed by him in his discretion, declares the seat of that Senator to be vacant by writing under the hand of the Governor addressed to the President of the Senate.

(2) If circumstances such as are referred to in subsection (1)(e) of this section arise because any member of either House is under sentence of death or imprisonment, declared bankrupt, adjudged to be of unsound mind or convicted of an offence relating to elections and it is open to the member to appeal against the decision (either with the leave of a court or other authority or without such leave), he shall forthwith cease to perform his functions as a member of that House but, subject to subsection (3) of this section, he shall not vacate his seat until the expiration of a period of thirty days thereafter:

Provided that the President in the case of a Senator and the Speaker in the case of a member of the House of Assembly may, at the request of the member, from time to time extend that period for further periods of thirty days to enable the member to pursue an appeal against the decision, so, however, that extensions of time exceeding in the aggregate one hundred and fifty days shall not be given without the approval, signified by resolution, of the House of which he is a member.

(3) 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, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal of leave to appeal or for any other reason, it ceases to be open to the member to appeal, he shall forthwith vacate his seat.

## **BERMUDA CONSTITUTION ORDER 1968**

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(4) 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 (2) of this section and he may resume the performance of his functions as a member.

(5) References in this section to the President or the Speaker shall, if that office is vacant or the holder thereof is absent from Bermuda, be construed as if they were references to the Vice-President or the Deputy Speaker, as the case may require.

(6) The provisions of subsection (1) of this section shall be without prejudice to any provision contained in any law made in pursuance of paragraph (b) of section 30(3) of this Constitution for the vacation by a member of the House of Assembly of his seat.

### **President and Vice-President of Senate and Speaker and Deputy Speaker of House of Assembly**

32 (1) At its first sitting after any general election—

- (a) the Senate shall elect a President and a Vice-President from among its members and
- (b) the House of Assembly, shall elect a Speaker and a Deputy Speaker from among its members;

and the election of a President or a Speaker shall take place before the transaction of any other business by the House concerned.

(2) The office of President, Vice-President, Speaker or Deputy Speaker shall become vacant if the holder thereof—

- (a) ceases to be a member of the Senate or the House of Assembly, as the case may be;
- (b) is required, under the provisions of section 31(2) of this Constitution, to cease to perform his functions as such a member; or
- (c) announces the resignation of his office to the House of which he is a member or resigns it by writing under his hand addressed, in the case of the President or the Speaker, to the Clerk of that House or, in the case of the Vice-President or the Deputy Speaker, to the President or the Speaker respectively;
- (d) in the case of the Vice-President or the Deputy Speaker, if he is elected to be President or Speaker.

(3) If the office of President, Vice-President, Speaker or Deputy Speaker becomes vacant for any reason other than a dissolution of the Legislature, the Senate or, as the case may require, the House of Assembly shall (unless the Legislature is sooner dissolved) elect one of its members to fill the vacancy at its next sitting after the occurrence of the vacancy or as soon as practicable thereafter.

**Determination of questions of membership of Senate and House of Assembly**

33 (1) The Supreme Court shall have jurisdiction to hear and determine any question whether—

- (a) any person has been validly appointed as a Senator or has vacated his seat as a Senator or is required, under the provisions of section 31(2) of this Constitution, to cease to perform his functions as a Senator;
- (b) any person has been validly elected as a member of the House of Assembly; or
- (c) any member of the House of Assembly has vacated his seat as such a member or is required, under the provisions of section 31(2) of this Constitution, to cease to perform his functions as such.

(2) An application to the Supreme Court for the determination of—

- (a) any question under paragraph (a) of subsection (1) of this section may be made by any Senator or by any person registered in any constituency as an elector for the purposes of elections or by the Attorney-General;
- (b) any question under paragraph (b) of that subsection may be made by any person registered as such an elector in the constituency in which the election to which the application relates was held or by any person who was a candidate in that constituency at that election or by the Attorney-General;
- (c) any question under paragraph (c) of that subsection may be made by any member of the House of Assembly or by any person registered as an elector for the purposes of elections in the constituency for which the member in question was returned or by the Attorney-General;

## **BERMUDA CONSTITUTION ORDER 1968**

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and if such an application 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.

(3) The Legislature may by law make, or provide for the making of, provision with respect to—

(a) the circumstances and manner in which and the imposition of conditions upon which any application may be made to the Supreme Court for the determination of any question under this section; and

(b) the powers, practice and procedure of the Supreme Court in relation to any such application.

(4) An appeal shall lie as of right to the Court of Appeal on any final decision of the Supreme Court determining such a question as is referred to in subsection (1) of this section.

(5) No appeal shall lie from any decision of the Court of Appeal in exercise of the jurisdiction conferred by subsection (4) of this section and no appeal shall lie from any decision of the Supreme Court in proceedings under this section other than a final decision determining such a question as is referred to in subsection (1) of this section.

(6) In the exercise of his functions under this section the Attorney-General shall not be subject to the direction or control of any other person or authority.

### *Powers and Procedure*

#### **Power to make laws**

34 Subject to the provisions of this Constitution, the Legislature may make laws for the peace, order and good government of Bermuda.

#### **Mode of exercise of power to make laws**

35 (1) Subject to the provisions of sections 37 and 38 of this Constitution, the power of the Legislature to make laws shall be exercised by bills passed by both Houses, either without amendment or with such amendments only as are agreed to by both Houses, and assented to by Her Majesty or by the Governor on behalf of Her Majesty.

(2) When a bill is presented to the Governor for assent, he shall signify that he assents or that he withholds assent or that he reserves the bill for the signification of Her Majesty's pleasure:

Provided that, unless he has been authorised by a Secretary of State to assent thereto, the Governor shall reserve for the signification of

Her Majesty's pleasure any bill which appears to him, acting in his discretion—

- (a) to be inconsistent with any obligation of Her Majesty or of Her Majesty's Government in the United Kingdom towards any other state or power or any international organisation;
- (b) to be likely to prejudice the Royal prerogative;
- (c) to be in any way repugnant to or inconsistent with the provisions of this Constitution;
- (d) to affect any matter for which he is responsible under section 62 of this Constitution; or
- (e) to relate to currency or banking.

(3) A Bill assented to by Her Majesty shall become a law when the Governor has signified such assent by proclamation published in the Gazette.

(4) In every Bill presented to the Governor for assent, other than a Bill presented under section 37 or section 38 of this Constitution, the words of enactment shall be as follows:—

"Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

(5) In every Bill presented to the Governor for assent under section 37 or section 38 of this Constitution the words of enactment shall be as follows:—

"Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Bermuda in accordance with the provisions of section 37 (or section 38, as the case may be) of the Constitution of Bermuda, and by the authority of the same, as follows:— "

**Restrictions with regard to certain financial measures**

36 (1) The Senate shall not—

- (a) proceed upon any money bill, other than a money bill sent from the House of Assembly, or upon any amendment to a money bill;

## **BERMUDA CONSTITUTION ORDER 1968**

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- (b) proceed upon any other bill, other than a bill sent as aforesaid, that, in the opinion of the person presiding, makes provision for any of the following purposes—
- (i) the imposition, repeal or alteration of taxation;
  - (ii) the imposition, repeal or alteration of any charge upon the Consolidated Fund or any other public fund of Bermuda;
  - (iii) the payment, issue or withdrawal from the Consolidated Fund or any other public fund of Bermuda of any moneys not charged thereon or any alteration in the amount of such payment, issue or withdrawal; or
  - (iv) the composition or remission of any debt due to the Government;
- (c) proceed upon any amendment to a bill other than a money bill that, in the opinion of the person presiding, is an amendment that makes provision for any of the purposes specified in paragraph (b) of this subsection or an amendment to any provision for any of those purposes contained in the bill; or
- (d) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes.

(2) Nothing in subsection (1) of this section shall be construed as preventing the Senate from returning any bill to the House of Assembly with a message recommending any amendment to the bill that the Senate may consider desirable.

