

1973 No. 233

CARIBBEAN AND NORTH ATLANTIC TERRITORIES**The Bermuda Constitution (Amendment) Order 1973***Made* - - - - 16th February 1973*Laid before Parliament* 22nd February 1973*Coming into Operation* On a day to be
appointed under
section 1(2)

At the Court at Buckingham Palace, the 16th day of February 1973

Present,

The Queen's Most Excellent Majesty in Council

Whereas it has been agreed between Her Majesty's Government in the United Kingdom and the Government of Bermuda that certain changes should be made in the Constitution of Bermuda :

Now, therefore, Her Majesty, by virtue and in exercise of the powers vested in Her in that behalf by section 1 of the Bermuda Constitution Act 1967(a) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation and commencement. **1.**—(1) This Order may be cited as the Bermuda Constitution (Amendment) Order 1973.

(2) This Order shall come into force on such day as may be appointed by the Governor by proclamation published in the Gazette.

Interpretation. **2.**—(1) In this Order—

“the amended Constitution” means the Constitution as amended by this Order ;

“the appointed day” means the day appointed under section 1(2) of this Order ;

“the Constitution” means the Constitution of Bermuda set out in Schedule 2 to the Bermuda Constitution Order 1968(b) as amended by the Bermuda Constitution (Amendment) Order 1968(c) and the Bermuda Constitution (Amendment) (No. 2) Order 1968(d).

(a) 1967 c. 63.

(b) S.I. 1968/182 (1968 I, p. 436).

(c) S.I. 1968/463 (1968 I, p. 1179).

(d) S.I. 1968/726 (1968 II, p. 2104).

(2) The provisions of section 102 of the Constitution shall apply for the purpose of interpreting this Order and otherwise in relation thereto as they apply for the purpose of interpreting and in relation to the Constitution.

3. The Constitution is amended in the manner provided in the Schedule. Amendment of Constitution.

4.—(1) The person holding the office of Government Leader immediately before the appointed day shall be deemed as from that day to have been appointed as the Premier in accordance with the provisions of the amended Constitution and to have made the oath or affirmation required to be made by a Minister, before entering upon the functions of his office, under the amended Constitution. Existing Government Leader and certain other officers.

(2) Any person who immediately before the appointed day holds any office, other than the office of a member of the Executive Council or of the Advisory Committee on the Prerogative of Mercy, to which he was appointed under the Constitution—

- (a) in accordance with the advice of the Government Leader ;
- (b) after consultation with the Government Leader ; or
- (c) in accordance with the recommendation of the Government Leader,

shall be deemed as from that day to have been appointed to that office in accordance with the provisions of the amended Constitution :

Provided that the office of any such person who was appointed for a specified period shall become vacant at the expiration of that period.

(3) The provisions of this section shall be without prejudice to any powers conferred by the amended Constitution upon any authority or person to remove from office any person holding any office.

W. G. Agnew.

THE SCHEDULE TO THE ORDER

Section 3.

AMENDMENT OF THE CONSTITUTION OF BERMUDA

Delete and substitute the following—

“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.

Sections 18 and 19.

(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.

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.”.

(a) Delete subsection (1) and substitute the following—

Section 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.”.

(b) In subsection (2)(b) and (c) and subsection (4), delete “Executive Council” and substitute “Cabinet”.

(c) In subsection (5), delete “Executive Council or a member thereof” and substitute “Cabinet or a Minister”.

(a) Delete subsection (1) and substitute the following—

Section 23.

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

(a) five members who shall be appointed by the Governor after consultation with the Premier ; and

(b) the Attorney-General.”.

(b) Delete subsection (5) and substitute the following—

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

(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.”.

In subsection (3), delete “ member of the Executive Council ” and substitute “ Minister ”.

In subsections (1) and (2), delete “ member of the Executive Council ” and substitute “ Minister ”.

