

1984 No. 126

CARIBBEAN AND NORTH ATLANTIC TERRITORIES

The Cayman Islands (Constitution) (Amendment) Order 1984

<i>Made - - - -</i>	8th February 1984
<i>Laid before Parliament</i>	16th February 1984
<i>Coming into Operation</i>	12th March 1984

At the Court at Buckingham Palace, the 8th day of February 1984

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue of the powers conferred upon Her by section 5 of the West Indies Act 1962 (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,
construc-
tion and
commence-
ment

1.—(1) This Order may be cited as the Cayman Islands (Constitution) (Amendment) Order 1984 and shall be construed as one with the Cayman Islands (Constitution) Order 1972 (b).

(2) The Cayman Islands (Constitution) Order 1972 and this Order may be cited together as the Cayman Islands (Constitution) Orders 1972 and 1984.

(3) This Order shall come into operation on 12th March 1984 save that the provisions of sections 2 to 6 inclusive and section 8 or of any such sections shall have effect from such later date or dates as may be notified by the Governor, acting in his discretion, by proclamation published in the Gazette.

Replace-
ment of
section
18.

2. Section 18 of the Constitution of the Cayman Islands shall be replaced by the following:

“Qualifications for elected membership. 18. Subject to the provisions of the next following section, a person shall be qualified to be elected as a member of the Assembly if, and shall not be qualified to be so elected unless,—

- (a) he possesses Caymanian status and is either a British citizen or a British Dependent Territories citizen of the age of twenty-one years or over; and
- (b) he is domiciled in the Islands at the date of his nomination for election; and either
- (c) he or one of his parents was born in the Islands and he has resided in the Islands for a period or periods totalling not less than five years out of the seven years immediately preceding the date of his nomination for election and he is resident therein at that date; or

(a) 1962 c.19.

(b) S.I. 1972/1101.

- (d) he has resided in the Islands for a period or periods totalling not less than fifteen years out of the twenty years immediately preceding the date of his nomination for election, of which period of fifteen years five years must be immediately prior to the date of his nomination for election; or
- (e) he was, on the day immediately preceding the appointed day, qualified to be elected as a member of the Assembly."

3. Paragraph (c) of subsection (3) of section 20 of the Constitution of the Cayman Islands shall be amended by substituting the words "either a British citizen possessing Caymanian status or a British Dependent Territories citizen possessing Caymanian status" for the words "a British subject" and by adding the following proviso — "Provided that the seat of any person who qualified for election under the provisions of section 18 (e) of the Constitution shall not become vacant because that person does not possess Caymanian status, unless he is granted Caymanian status on or after the date of his election and subsequent to such grant he shall cease to possess such status, in which case his seat shall become vacant."

Amend-
ment of
section
20.

4. Section 25 of the Constitution of the Cayman Islands shall be replaced by the following:

Replace-
ment of
section
25.

"Qualifica-
tions of
electors.

25. Subject to the provisions of the next following section, a person shall be entitled to be registered as an elector in one electoral district only but he shall not be entitled to be registered as an elector for elections to the Assembly unless—

- (a) he is a citizen of a Commonwealth country of the age of eighteen years or over; and
- (b) he is domiciled and resident in the Islands at the date of registration; and either
- (c) he one of his parents was born in the Islands; or
- (d) he has been ordinarily resident in the Islands for a period or periods amounting to seven years out of the nine years immediately preceding the date of registration; or
- (e) he is, on the day immediately preceding the appointed day, entitled to be registered as an elector."

5. Part V of the Constitution of the Cayman Islands shall be replaced by the following:

Replace-
ment of
Part V.

"PART V

THE COURT OF APPEAL

Appeals to
Court of
Appeal.

49. There shall be a Court of Appeal for the Islands styled the Cayman Islands Court of Appeal, which shall be a superior Court of Record.

Jurisdiction
of the Court.

49A.—(1) The Court shall have jurisdiction to hear and determine such appeals from the Grand Court as may be prescribed by any law in force in the Islands.

(2) In connection with any appeal from the Grand Court the Court shall, subject to the provisions of this Order and any law in force in the Islands, have all the powers and jurisdiction that are possessed by that court under any law in force in the Islands; and decisions of the Court in respect of any appeal from the Grand Court shall, subject as aforesaid, be enforced in the Islands in the same way as decisions of that court.

(3) The provisions of subsection (1) of this section shall not apply to appeals relating to any matter in respect of which this Constitution or any other law provides that the decision of the Grand Court of the Islands is to be final.

(4) The Court shall have and use a seal bearing the style of the Court and a device approved by the President.

Constitution
of Court
of Appeal.

49B.—(1) The judges of the Court of Appeal shall be a President and not less than two Justices of Appeal.