(3) Except on the recommendation of the Governor signified by a Minister, the House of Assembly shall not—

- (a) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, makes provision for any of the following purposes:
- (i) for the imposition of taxation or the alteration of taxation otherwise than by reduction;
  - (ii) for the imposition of any charge upon the Consolidated Fund or any other public fund of

Bermuda or the alteration of any such charge otherwise than by reduction;

(iii) for the payment, issue or withdrawal from the Consolidated Fund or any other public fund of Bermuda of any moneys not charged thereon or any increase in the amount of such a payment, issue or withdrawal; or

(iv) for the composition or remission of any debt due to the Government; or

(b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes.

**Restriction on powers of Senate as to money bills which are not taxation bills**

37 (1) This section applies to any money bill that is not a taxation bill.

(2) If any bill to which this section applies, having been passed by the House of Assembly and sent to the Senate at least two months before the end of the session, is not passed by the Senate within two months after it is sent to the Senate, the bill shall, unless the House of Assembly otherwise resolves, be presented to the Governor for assent notwithstanding that the Senate has not consented to the bill.

(3) There shall be inserted in any bill that is presented to the Governor for assent in pursuance of subsection (2) of this section any amendments to it that are certified by the Speaker to have been recommended by the Senate and agreed to by the House of Assembly.

(4) There shall be endorsed on every bill to which this section applies when it is sent to the Senate the certificate of the Speaker signed by him that it is a money bill which is not a taxation bill; and there shall be endorsed on any bill that is presented to the Governor for assent in pursuance of subsection (2) of this section the certificate of the Speaker signed by him that it is a money bill which is not a taxation bill and that the provisions of subsections (2) and (3) of this section have been complied with.

**Restriction on powers of Senate as to other public bills**

38 (1) This section applies to any public bill other than a bill to which section 37 of this Constitution applies.

## **BERMUDA CONSTITUTION ORDER 1968**

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(2) If any bill to which this section applies is passed by the House of Assembly in two successive sessions (whether or not the Legislature is dissolved between those sessions) and, having been sent to the Senate in each of those sessions at least one month before the end of the session, is rejected by the Senate in each of those sessions, that bill shall, on its rejection for the second time by the Senate, unless the House of Assembly otherwise resolves, be presented to the Governor for assent notwithstanding that the Senate has not consented to the bill:

Provided that the foregoing provisions of this subsection shall not have effect unless at least twelve months have elapsed between the date on which the bill is passed by the House of Assembly in the first session and the date on which it is passed by that House in the second session.

(3) For the purposes of this section, a bill shall be deemed to be rejected by the Senate if—

(a) in the case of a taxation bill, it is not passed by the Senate; or

(b) in the case of any other bill, it is not passed by the Senate without amendment, or it is passed by the Senate with any amendment which is not agreed to by the House of Assembly.

(4) There shall be endorsed on every taxation bill when it is sent to the Senate the certificate of the Speaker signed by him that it is a taxation bill.

(5) For the purposes of this section, a bill that is sent to the Senate in any session shall be deemed to be the same bill as a former bill sent to the Senate in the preceding session if, when it is sent to the Senate, it is identical with the former bill or contains only such alterations as are certified by the Speaker to be necessary owing to the time that has elapsed since the date of the former bill or to represent any amendments which have been made or recommended by the Senate in the former bill in the preceding session and agreed to by the House of Assembly.

(6) The House of Assembly may, if it thinks fit, on the passage through that House of a bill that is deemed to be the same bill as a former bill sent to the Senate in the preceding session, suggest any amendments without inserting the amendments in the bill, and any such amendments shall be considered by the Senate and, if agreed to by the Senate, shall be treated as amendments made by the Senate and agreed to by the House of Assembly; but the exercise of this power by

the House of Assembly shall not affect the operation of this section in the event of the rejection of the bill by the Senate.

(7) There shall be inserted in any bill that is presented to the Governor for assent in pursuance of this section any amendments to it that are certified by the Speaker to have been made or recommended by the Senate in the second session and agreed to by the House of Assembly.

(8) There shall be endorsed on any bill that is presented to the Governor for assent in pursuance of this section the certificate of the Speaker signed by him that it is a bill to which his section applies and that the provisions of this section have been complied with.

**Provisions relating to sections 36, 37 and 38**

39 (1) In sections 36, 37 and 38 of this Constitution "money bill" means a public bill which, in the opinion of the Speaker, contains only provisions dealing with all or any of the following matters, that is to say—

- (a) the imposition, repeal, remission, alteration or regulation of taxation;
- (b) the imposition, for the payment of debt or other financial purposes, of charges on public money, or the variation or repeal of any such charges;
- (c) the grant of money to the Crown or to any authority or person, or the variation or revocation of any such grant;
- (d) the appropriation, receipt, custody, investment, issue or audit of accounts of public money;
- (e) the raising or guarantee of any loan or the repayment thereof, or the establishment, alteration, administration or abolition of any sinking fund provided in connection with any such loan; or
- (f) subordinate matters incidental to any of the matters aforesaid:

and in this subsection the expressions "taxation", "debt", "public money" and "loan" do not include any taxation imposed, debt incurred, money provided or loan raised by any local authority body for local purposes.

(2) In sections 37 and 38 of this Constitution "taxation bill" means a money bill which, in the opinion of the Speaker, contains provisions for the imposition of an income tax, a capital gains tax, a corporation tax, a profits tax, an inheritance tax, a capital levy or estate duty or

## **BERMUDA CONSTITUTION ORDER 1968**

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makes provision for the cesser, remission, suspension, alteration or regulation of any such tax, levy or duty.

(3) Whenever the office of Speaker is vacant or the Speaker is for any reason unable to perform any function conferred upon him by subsection (1) or (2) of this section or by section 37 or 38 of this Constitution, that function may be performed by the Deputy Speaker.

(4) Any certificate given by the Speaker or Deputy Speaker under section 37 or 38 of this Constitution shall be conclusive for all purposes and shall not be questioned in any court.

### **Oath of allegiance**

40 No member of either House shall be permitted to take part in the proceedings of that House (other than proceedings necessary for the purposes of this section) until he has made and subscribed before that House an oath or affirmation of allegiance in the form set out in the Schedule to this Constitution:

Provided that the election of a President of the Senate or the election of a Speaker of the House of Assembly may take place before the members of the Senate or the House of Assembly, as the case may be, have made such oath or affirmation.

### **Validity of proceedings**

41 A House 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 House first meets after any general election), and any proceedings therein shall be valid notwithstanding that some person who was not entitled so to do sat or voted in the House or otherwise took part in the proceedings.

### **Presiding in the Senate and House of Assembly**

42 (1) The President of the Senate or, in his absence, the Vice-President or, if they are both absent, a Senator (not being a Minister or a Parliamentary Secretary) elected by the Senate for that sitting shall preside at each sitting of the Senate.

(2) The Speaker or, in his absence, the Deputy Speaker or if they are both absent, a member of the House of Assembly (not being a Minister or a Parliamentary Secretary) elected by the House for that sitting shall preside at each sitting of the House.

(3) References in this section to circumstances in which the President, Vice-President, Speaker or Deputy Speaker is absent include

references to circumstances in which the office of President, Vice-President, Speaker or Deputy Speaker is vacant.

**Quorum**

43 (1) If at any sitting of either House any member of the House who is present draws the attention of the member presiding at the sitting to the absence of a quorum and, after such interval as may be prescribed in the rules of procedure of the House, the member presiding at the sitting ascertains that a quorum of the House is still not present, the House shall be adjourned.

(2) For the purposes of this section—

(a) a quorum of the Senate shall consist of the President or the Senator presiding and four other Senators; and

(b) a quorum of the House of Assembly shall consist of the Speaker or other member presiding and fourteen other members of the House.

**Voting**

44 (1) Save as otherwise provided in this Constitution or in rules of procedure of the House made in accordance with section 45(2) of this Constitution, all questions proposed for decision in either House shall be determined by a majority of the votes of the members thereof present and voting.