In subsection (2)(c), delete “ adult persons, ascertained by reference to the latest census of the population of Bermuda held in pursuance of any law ” and substitute “ persons qualified to be registered as electors under section 55 of this Constitution ”.

Section 57. Delete and substitute the following—

“ 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 any 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 member of the Legislative Council under paragraph (a) of section 27(2) of this Constitution ;
or

(c) the dissolution of the Legislature.”.

Section 58. Delete and substitute the following—

“ Appoint- 58.—(1) The Governor, acting in his discretion, shall appoint ment of as the Premier the member of the House of Assembly who Premier appears to him best able to command the confidence of a and other Ministers. 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 members of the Legislative Council 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 Legislative Council 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.”.

Delete and substitute the following—

Section 59.

“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 Legislative Council 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.”.

Delete and substitute the following sections—

Section 60.

“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.

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.”.

Section 61. Delete and substitute the following—

“Allocation of portfolios of 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 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.”.

Delete and substitute the following—

Section 62.

“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 matters relating to external affairs, internal security or the police as the Governor may think fit upon such conditions as he may impose.”.

Section 63. In subsections (1) and (4) delete “members of the Executive Council” and substitute “Ministers”.

Section 64. Delete “members of the Executive Council” and substitute “Ministers”.

Sections 65, 66 and 67. Delete and substitute the following—

“Summon- 65. The Cabinet shall not be summoned except by the
ing of authority of the Premier.
Cabinet.

Proceedings 66.—(1) The Premier shall, so far as is practicable, attend
in Cabinet. 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 67. The Premier may summon any Parliamentary Secretary
of persons or public officer to a meeting of the Cabinet whenever, in the
to Cabinet. opinion of the Premier, the business before the Cabinet renders
his presence desirable.”.

Section 68. Delete “member of the Executive Council” and substitute “Minister”.

Section 69. Delete and substitute the following—

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

(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.”.

Delete and substitute the following—

Section 70.

“Governor’s Council.—(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 1(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.”.

In subsection (4), delete “ Chief Secretary,”.

Section 82.

Delete the section.

Section 85.

In subsection (1), delete “ Executive Council ” and substitute “ Cabinet ”.

Section 90(1).

In subsection (2)(a), delete sub-paragraphs (i) (ii) and (iii) and substitute the following—

Section 93.

“ (i) Deputy Governor ;

(ii) a judge of the Supreme Court ;

(iii) a judge of the Court of Appeal ;”.

In subsection (1), delete “ member of the Executive Council responsible for finance (in this Chapter referred to as “ the member for finance ”) ” and substitute “ Minister of Finance ”.

Section 95.

- Sections 95(1)(a), 95(2), 96(1) and (5), 97 and 98(1). Delete “ member for finance ” and substitute “ Minister of Finance ”.
- Section 103. (a) In subsection (1)(a) and (e), delete “ member of the Executive Council ” and substitute “ Minister ”.
(b) In subsection 1(b), delete “ 91 and 93 ” and substitute “ 61, 91 and 93 ”.
- Section 104. Add the following subsection—
“ (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.”.
- Sections 14(9), 27(2)(a), 49(1), 50, 53(1), (2)(c) and (5)(c), 54(3), (4), (5), and (6), 63(1), 72(3)(b) and (5)(b), 73(3), 75(1), 81(2), (8) and (9), 82(2), 84(5), 86(2) and (5), 88(2), 90(1) and (2) and 103(1)(a). Delete “ Government Leader ” wherever that expression occurs and substitute “ Premier ”.

Delete paragraphs 5 and 6 and substitute the following—

Schedule.

“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.”

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order amends the Bermuda Constitution Order 1968 in relation to the titles of the Executive Council and of certain offices, the membership of the Advisory Committee on the Prerogative of Mercy, the Boundaries Commission and posts where there are special provisions for security of tenure. Provision is made for a Governor's Council in respect of the Governor's special responsibilities.

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