(2) The judges of the Court of Appeal shall be appointed by the Governor, acting in his discretion, by instrument under the Public Seal, in accordance with such instructions as he may receive from Her Majesty through a Secretary of State:

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

(3) 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.

(4) A judge of the Grand Court may exercise any of the powers of a single judge of the Court of Appeal to such extent as the Assembly may by law prescribe.

Tenure of
office of
judges of
Court of
Appeal.

49C.—(1) The judges of the Court of Appeal shall be appointed for such period as may be specified in their respective instruments of appointment. 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 Enquiry Law 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 Law.

(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 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.

49D.—(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 thereof has resumed 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 the President.

Acting
judges of
Court of
Appeal.

(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, or acting 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.

49E. 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 Schedule II to this Constitution.

Pending proceedings.

49F.—(1) Any proceedings relating to appeals from the Grand Court that are pending immediately before the commencement of The Cayman Islands (Constitution) (Amendment) Order 1984 in the existing Court may be continued and concluded after the commencement of the said Order in that court as if the said Order had not been made.

(2) Any judgment of the existing Court given, but not satisfied before the commencement of The Cayman Islands (Constitution) (Amendment) Order 1984, and any judgment of the existing Court given after the commencement of the said Order in respect of any proceedings referred to in subsection (1), may be enforced after the commencement of the said Order as if it were a judgment of the Court.

(3) For the purposes of subsection (2), “judgment” includes an order for costs and any other ancillary or consequential order including an order in relation to an application for leave to appeal to Her Majesty in Council.

(4) For the purposes of subsections (1) and (2) and of section 49G, the words “existing Court” mean the Court of Appeal existing immediately before the date on which this section comes into operation.

Existing appeal laws and rules of court.

49G.—(1) Any law in force in the Islands immediately before the commencement of The Cayman Islands (Constitution) (Amendment) Order 1984 providing for appeals from the Grand Court to the existing Court and matters relating thereto shall, subject to amendment or repeal by a law of the Assembly, continue in force in the Islands after

the commencement of the said Order, and for that purpose shall be construed with any necessary adaptations and modifications.

(2) All rules of court relating to the hearing and determination of appeals from the Grand Court by the existing Court in force immediately before the commencement of The Cayman Islands (Constitution) (Amendment) Order 1984, shall continue in force after the commencement of the said Order.

(3) The Governor may by order made at any time before the 31st December 1984 make such amendments to any law in force in the Islands as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of this Order or otherwise for giving effect or enabling effect to be given to those provisions."

6. Section 50 of the Constitution of the Cayman Islands shall be amended as follows: Amendment of section 50.

(1) the definition of "appointed day" in subsection (1) shall be replaced by the following:

" "appointed day" means—

- (a) in relation to sections 18(e) and 25(e), the day as from which those provisions respectively come into operation under section 1(3) of the Cayman Islands (Constitution) (Amendment) Order 1984;
- (b) in relation to any other provision of this Constitution, the day as from which this Constitution (other than Part II thereof) has effect under section 2(1) of the Cayman Islands (Constitution) Order 1972;"

(2) the following definitions shall be added:

"Caymanian status" means Caymanian status as provided under the Caymanian Protection Law 1971 (as amended) or any law repealing and replacing such law;

"the Court" for the purposes of Part V of the Constitution shall mean the Cayman Islands Court of Appeal;

"Grand Court" means the Grand Court constituted under the provisions of the Grand Court Law.

7.—(1) The registration of electors, using the provisions of sections 2, 3, 4 and 6 of this Order, may take place at any time after the coming into operation of this Order although the said sections have not yet come into effect but no person so registered may vote until the said sections have come into effect. Preparatory measures.

(2) Any procedures begun in pursuance of subsection (1) may be continued after the said sections have come into effect.

8. The Constitution of the Cayman Islands shall be amended by the addition of a Schedule II thereto as follows: Schedule II to the Constitution.

"(Section 49E)

SCHEDULE II

Forms of Oaths and Affirmations for judges of the Court of Appeal

1. *Judicial Oath*

I do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second in the office of (here insert the description of the office) and I will do right to all manner of people according to the law without fear or favour affection or ill-will. So help me God.

2. *Judicial Affirmation*

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 (here insert the description of the office) and I will do right to all manner of people according to the law without fear or favour affection or ill-will."

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

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order provides that electors and persons putting up for election to the Legislative Assembly shall have closer ties with the Cayman Islands than hitherto. No one who is enfranchised or who is qualified for election to the Assembly immediately prior to the Order is disenfranchised or disqualified. The Order also makes fresh provision for the hearing and determination of appeals from the Grand Court of the Cayman Islands.

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