(2) The President or other member presiding in the Senate shall have an original but no casting vote; and in the event of an equality of votes on any question, the motion shall be lost.

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

**Rules of procedure**

45 (1) Subject to the provisions of this Constitution, each House may make rules of procedure for the regulation and orderly conduct of its own proceedings and the despatch of business, and the passing, intituling and numbering of bills and the presentation of the same to the Governor for assent.

(2) The rules of procedure of a House may provide that a rule shall not be suspended, or that the ordinary procedure for the despatch of business shall not be departed from in favour of any exceptional procedure provided for in the rules, if such number of members of the

## **BERMUDA CONSTITUTION ORDER 1968**

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House as is specified by the rules object to such suspension or departure.

### **Privileges of Houses**

46 The Legislature may by law determine and regulate the privileges, immunities and powers of either House and the members thereof, 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.

### **Power of disallowance in respect of laws relating to Government stock**

47 (1) Any law enacted by the Legislature which has been assented to by the Governor and which appears to Her Majesty's Government in the United Kingdom to alter, to the injury of the stockholder, any provision relating to any stock to which this section applies or to involve a departure from the original contract in respect of any such stock, may be disallowed by Her Majesty through a Secretary of State.

(2) Whenever such a law has been disallowed by Her Majesty the Governor shall cause notice of such disallowance to be published in the Gazette and the law shall be annulled with effect from the date of publication of that notice.

(3) On the annulment of any law under this section 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; and, save as provided in the foregoing provisions of this subsection, the provisions of section 38(2) of the Interpretation Act 1889 [*NOTE the Interpretation Act 1889 was repealed and replaced by the Interpretation Act 1978 [title 1 item 1A]*] shall apply to that annulment as they apply to the repeal of an Act of Parliament.

(4) The stock to which this section applies is stock forming the whole or any part of the public debt of Bermuda by the conditions of issue of which it is provided that this section shall apply to it.

### **Session of the Legislature**

48 (1) Each session of the Legislature shall be held in such place and shall commence at such time as the Governor may appoint by proclamation published in the Gazette.

(2) The time appointed for the commencement of any session of the Legislature shall be such that a period of twelve months does not intervene between the end of one session and the first sitting of the Legislature in the next session.

**Prorogation and dissolution of the Legislature**

49 (1) The Governor, acting in accordance with the advice of the Premier, may at any time, by proclamation published in the Gazette, prorogue or dissolve the Legislature:

Provided that—

- (a) if the Premier advises the Governor to dissolve the Legislature and the Governor considers that the government of Bermuda can be carried on without a dissolution and that a dissolution would not be in the interests of Bermuda, the Governor, acting in his discretion, may refuse to dissolve the Legislature; and
- (b) if the office of Premier is vacant and the Governor considers that there is no prospect of his being able within a reasonable time to appoint to that office a person who can command the support of majority of the members of the House of Assembly the Governor, acting in his discretion, may dissolve the Legislature.

(2) Unless sooner dissolved, the Legislature shall stand dissolved on the expiration of five years from the date of its first sitting after any general election.

**Recalling dissolved Legislature in case of emergency**

50 If between a dissolution of the Legislature 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 two Houses to be summoned before that general election can be held, the Governor may, after consultation with the Premier, by proclamation published in the Gazette, summon the two Houses of the preceding Legislature, and that Legislature shall thereupon be deemed (except for the purposes of section 51(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, bye-elections and appointments to Senate**

51 (1) A general election of members of the House of Assembly shall be held at such time within three months after every dissolution of the Legislature as the Governor shall appoint by proclamation published in the Gazette.

(2) Whenever any person vacates his seat as a member of the House of Assembly for any reason other than a dissolution of the Legislature, an election to fill the vacancy shall be held within two months af-

## **BERMUDA CONSTITUTION ORDER 1968**

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ter the occurrence of the vacancy unless the Legislature is sooner dissolved or the date on which the Legislature will stand dissolved under the provisions of section 49(2) of this Constitution is less than four months after the occurrence of the vacancy.

(3) As soon as practicable after every general election the Governor shall proceed under section 27 of this Constitution to the appointment of members of the Senate.

(4) Whenever any person vacates his seat as a Senator for any reason other than a dissolution of the Legislature, the Governor shall, as soon as practicable, appoint a person to fill the vacancy under the same paragraph of section 27(2) of this Constitution as the person whose seat has become vacant was appointed.

### *Constituencies and the Franchise*

#### **Division of parishes of Bermuda into two-member constituencies**

52 (1) For the purpose of elections, the parish of Pembroke shall be divided into four constituencies and each of the other eight parishes of Bermuda shall be divided into two constituencies.

(2) Each constituency shall return two members to the House of Assembly.

(3) For the purposes of subsection (1) of this section, the boundaries of the parishes of Bermuda shall be the boundaries of those parishes subsisting immediately before the coming into operation of this Constitution [2 June 1968]:

Provided that the Legislature may by law include any reclaimed land within the boundaries of any parish and (without prejudice to the provisions of section 54 of this Constitution) of any constituency within that parish.

#### **Constituency Boundaries Commission**

53 (1) A Constituency Boundaries Commission for Bermuda shall be appointed from time to time at such time as the Governor, after consultation with the Premier and the Opposition Leader, may determine:

Provided that—

- (a) the first such Commission shall be appointed not earlier than 20th May 1970 nor later than 20th May 1974;
- (b) any subsequent Commission shall be appointed not less than three nor more than seven years from the date on

which the previous Commission submitted its report in accordance with the provisions of section 54 of this Constitution.

- (2) A Constituency Boundaries Commission shall consist of—
- (a) a Chairman appointed by the Governor, acting in his discretion;
  - (b) a 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;
  - (c) two members appointed by the Governor, acting in accordance with the advice of the Premier, from among the members of the two Houses; and
  - (d) two members appointed by the Governor, acting in accordance with the advice of the Opposition Leader, from among those members.

(3) A person shall not be qualified to be appointed as the Chairman or the judicial member of a Constituency Boundaries Commission if he is a member of either House or a public officer.

(4) The Chairman or the judicial member of a Constituency Boundaries Commission shall vacate his office—

- (a) on the day following the date of submission under section 54 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 a Constituency Boundaries Commission shall vacate his office—

- (a) on the day following the date of submission under section 54 of this Constitution of the report of the Commission;
- (b) if he ceases to be a member of either House;

## **BERMUDA CONSTITUTION ORDER 1968**

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(c) if his appointment is revoked by the Governor, acting, in the case of a member appointed under subsection (2)(c) of this section, in accordance with the advice of the Premier or, in the case of a member appointed under subsection (2)(d) of this section, in accordance with the advice of the Opposition Leader.

(6) A Constituency Boundaries 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) A Constituency Boundaries 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) In the exercise of its functions under this Constitution, a Constituency Boundaries Commission shall not be subject to the direction or control of any other person or authority.

(9) Subject to the provisions of subsection (7) of this section, any question before a Constituency 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.

### **Review and alteration of constituency boundaries**

54 (1) A Constituency Boundaries Commission shall, as soon as practicable after its appointment, review the boundaries of the constituencies into which the parishes of Bermuda are divided and submit to the House of Assembly a report either—

- (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.

(2) In determining whether or not to recommend any changes in the boundaries of the constituencies, the Commission shall—

- (a) take no account of the racial distribution of electors within a parish;
- (b) take account of the natural boundaries within a parish; and
- (c) subject to the provisions of section 52(1) of this Constitution and to the foregoing provisions of this subsection, ensure that the constituencies shall contain, so far as it reasonably practicable, equal numbers of persons qualified to be registered as electors under section 55 of this Constitution:

Provided that no account shall be taken of the population resident in any area leased to the United States of America in pursuance of the agreement between the Governments of the United Kingdom and the United States of America signed on 27th March, 1941 or which by virtue of any law is in the possession of the United States of America in anticipation of such a lease.

