

1979 No. 1310

CARIBBEAN AND NORTH ATLANTIC TERRITORIES

The Bermuda Constitution (Amendment) (No. 2) Order 1979

Made - - - - 19th October 1979

Laid before Parliament 29th October 1979

Coming into Operation 1st December 1979

At the Court at Buckingham Palace, the 19th day of October 1979

Present,

The Queen's Most Excellent Majesty in Council

Whereas it is expedient to give effect to certain recommendations made at a Constitutional Conference held in Bermuda in February and July 1979:

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:—

1.—(1) This Order may be cited as the Bermuda Constitution (Amendment) (No. 2) Order 1979. Citation and commencement.

(2) This Order shall be construed as one with the Orders referred to in section 2 of this Order, and those Orders and this Order may be cited together as the Bermuda Constitution Orders 1968 to 1979.

(3) This Order shall come into operation on 1st December 1979 (in this Order referred to as “the appointed day”).

2. In this Order—

“the amended Constitution” means the Constitution as amended by 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), the Bermuda Constitution (Amendment) (No. 2) Order 1968(d), the Bermuda Constitution (Amendment) Order 1973(e) and the Bermuda Constitution (Amendment) Order 1979(f). Interpretation.

(a) 1967 c. 63.

(b) S.I. 1968/182.

(c) S.I. 1968/463.

(d) S.I. 1968/726.

(e) S.I. 1973/233.

(f) S.I. 1979/452.

Amendment
of Consti-
tution.

3.—(1) As from the appointed day, the Constitution is amended in the manner provided in Part 1 of the Schedule to this Order.

(2) As from the dissolution of the Legislature next following the appointed day, the Constitution is amended in the manner provided in Part 2 of the said Schedule.

(3) As from such day as the Governor, acting in his discretion, shall appoint by notice in the Gazette, the Constitution is amended in the manner provided in Part 3 of the said Schedule.

Existing
officers.

4.—(1) Any person who, immediately before the appointed day, 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 in accordance with the provisions of the amended Constitution and to have made any necessary oath or affirmation under the 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.

(2) This section applies to the offices of the Chief Justice, Attorney-General, and Chairman or other member of the Public Service Commission.

(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.

Existing
interests in
Government
contracts.

5.—(1) A person who, immediately before the appointed day, possesses an interest in a Government contract shall, for the purposes of section 31(1) (*f*) of the amended Constitution, be deemed to have acquired that interest on the appointed day.

(2) In this section “Government contract” has the meaning ascribed to it in section 30(8) of the amended Constitution.

N. E. Leigh,
Clerk of the Privy Council.

Section 3

THE SCHEDULE TO THE ORDER

AMENDMENT OF THE CONSTITUTION OF BERMUDA

PART 1

Section 23.

- (a) In subsection (1), delete “and (*b*) the Attorney-General”.
(b) In subsection (4), delete “of whom one shall be the Attorney-General”.

Add the following subsections—

Section 30.

“(6) Subject to such exceptions and limitations as may be prescribed by the Legislature, a person shall not be qualified to be elected 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 member of the Legislative Council 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.”

(a) In subsection (1)(e), delete “section 30” and substitute “subsections (1) to (5) of section 30”. Section 31.

(b) In subsection (1), add after paragraph (e) the following new paragraph—

“(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.”

(a) In subsection (1), delete paragraph (a) and substitute the following— Section 55.

“(a) is a British subject who has attained the age of twenty-one years or such lower age, not being less than eighteen years, as the Legislature may prescribe by law;”.

(b) In subsection (1), delete paragraph (b) and substitute the following—

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

(a) Delete subsection (1), and substitute the following subsections— Section 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.”

(b) Add after section 71 the following new section—

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

(a) there shall be a Director of Public Prosecutions whose office shall be a public office;

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.”

Section 73. Delete subsection (3) and substitute the following—

“(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.”

Section 81. Delete subsection (2) and substitute the following—

“(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.”

PART 2

Section 27. Delete subsection (2), and substitute the following—

“(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.”

Section 31. After subsection (1), add the following subsection—

“(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.”

Sections 26, 27(1), 32, 35(4), 36, 37, 38, 40, 42, 44, 58(4), 59(3)(c), 63(3), 101 and 102(1). Delete “Legislative Council” wherever that expression appears and substitute “Senate”.

- Delete "member of the Legislative Council" wherever that expression appears and substitute "Senator". Sections 29, 30, 31, 33, 51(4) and 57(3)(b).
- Delete "members of the Legislative Council" and substitute "Senators". Sections 51(3), 58(2) and 63(1).
- In subsection (1)(a), delete "such a member" wherever that expression appears and substitute "a Senator". Section 33.
- In subsection (1), delete "member of the Council" and substitute "Senator", and delete "the Council" wherever that expression appears and substitute "the Senate". Section 42.
- In subsection (2), delete paragraph (a) and substitute the following— Section 43.
 "(a) a quorum of the Senate shall consist of the President or the Senator presiding and four other Senators;"
- In subsection (1)(a), delete "President, Vice-President or member of the Legislative Council" and substitute "President or Vice-President of the Senate or Senator". Section 103.

PART 3

- Add the following subsection— Section 5.
 "(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."

EXPLANATORY NOTE

(This Note is not part of the Order.)

The Constitutional Conference held in Bermuda in February and July 1979, at which Her Majesty's Government in the United Kingdom, the United Bermuda Party and the Progressive Labour Party were represented, made a number of recommendations for the amendment of the Constitution of Bermuda. The Bermuda Constitution (Amendment) Order 1979 gave effect to the recommendations relating to the Constituency Boundaries Commission. This Order gives effect to the other recommendations of the Conference for amendment of the Constitution.

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