(3) As soon as may be after the Commission has submitted a report under subsection (1)(b) of this section, the Premier shall lay before the House of 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 Premier 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 Premier shall lay before the House of 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 House of Assembly, or is withdrawn by leave of that House, an amended draft shall be laid without undue delay by the Premier before the House of Assembly.

(6) If any draft order laid under this section is approved by resolution of the House of Assembly, the Premier shall submit it to the Governor who shall make an order (which shall be published in the Gazette) in terms of the draft; and that order shall come into force upon the next dissolution of the Legislature 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

## **BERMUDA CONSTITUTION ORDER 1968**

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thereof has been approved by resolution of the House of Assembly shall not be inquired into in any court except on the ground that it is inconsistent with the provisions of section 52(1) of this Constitution.

### **Qualifications and disqualifications of electors**

55 (1) Subject to the provisions of subsection (2) of this section, a person shall be qualified to be registered as an elector for the purposes of elections in a constituency if and shall not be so qualified unless, on the qualifying date, he—

(a) is a British subject who has attained the age of eighteen years;

*[paragraph (a) amended to give effect to 1989:57 section 3 effective 1 January 1990]*

(b) he possesses Bermudian status or, if he does not possess that status, was registered as an elector on 1st May, 1976; and

(c) he is ordinarily resident in that constituency.

*[NOTE by the British Nationality Act 1981 section 51 without prejudice to subsection (3)(c) thereof in any UK statutory instrument made before 1 January 1983 "British subject" and "Commonwealth citizen" have the same meaning and in relation to any time after 1 January 1983 means a person who has the status of a Commonwealth citizen under the British Nationality Act 1981]*

(2) No person shall be qualified to be registered as aforesaid who, on the qualifying date—

(a) is registered as an elector for the purposes of elections in any other constituency;

(b) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Bermuda;

(c) is disqualified for such registration under any law in force in Bermuda by reason of his serving or being under such a sentence of imprisonment (by whatever name called) as may be prescribed by any such law; or

(d) is disqualified for such registration under any such law by reason of his having been convicted of any offence relating to elections.

(3) In this section "the qualifying date" means, in relation to any person, such date as may be prescribed by law as the date with reference to which that person's qualifications for registration shall be ascertained for the purposes of the preparation or revision of a register of electors for the constituency concerned.

## **CHAPTER IV**

### THE EXECUTIVE

#### **Executive authority**

56 (1) The executive authority of Bermuda is vested in Her Majesty.

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

(3) Nothing in this section shall prevent the Legislature from conferring functions on persons or authorities other than the Governor.

#### **The Cabinet**

57 (1) There shall be a Cabinet for Bermuda which shall consist of the Premier and, subject to the provisions of section 64 of this Constitution, not less than six other Ministers appointed in accordance with section 58 of this Constitution.

(2) The Cabinet shall be collectively responsible to the Legislature for any advice given to the Governor by or under the general authority of the Cabinet and for all things done by or under the authority of any Minister in the execution of his office.

(3) The provisions of subsection (2) of this section shall not apply in relation to—

- (a) the appointment and removal from office of Ministers and Parliamentary Secretaries, the charging of a Minister under section 61 of this Constitution with responsibility for the conduct of any business of the Government, or the authorisation of another Minister to perform the functions of the Premier during absence or illness;
- (b) the appointment of any Senator under paragraph (a) of section 27(2) of this Constitution; or
- (c) the dissolution of the Legislature.

## **BERMUDA CONSTITUTION ORDER 1968**

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### **Appointment of Premier and other Ministers**

58 (1) The Governor, acting in his discretion, shall appoint as the Premier the member of the House of Assembly who appears to him best able to command the confidence of a majority of the members of that House.

(2) The other Ministers shall be appointed by the Governor in accordance with the advice of the Premier and, of those Ministers, not less than one nor more than two shall be appointed from among the Senators and the remainder shall be appointed from among the members of the House of Assembly.

(3) If occasion arises for making an appointment of a Minister between a dissolution of the Legislature and the polling in the next following general election the preceding provisions of this section shall have effect for that purpose as if the Legislature had not been dissolved.

(4) A person shall not be qualified to be appointed as a Minister if he is the President or Vice-President of the Senate or the Speaker or Deputy Speaker of the House of Assembly or holds or is acting in any public office specified under paragraph (a) of section 30(3) of this Constitution.

(5) Appointments under this section shall be made by instrument under the Public Seal.

### **Tenure of office of Premier and other Ministers**

59 (1) If the House of Assembly by the affirmative votes of a majority of all the members thereof passes a resolution that it has no confidence in the Government, the Governor shall, by instrument under the Public Seal, revoke the Premier's appointment:

Provided that before so doing the Governor shall consult with the Premier and may dissolve the Legislature in accordance with the provisions of section 49(1) of this Constitution instead of revoking the Premier's appointment.

(2) The Governor, acting in his discretion, may by instrument under the Public Seal revoke the appointment of the Premier if at any time between the polling in a general election and the first sitting of the House of Assembly thereafter the Governor considers that, in consequence of the changes in the membership of the House of Assembly resulting from that election, the Premier will not be the member of the House best able to command the confidence of a majority of the members thereof.

(3) The office of any Minister shall become vacant—

- (a) if for any reason other than a dissolution of the Legislature the holder thereof ceases to be a member of the House of which he was a member at the time of his appointment as a Minister;
  - (b) if, under the provisions of section 31(2) of this Constitution, he is required to cease to perform his functions as a member of that House; or
  - (c) if he is elected to be the President or Vice-President of the Senate or the Speaker or Deputy Speaker of the House of Assembly or is appointed to or to act in any public office specified under paragraph (a) of section 30(3) of this Constitution.
- (4) The office of any Minister other than the Premier shall become vacant—
- (a) if his appointment thereto is revoked by the Governor, acting in accordance with the advice of the Premier, by instrument under the Public Seal;
  - (b) whenever the office of Premier becomes vacant; or
  - (c) if he is not, at the commencement of the first Session of the Legislature after a dissolution thereof, a member of the House of which he was a member at the time of his appointment as a Minister.

**Performance of functions of Premier in certain events**

60 (1) Whenever the Premier is absent from Bermuda or is unable by reason of illness to perform the functions conferred upon him by this Constitution, the Governor may, by directions in writing, authorise any other Minister who was appointed from among the members of the House of Assembly to perform those functions (other than the functions conferred on the Premier by subsection (2) of this section) and that Minister may perform those functions until his authority is revoked by the Governor.

(2) The powers conferred upon the Governor by this section shall be exercised by him in accordance with the advice of the Premier:

Provided that if the Governor considers that it is impracticable to obtain the Premier's advice owing to his absence or illness the Governor may exercise those powers in his discretion.

## **BERMUDA CONSTITUTION ORDER 1968**

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### **Performance of functions of other Ministers in certain events**

60A (1) Whenever a Minister other than the Premier is unable, by reason of illness or absence from Bermuda or absence from his duties on leave, to perform the functions of his office, the Governor may, in writing—

- (a) appoint a person who is a member of the same House as that Minister to be a temporary Minister; or
- (b) assign responsibility for the performance of the functions of that Minister to another Minister (including the Premier),

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.

(2) Subject to the provisions of section 59(3) and (4) 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 (1) 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.

(3) The powers conferred on the Governor by this section shall be exercised by him in accordance with the advice of the Premier.

### **Allocation of portfolios to Ministers**

61 (1) The Governor, acting in accordance with the advice of the Premier, may by directions in writing—

- (a) charge the Premier 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 members of the House of 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 Cabinet and conducting government business relating to such matters in either House, 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 62 of this Constitution;
- (b) the discharge by the courts of Bermuda of their judicial functions;
- (c) the initiation, conduct and discontinuance of criminal proceedings;
- (d) the audit of the accounts of Bermuda;
- (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 section 93 of this Constitution.

(4) 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; and any such body shall have such advisory, consultative and administrative functions as may be conferred on it by such a law or such directions, but, in exercising any such functions, the body shall be subject to the directions of the Minister concerned.

(5) Where a Minister has been charged under subsection (1) of this section with responsibility for the administration of any department

## **BERMUDA CONSTITUTION ORDER 1968**

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of government, the Minister shall (subject to the provisions of this Constitution and of any other law) exercise general direction and control over that 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.

### **Governor's special responsibilities**

62 (1) The Governor, acting in his discretion, shall be responsible for the conduct (subject to the provisions of this Constitution and of any other law) of any business of the Government, including the administration of any department of government, with respect to the following matters—

- (a) external affairs;
- (b) defence, including armed forces;
- (c) internal security;
- (d) the police.

(2) The Governor, acting in his discretion, may by directions in writing delegate, with the prior approval of the Secretary of State, to the Premier or any other Minister designated by him after consultation with the Premier such responsibility for any of the matters specified in subsection (1) of this section as the Governor may think fit upon such conditions as he may impose.

### **Parliamentary Secretaries**

63 (1) The Governor, acting in accordance with the advice of the Premier, may by instrument under the Public Seal appoint Parliamentary Secretaries from among the Senators and, subject to the provisions of section 64 of this Constitution, the members of the House of Assembly to assist Ministers in the performance of their functions.

(2) If occasion arises for making an appointment of a Parliamentary Secretary between a dissolution of the Legislature and the polling in the next following general election the provisions of subsection (1) of this section shall have effect for that purpose as if the Legislature had not been dissolved.

(3) A person shall not be qualified to be appointed as a Parliamentary Secretary if he is the President or Vice-President of the Senate or the Speaker or Deputy Speaker of the House of Assembly or holds or

is acting in any public office specified under paragraph (a) of section 30(3) of this Constitution.

(4) The provisions of subsections (3) and (4) of section 59 of this Constitution shall apply in relation to Parliamentary Secretaries as they apply in relation to Ministers.

**Restriction on appointments from House of Assembly**

64 The number of Ministers and Parliamentary Secretaries who are members of the House of Assembly shall not at any time exceed twelve.

**Summoning of Cabinet**

65 The Cabinet shall not be summoned except by the authority of the Premier.

**Proceedings of Cabinet**

66 (1) The Premier shall, so far as is practicable, attend and preside at all meetings of the Cabinet and in his absence such other Minister shall preside as the Premier shall appoint.

(2) The Cabinet shall not be disqualified for the transaction of business by reason of any vacancy in the membership of the Cabinet (including any vacancy not filled when the Cabinet is first constituted or is reconstituted at any time) and the validity of the transaction of business in the Cabinet 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.

**Summoning of persons to Cabinet**

67 The Premier may summon any Parliamentary Secretary or public officer to a meeting of the Cabinet whenever, in the opinion of the Premier, the business before the Cabinet renders his presence desirable.

**Oaths**

68 A Minister or a Parliamentary Secretary shall not enter upon the functions of his office unless he has made before the Governor an oath or affirmation of allegiance and an oath or affirmation for the due execution of his office in the forms set out in the Schedule to this Constitution.

**Secretary to Cabinet**

69 (1) There shall be a Secretary to the Cabinet whose office shall be a public office.

## **BERMUDA CONSTITUTION ORDER 1968**

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(2) The Secretary to the Cabinet shall have charge of the Cabinet Office and shall be responsible, in accordance with such instructions as may be given to him by the Premier, for arranging the business for, and keeping the minutes of, the meetings of the Cabinet 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 Premier may from time to time direct.

(3) The Secretary to the Cabinet shall—

- (a) transmit to the Governor copies of all papers submitted for consideration by the Cabinet or any committee thereof at the same time as those papers are transmitted to Ministers;
- (b) inform the Governor of the summoning of any meeting of the Cabinet or any committee of the Cabinet and of the matters to be discussed at any meeting of the Cabinet or any committee thereof at the same time as Ministers are so informed; and
- (c) furnish the Governor, as soon as practicable after each meeting of the Cabinet or any committee thereof with a copy of the minutes of that meeting showing the matters discussed and the conclusions reached at that meeting.

### **Governor's Council**

70 (1) There shall be a Governor's Council for the purpose of considering matters for which the Governor is responsible under section 62(1) of this Constitution.

(2) The Governor's Council shall consist of—

- (a) the Governor, as Chairman;
- (b) the Premier; and
- (c) not less than two or more than three other Ministers appointed in writing by the Governor after consultation with the Premier.

(3) In the absence of the Governor the Deputy Governor shall preside at any meeting of the Governor's Council.

(4) A Minister appointed under subsection 2(c) of this section shall vacate his seat on the Council if—

- (a) his office becomes vacant under section 59(3) or (4) of this Constitution; or

(b) the Governor, acting after consultation with the Premier, so directs in writing.

(5) Nothing in subsection (1) shall be construed as requiring the Governor to act in accordance with the advice of the Council in the discharge of his responsibilities under the said section 62(1).

(6) The Governor, acting in his discretion, may summon a meeting of the Council whenever he considers it desirable to do so and shall summon such a meeting whenever the Premier requests him to do so.

(7) The Governor may—

(a) after consultation with the Premier, summon any Minister who is not a member of the Council to attend any meeting of the Council;

(b) summon any other person to attend any meeting of the Council whenever he considers it desirable to do so.

(8) Subject to the provisions of this section, the Council may regulate its own procedure.

(9) The Secretary to the Cabinet shall be the Secretary to the Council.

**Attorney-General**

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

(1A) The Attorney-General shall be either a member of either House who is entitled to practise as a barrister in Bermuda, in which case he shall be appointed by the Governor in accordance with the advice of the Premier, or a public officer.

(2) 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 civil court of Bermuda in respect of any offence against any law in force in Bermuda;

(b) to take over and continue any such criminal proceedings that have been instituted or undertaken 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.

## **BERMUDA CONSTITUTION ORDER 1968**

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(3) The powers of the Attorney-General under subsection (2) 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 special instructions.

(4) The powers conferred upon the Attorney-General by paragraphs (b) and (c) of subsection (2) of this section shall be vested in him to the exclusion of any other person:

Provided that, where any other person or authority has instituted criminal proceedings which have not been taken over and continued by the Attorney-General under the said paragraph (b), nothing in this subsection shall, save when the Attorney-General has exercised his powers under the said paragraph (b), prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.

(5) 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.

(6) In the exercise of the powers conferred on him by this section, the Attorney-General shall not be subject to the direction or control of any other person or authority.

### **Director of Public Prosecutions**

71A At any time when the office of Attorney-General is held by a member of either House—

- (a) there shall be a Director of Public Prosecutions whose office shall be a public office;
- (b) the following provisions of this Constitution shall have effect as if references therein to the Attorney-general were references to the Director of Public Prosecutions, that is to say, subsections (2) to (6) of section 71, section 82(4), section 86, section 100(5), section 104(5), and section 105(3);
- (c) section 93(2) of this Constitution shall have effect as if the reference therein to the Attorney-General included a reference to the Director of Public Prosecutions.

**Opposition Leader**

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

(2) The Governor shall appoint as the Opposition Leader—

(a) the member of the House of Assembly who, in the opinion of the Governor, is the leader in that House of any opposition party whose numerical strength in that House is greater than that of any other opposition party; or

(b) if it appears to the Governor that there is no such party but that there is a member of the House of Assembly who would be acceptable as Opposition Leader to a majority of the members of that House in opposition to the Government, that member.

(3) Whenever the office of Opposition Leader is vacant by reason of the fact that the Governor is of the opinion that there is no member of the House of 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 paragraph (b) of section 27(2) of this Constitution shall be exercised by him after consultation with the leaders in the House of Assembly of the opposition parties whose numerical strength in that House is greatest;

(b) the function conferred upon the Governor by section 53(1) of this Constitution shall be exercised by him after consultation with the Premier and the leaders aforesaid; and

(c) the function conferred upon the Governor by paragraph (d) of section 53(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 Opposition Leader, the function conferred upon him by paragraph (c) of section 53(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.

(4) If at any time between the polling in a general election and the next following dissolution of the Legislature the Governor is satisfied that, if the office of the Opposition Leader 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 Opposition Leader.

## **BERMUDA CONSTITUTION ORDER 1968**

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

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

(b) if the holder thereof is appointed as the Premier.

(6) In this section, "opposition party" means a group of members of the House of 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.

### **CHAPTER V**

#### THE JUDICIARY

##### *The Supreme Court*

#### **Constitution of Supreme Court**

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

(2) The judges of the Supreme Court shall be a Chief Justice and such number of Puisne Judges as may be prescribed by any law enacted by the Legislature:

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

(3) The Chief Justice shall be a person qualified for appointment under subsection (5) of this section and shall be appointed by the Governor, by instrument under the Public Seal, acting after consultation with the Premier who shall first have consulted the Opposition Leader.

(4) The Puisne Judges of the Supreme Court shall be persons qualified as aforesaid and shall be appointed by the Governor, by instrument under the Public Seal, after consultation with the Chief Justice.

(5) The qualifications for appointment as a judge of the Supreme Court shall be such as may be prescribed by any law enacted by the Legislature:

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.

(6) Whenever the Governor, acting after consultation with the Chief Justice, is satisfied that the state of business in the Supreme Court so requires, he may, acting as aforesaid, appoint a person, possessing such legal qualifications and experience as he may deem appropriate, to be an Assistant Justice on such terms and conditions of service as he may think fit, and any Assistant Justice shall have all the powers of a Puisne Judge:

Provided that the number of Assistant Justices holding office at any time shall not exceed such number as the Legislature may by law prescribe.

(7) References in sections 30(1), 76 and 103 of this Constitution to a judge of the Supreme Court shall be construed as including references to an Assistant Justice.

**Tenure of office of judges of Supreme Court**

74 (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 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 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

## **BERMUDA CONSTITUTION ORDER 1968**

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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 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 Inquiry Act 1935 [*title 28 item 19*] of Bermuda as in force immediately before the coming into operation of this Constitution [*2 June 1968*] 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 Supreme 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 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**

75 (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 Puisne Judges or such other person qualified for appointment as a judge of the Supreme Court as the Governor may, after consultation with the Premier, appoint for that purpose shall act in the office of Chief Justice.

(2) If the office of a Puisne Judge 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 after consultation with the Chief Justice, may appoint a person, possessing such legal qualifications and experience as he may deem appropriate, to act as a Puisne Judge.

(3) A person may be appointed under subsection (1) or subsection (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 Puisne Judge 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 after consultation with the Chief Justice:

Provided that a person whose appointment so to act has expired or been revoked may, with the permission of the Governor, acting after consultation with the Chief Justice, 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**

76 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, oaths or affirmations of allegiance and for the due execution of his office in the forms set out in the Schedule to this Constitution.

## **BERMUDA CONSTITUTION ORDER 1968**

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### *The Court of Appeal*

#### **Constitution of Court of Appeal**

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

(2) The judges of the Court of Appeal shall be a President and such number of Justices of Appeal, not being less than two, as the Legislature 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.

(3) 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.

(4) 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.

(5) A judge of the Supreme Court may exercise any of the powers of a single judge of the Court of Appeal to such extent as the Legislature may by law prescribe.

#### **Tenure of office of judges of Court of Appeal**

78 (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; 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 Act 1935 [*title 28 item 19*] of Bermuda as in force immediately before the coming into operation of this Constitution [*2 June 1968*] 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 this 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**

79 (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

## **BERMUDA CONSTITUTION ORDER 1968**

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thereof has assumed 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**

80 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, oaths or affirmations of allegiance and for the due execution of his office in the forms set out in the Schedule to this Constitution.

## **CHAPTER VI**

### THE PUBLIC SERVICE

#### *General*

#### **Public Service Commission**

81 (1) There shall be a Public Service Commission for Bermuda consisting of a Chairman and four other members.

(2) The members of the Public Service Commission shall be appointed by the Governor, by instrument under the Public Seal, acting after consultation with the Premier who shall first have consulted the Opposition Leader, for such period, not being less than three nor more

than five years, as may be specified in their respective instruments of appointment.

(3) No person shall be qualified to be appointed as a member of the Public Service Commission if he is a member of either House or a public officer.

(4) A person shall not, while he holds or is acting in the office of a member of the Public Service Commission or within a period of five years commencing with the date on which he last held or acted in that office, be eligible for appointment to or to act in any public office.

(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 becomes a member of either House; or
- (c) if he is removed from office in accordance with the provisions of subsection (6) of this section.

(6) A member of the Public Service Commission 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 to discharge the functions thereof (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(7) During any period when the question of removing a member of the Public Service Commission 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 that member from performing the functions of his office.

(8) 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 after consultation with the Premier, may appoint shall act in the office of the Chairman.

(9) 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 reason unable to perform the functions of his office, the Governor, acting after consultation with the Premier, 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 the provisions of subsection (5) of this sec-

## **BERMUDA CONSTITUTION ORDER 1968**

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tion, 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.

### **Appointment etc., of public officers**

82 (1) Subject to the provisions of this Constitution, power to make appointments to public offices, and to 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 a department of government the Commission shall consult the Premier.

(3) The Legislature 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 Bermuda 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.

(4) The provisions of this section shall not apply in relation to—

- (a) the office of the Attorney-General, Commissioner of Police, Deputy Commissioner of Police and the Auditor;
- (b) any office to which section 89 of this Constitution applies; or
- (c) the office of Secretary to the Cabinet except as respects power to remove or exercise disciplinary control over a person holding or acting in that office.

### **Delegation of Governor's powers**

83 (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 82 of this Constitution (other than powers in relation to the offices referred to in subsections (2) and (4)(c) thereof) to the Chairman of the Commission or to such public officers as may be so 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**

84 (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 Deputy 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 Premier and the Public Service Commission, may by regulations 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;

## **BERMUDA CONSTITUTION ORDER 1968**

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

Provided that no such penalty shall exceed a fine of twelve hundred dollars or imprisonment for a term of one year or both such fine and such imprisonment.

(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.

### **Particular Offices**

85 [Deleted by UK SI 1973 No. 233].

### **Appointment, etc., of Attorney-General**

86 (1) Power to make appointments to the office of Attorney-General is vested in the Governor acting in his discretion.

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

Provided that the Governor, acting after consultation with the Premier, may permit an Attorney-General 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 Attorney-General.

(3) The Attorney-General may be removed from office 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 (4) of this section.

(4) 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 (5) 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.

(5) 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 if the Premier or the Chief Justice after consultation with the Premier represents to the Governor that that question 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.

(6) The provisions of the Commissions of Inquiry Act 1935 [*title 28 item 19*] of Bermuda as in force immediately before the coming into operation of this Constitution [*2 June 1968*] shall, subject to the provisions of this section, apply as nearly as may be in relation to tribunals appointed under subsection (5) 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.

(7) If the question of removing the Attorney-General from office has been referred to a tribunal under subsection (5) 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.

(8) References in subsections (2) to (7) 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.

**Appointment, etc., of Commissioner and Deputy Commissioner of Police**

87 Power to make appointments to, the offices of Commissioner of Police and Deputy Commissioner of Police and to remove or exercise disciplinary control over persons holding or acting in those offices is vested in the Governor acting after consultation with the Public Service Commission.

## **BERMUDA CONSTITUTION ORDER 1968**

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### **Appointment, etc., of the Auditor**

88 (1) Power to make appointments to the office of the Auditor is vested in the Governor acting in his discretion.

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

Provided that the Governor, acting after consultation with the Premier, may permit an Auditor 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 Auditor.

(3) The Auditor 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 (4) of this section.

(4) The Auditor 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.

(5) During any period when the question of removing the Auditor 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 from performing the functions of his office.

(6) References in subsections (2) to (5) of this section to the Auditor do not include references to a person appointed to act in the office of Auditor 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.

### **Appointment, etc., of magistrates and other legally qualified staff of the courts**

89 (1) 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 those offices is vested in the Governor acting after consultation with the Chief Justice.

(2) This section applies to the offices of magistrate, member of any other civil court subordinate to the Supreme Court and registrar of the Supreme Court or the Court of Appeal and of such other officers of

the civil courts of Bermuda who are required to possess legal qualifications as the Legislature may by law prescribe.

**Appointment of Secretary to Cabinet**

90 (1) Power to make appointments to the office of Secretary to the Cabinet is vested in the Governor acting in accordance with the recommendation of the Premier.

(2) Whenever occasion arises for making an appointment under this section the Public Service Commission shall submit to the Premier a list of public officers who appear to the Commission to be qualified for the appointment and the Premier shall recommend to the Governor a person whose name appears on that list.

*Pensions*

**Applicability of pensions law**

91 (1) Subject to the provisions of Section 93 of this Constitution, the law to be applied 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 sections 92 and 93 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 date on which this Constitution comes into operation, the day on which the award was granted;

(b) in relation to an award granted or to be granted on or after the date on which this Constitution comes into operation to or in respect of a person who was a public officer before that date, the day immediately before that date;

(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 date on which this Constitution comes into operation, 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

## **BERMUDA CONSTITUTION ORDER 1968**

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taken to be more favourable to him than any other law for which he might have opted.

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

92 Awards granted under any law for the time being in force in Bermuda shall (except so far as they are a charge on some other fund and are duly paid out of that fund to the person to whom payment is due) be a charge on and paid out of the Consolidated Fund.

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

93 (1) The power to grant any award under any pensions law for the time being in force in Bermuda (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 in any such law, to withhold, reduce in amount or suspend any award payable under any such law shall vest in the Governor.

(2) The power vested in the Governor by, subsection (1) of this section shall be exercised by him—

(a) in his discretion in the case of an award payable in respect of the services of any person who, having been a public officer, was, immediately before the date on which he ceased to hold public office, serving as—

- (i) Deputy Governor;
- (ii) a judge of the Supreme Court;
- (iii) a judge of the Court of Appeal;
- (iv) Attorney-General;
- (v) Auditor; or
- (vi) a member of the personal staff of the Governor;

(b) after consultation with the Public Service Commission in the case of an award payable in respect of any person who, having been a public officer, was, immediately before the date aforesaid, serving as Commissioner of Police or Deputy Commissioner of Police or in any office to which section 89 of this Constitution applies; and

(c) in accordance with the recommendation of the Public Service Commission in any other case.

(3) 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.

## **CHAPTER VII**

### FINANCE

#### **Consolidated Fund**

94 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**

95 (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 Bermuda, 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 authorised 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 House of Assembly;
- (b) the expenditure has been authorised in accordance with the provisions of section 97 of this Constitution; or

## **BERMUDA CONSTITUTION ORDER 1968**

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(c) it is expenditure (in this Chapter 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 authorised by or under any law.

### **Authorisation of expenditure**

96 (1) The Minister of Finance shall cause to be prepared and laid before the House of Assembly as soon as practicable before the commencement of each financial year estimates of the revenues and expenditure of Bermuda for that year:

Provided that, if the Legislature is dissolved less than three months before the commencement of any financial year, the estimates for that year may be laid before the House 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 House of 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 House of Assembly.

(4) Where in respect of any financial year any supplementary estimates have been laid before the House of Assembly in accordance with the provisions of subsection (3) of this section and approved by resolution of that House, a supplementary Appropriation bill shall, as soon as practicable after the end of that year, be introduced into that House

to provide 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 95(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 House of Assembly.

**Authorisation of expenditure in advance of appropriation**

97 If the Appropriation law in respect of any financial year has not come into operation by the beginning of that financial year, the House of 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 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**

98 (1) The Legislature may by law make provision for the establishment of a contingencies fund and for authorising 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 House of Assembly for the purpose of authorising the replacement of the amount so advanced.

**Public debt**

99 (1) All debt charges for which Bermuda is 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 debt and all expenditure in connection with the raising of loan on the security of the revenues of Bermuda or the Consolidated Fund and the service and redemption of debt thereby created.

**Remuneration of certain officers**

100 (1) There shall be paid to the holders of the offices to which this section applies such salary or other remuneration and such al-

## **BERMUDA CONSTITUTION ORDER 1968**

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lowances as may be prescribed by or under a law enacted by the Legislature.

(2) The remuneration and allowances payable to the holders of those offices shall be a charge on the Consolidated Fund.

(3) The remuneration prescribed in pursuance of this section in respect of the holder of any such office and his other terms of service (other than allowances that are not taken into account in computing, under any law in that behalf, any pension payable in respect of his service in that office) shall not be altered to his disadvantage after his appointment.

(4) Where a person's remuneration or other terms of service depend upon his option, the remuneration or terms for which he opts shall, for the purposes of subsection (3) of this section, be deemed to be more advantageous to him than any others for which he might have opted.

(5) This section applies to the offices of Governor, Chief Justice, Puisne Judge, President of the Court of Appeal, Justice of Appeal, Chairman or other member of the Public Service Commission, Attorney-General, Auditor, and Chairman and judicial member of a Constituency Boundaries Commission.

### **The Auditor**

101 (1) There shall be an Auditor whose office shall be a public office.

(2) The accounts of the Senate, the House of Assembly, all government departments and offices (including the Public Service Commission) and all courts of Bermuda shall be audited and reported on annually by the Auditor, and for that purpose the Auditor or any person authorised by him in that behalf shall have access to all books, records, returns and other documents relating to such accounts.

(3) The Auditor shall submit his reports made under subsection (2) of this section to the Speaker of the House of Assembly who shall cause them to be laid before the House; and the Auditor shall also send a copy of each report to the Governor and to the President of the Senate and the President shall cause the copy sent to him to be laid before the Senate.

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

**CHAPTER VIII**

MISCELLANEOUS

**Interpretation**

102 (1) In this Constitution, unless it is otherwise provided or required by the context—

"election" means an election of a member or members of the House of Assembly;

"financial year" means the period of twelve months beginning on the first day of January in any year or such other day as the Legislature may prescribe;

"the Gazette" means such publication as may for the time being be appointed by the Governor to be the publication in which Government notices are published by authority and includes any supplement thereto in which Government notices are published;

"the Government" means the Government of Bermuda;

"the Governor" means the Governor and Commander-in-Chief of Bermuda;

"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;

"House" means the Senate or the House of Assembly, as the context may require;

"law" includes any instrument having the force of law and any unwritten rule of law, and "lawful" and "lawfully" shall be construed accordingly;

"the Legislature" means the Legislature established by this Constitution;

"the Police Force" means the Bermuda Police Force established in accordance with the provisions of the Police Act 1951 of Bermuda or any law amending or replacing that Act [*Police Act 1974 title 10 item 21*];

"public office" means, subject to the provisions of section 103 of this Constitution, an office of emolument in the public service;

## **BERMUDA CONSTITUTION ORDER 1968**

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

"the Public Seal" means the Public Seal of Bermuda;

"the public service" means the service of the Crown in a civil capacity in respect of the government of Bermuda;

"session" means, in relation to a House, the sittings of that House commencing when it first meets after any general election or prorogation of the Legislature and terminating when the Legislature is prorogued or is dissolved without having been prorogued;

"sitting" means, in relation to a House, a period during which that House is sitting continuously without adjournment and includes any period during which the House is in committee.

(2) In this Constitution, unless it is otherwise provided or required by the context—

(a) a reference to the holder of an office by the term designating his office shall be construed as including a reference to any person acting in that office or, to the extent of his authority, otherwise performing the functions of that office;

(b) references to the functions of the Governor shall be construed as references to his powers and duties in exercise of the executive authority of Bermuda and to any other powers or duties conferred or imposed on him as Governor by or under this Constitution or any other law.

(3) For the purposes of this Constitution, a person shall be deemed to possess Bermudian status—

(a) in the case of a person who possesses that status on the date on which this Constitution comes into operation under the law then in force in Bermuda, if he has not lost that status under that law or any later law amending or replacing that law that is not less favourable to him; and

(b) in the case of a person who acquires that status at any date after this Constitution comes into operation, if he has not lost that status under the law in force at the date he acquired it or any later law amending or replacing that law that is not less favourable to him.

(4) The Interpretation Act 1889 shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation thereto as it applies for the purpose of interpreting and otherwise in relation to Acts of Parliament of the United Kingdom.

[NOTE the Interpretation Act 1889 was repealed and replaced by the Interpretation Act 1978 [title 1 item 1A]]

**References to public offices**

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

- (a) references to the office of President or Vice-President of the Senate or Senator, Speaker, Deputy Speaker or member of the House of Assembly, Premier or other Minister, Parliamentary Secretary or Opposition Leader;
- (b) except in sections 61, 91 and 93 of this Constitution, references to the office of a judge of the Supreme Court or the Court of Appeal or, subject to any provision made in pursuance of paragraph (c) of section 30(3) of this Constitution, any member of the Governor's personal staff;
- (c) references to the office of a member of the Public Service Commission, a Constituency Boundaries Commission or the Advisory Committee on the Prerogative of Mercy;
- (d) references to the office of a member of any other board, council, committee or other similar body (whether incorporated or not) established by or under any law, except in so far as the Legislature may by law otherwise prescribe, or of any such body established by directions given under section 61(2) of this Constitution;
- (e) except in so far as the Legislature may by law otherwise prescribe, references to the office of any employee of any body corporate established directly by law for public purposes which is not subject under any law to any direction or control by the Governor or any Minister in the performance of its functions other than general directions as to the policy to be followed by that body.

(2) For the purposes of this Constitution, 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.

## **BERMUDA CONSTITUTION ORDER 1968**

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### **Appointments**

104 (1) Where any person has vacated any office (including any seat in either House) established by this Constitution, he may, if qualified, again be appointed or elected or otherwise selected to hold that office in accordance with the provisions of this Constitution.

(2) Where a power is conferred by this Constitution upon any person to make any appointment to any office, a person may be appointed to that office, notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending relinquishment of that office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office the person last appointed to that office shall be deemed to be the sole holder of the office.

(3) In this Constitution, unless it is otherwise provided or required by the context, any reference to power to make appointments to any public office shall be construed as including reference to power to make appointments on promotion and transfer to that office and the power to appoint a person to act in that office during any period when it is vacant or the holder thereof is unable (whether by reason of absence or infirmity of body or mind or any other cause) to perform the functions of that office.

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

(5) Notwithstanding any other provision of this Constitution, a person may be appointed to the office of—

- (a) judge of the Supreme Court;
- (b) Attorney-General; or
- (c) Auditor,

for such term as may be specified in the instrument of appointment, and the office of a person so appointed shall become vacant on the day on which the specified term expires.

**Removal from office**

105 (1) References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service and to any power or right to terminate a contract on which a person is employed as a public officer and to determine whether any such contract shall or shall not be renewed.

(2) Any provision of this Constitution that vests in any person or authority power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified therein.

(3) If any circumstances arise that, under the provisions of this Constitution, require the Governor to remove a judge of the Supreme Court or the Court of Appeal or the Attorney General or the Auditor from office for inability to discharge the functions of his office, the Governor, acting in his discretion, may carry out such removal either by dismissing that officer or by requiring him to retire.

(4) Any power conferred by any law to permit any officer mentioned in subsection (3) of this section to retire before the date on which, under the provisions of this Constitution, he is required to vacate his office shall vest in the Governor acting in his discretion.

**Resignations**

106 (1) Save as otherwise provided in sections 31(1) and 32(2) of this Constitution, any person who is appointed to or to act in any office established by this Constitution may resign from that office by writing under his hand addressed to the person by whom he was appointed.

(2) The resignation of any person from any such office (including any seat in either House) by writing under his hand addressed in accordance with this Constitution to any other person shall take effect when the writing signifying the resignation is received by that other person.

**Saving for jurisdiction of courts**

107 No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court from exercising jurisdiction in relation to any question whether that person or authority has exercised those functions in accordance with this Constitution.

## **BERMUDA CONSTITUTION ORDER 1968**

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### **Power to amend and revoke instruments, etc.**

108 Where any power is conferred by this Constitution to make any proclamation, order, rules or regulations or to give any directions, the power shall be construed as including a power exercisable in like manner to amend or revoke any such proclamation, order, rules, regulations or directions.

## **THE SCHEDULE TO THE CONSTITUTION OF BERMUDA**

[Sections 17, 40, 68, 76 and 80]

### **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 Affirmation of Allegiance

I,....., do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law.

3 Oath for the due execution of the office of Governor and Commander-in-Chief

I,....., do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second in the office of Governor and Commander-in-Chief. So help me God.

4 Affirmation for the due execution of the office of Governor and Commander-in-Chief.

I,....., do solemnly and sincerely affirm and declare that I will well and truly serve Her Majesty Queen Elizabeth the Second in the office of Governor and Commander-in-Chief.

5 Oath for the due execution of the office of Premier or other Minister or Parliamentary Secretary.

I,....., being appointed Premier/ Minister/Parliamentary Secretary, do swear that I will to the best of my judgment, at all times when so required, freely give my counsel and advice to the Governor (or any other person for the time being lawfully performing the functions of that office) for the good management of the public

affairs of Bermuda, and I do further swear that I will not on any account, at any time whatsoever, disclose the counsel, advice, opinion or vote of any particular Minister or Parliamentary Secretary, and that I will not, except with the authority of the Cabinet and to such extent as may be required for the good management of the affairs of Bermuda, directly or indirectly reveal the business or proceedings of the Cabinet or the nature or contents of any documents communicated to me as a Minister/Parliamentary Secretary or any matter coming to my knowledge in my capacity as such, and that in all things I will be a true and faithful Premier/Minister/Parliamentary Secretary. So help me God.

6 Affirmation for the due execution of the office of Premier or other Minister or Parliamentary Secretary.

I,....., being appointed Premier Minister/Parliamentary Secretary, do solemnly and sincerely affirm and declare that I will to the best of my judgment, at all times when so required, freely give my counsel and advice to the Governor (or any other person for the time being lawfully performing the functions of that office) for the good management of the public affairs of Bermuda, and I do further solemnly and sincerely affirm and declare that I will not on any account, at any time whatsoever, disclose the counsel, advice, opinion or vote of any particular Minister or Parliamentary Secretary, and that I will not, except with the authority of the Cabinet and to such extent as may be required for the good management of the affairs of Bermuda, directly or indirectly reveal the business or proceedings of the Cabinet or the nature or contents of any documents communicated to me as a Minister/Parliamentary Secretary or any matter coming to my knowledge in my capacity as such, and that in all things I will be a true and faithful Premier/ Minister/Parliamentary Secretary.

7 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 Bermuda without fear or favour, affection or ill will. So help me God.

8 Judicial Affirmation.

I,....., do solemnly and sincerely affirm and declare 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 Bermuda without fear or favour, affection or ill will.

## **BERMUDA CONSTITUTION ORDER 1968**

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*[Amended by:*

- Bermuda Constitution (Amendment) Order 1968 (UK SI 1968 No. 463)
- Bermuda Constitution (Amendment) (No. 2) Order 1968 (UK SI 1968 No. 726)
- Bermuda Constitution (Amendment) Order 1973 (UK SI 1973 No. 233)
- Bermuda Constitution (Amendment) Order 1979 (UK SI 1979 No. 452)
- Bermuda Constitution (Amendment) (No. 2) Order 1979 (UK SI 1979 No. 1310)
- Bermuda Constitution (Amendment) Order 1989 (UK SI 1989 No. 151)]

*EndOfDoc: BERMUDA CONSTITUTION ORDER 1968*