

A BILL

for

**AN ACT TO AMEND THE CONSTITUTION
OF THE BAHAMAS**

The Bahamas Constitution (Amendment) (No.4) Act, 2002.

WHEREAS it is enacted inter alia by Article 54(1) of the Constitution that subject to the provisions of Article 54, Parliament may, by an Act of Parliament passed by both Houses, alter any of the provisions of the Constitution:

ENACTED by the Parliament of The Bahamas in accordance with the provisions of Article 54 of the Constitution.

Short title.

1. (1) This Act may be cited as The Bahamas Constitution (Amendment) (No.4) Act, 2002.

(2) This Act shall have effect for the purpose of the alteration of the Constitution.

Interpretation.

2. In this Act “the Constitution” means the Constitution set out in the Schedule to The Bahamas Independence Order, 1973.

**Amendment of
the Constitution.**

3. The Constitution is amended by the insertion after CHAPTER VI of the following -

“CHAPTER VIA

THE DIRECTOR OF PUBLIC PROSECUTIONS

Establishment
of office and
functions of
Director of
Public
Prosecutions.

92A. (1) There shall be a Director of Public Prosecutions for The Bahamas whose office shall be a public office.

(2) The Director of Public Prosecutions shall be appointed by the Governor—General by instrument under the Public Seal acting on the advice of the Judicial and Legal Service Commission.

(3) A person shall not be qualified to hold or act in the office of Director of Public Prosecutions unless he is qualified for appointment as a Judge of the Supreme Court.

(4) The Director of Public Prosecutions 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 court other than a court— martial in respect of any offence against the law of The Bahamas;

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

(5) The powers of the Director of Public Prosecutions under paragraph (4) of this Article may be exercised by him in person or through other

persons acting under and in accordance with his general or special instructions.

(6) The powers conferred upon the Director of Public Prosecutions by sub-paragraphs (b) and (c) of paragraph (4) of this Article shall be vested in him to the exclusion of any other person or authority:

Provided that where any other person or authority has instituted criminal proceedings, nothing in this paragraph shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.

(7) In the exercise of the powers conferred upon him by this Article the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority:

Provided that where the exercise of any such power in any case may, in the judgment of the Director of Public Prosecutions, involve general considerations of public policy, the Director of Public Prosecutions shall bring the case to the notice of the Attorney—General and shall, in the exercise of his powers in relation to that case, act in accordance with the directions of the Attorney-General.

(8) For the purposes of this Article, any appeal from any determination in any criminal proceedings before any court, or any case stated or question of law reserved for the purposes of any such proceedings, to any other court in The Bahamas or to the Judicial Committee of Her Majesty's Privy Council shall be deemed to be part of those proceedings:

Provided that the power conferred on the Director of Public Prosecutions by paragraph 4 (c) of this Article shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved except at the instance of such person.

Remuneration
of Director of
Public
Prosecutions.

92B. (1) The Director of Public Prosecutions shall receive such emoluments and be subject to such other terms and conditions of service as may from time to time be prescribed by or under any law:

Provided that the emoluments and terms and conditions of service of the Director of Public Prosecutions shall not be altered to his disadvantage during his continuance in office.

(2) The salary for the time being payable to the Director of Public Prosecutions under this Constitution shall be charged on and paid out of the Consolidated Fund.

Tenure of
office of
Director of
Public
Prosecutions
and Acting
Director of
Public
Prosecutions.

92C. (1) Subject to the provisions of paragraphs (4) to (7) (inclusive) of this Article the Director of Public Prosecutions shall hold office until he attains the age of sixty—eight years:

Provided that the Governor-General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, may permit a Director of Public Prosecutions who has attained the age of sixty—eight years to continue in office until he has attained such later age, not exceeding seventy—two years, as may (before the Director of Public Prosecutions has attained the age of sixty—eight years) have been agreed between them.

(2) Nothing done by the Director of Public Prosecutions shall be invalid by reason only that he has attained the age at which he is required by this Article to vacate his office.

(3) If the office of Director of Public Prosecutions is vacant or the holder of that office is for any reason unable to perform his functions thereof, a person qualified for appointment to that office may be appointed to act therein, and any person so appointed shall, subject to the provisions of paragraph (1) of this Article, continue to act until the office of Director of Public

Prosecutions is filled or, as the case may be, until the Director of Public Prosecutions has resumed the functions of his office or the appointment of that person is revoked by the Governor—General acting on the advice of the Judicial and Legal Service Commission.

(4) The Director of Public 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 paragraph (5) of this Article.

(5) The Director of Public Prosecutions shall be removed from office by the Governor—General by instrument under the Public Seal if the question of his removal from office has been referred to a tribunal appointed under paragraph (6) of this Article and the tribunal has recommended to the Governor—General that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(6) If the Prime Minister represents to the Governor—General that the question of removing the Director of Public Prosecutions from office for inability as aforesaid or for misbehaviour ought to be investigated, then —

- (a) the Governor—General shall appoint a tribunal, which shall consist of a Chairman and not less than two other members, selected by the Governor—General, acting in accordance with the advice of the Judicial and Legal Service Commission, from among persons who hold or have held or are eligible to hold high judicial office; and
- (b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-

General and recommend to the Governor-General whether the Director of Public Prosecutions ought to be removed from office for inability as aforesaid or for misbehaviour.

(7) If the question of removing the Director of Public Prosecutions from office has been referred to a tribunal appointed under paragraph (6) of this Article, the Governor—General, acting in accordance with the advice of the Judicial and Legal Service Commission after the Judicial and Legal Service Commission has consulted with the Prime Minister, may suspend the Director of Public Prosecutions from performing the functions of his office.

(8) Any such suspension may at any time be revoked by the Governor—General, acting in accordance with the advice of the Judicial and Legal Service Commission and shall in any case cease to have effect if the tribunal recommends to the Governor—General that the Director of Public Prosecutions should not be removed from office.”.

OBJECTS AND REASONS

This Act seeks to make several amendments to the Constitution of The Bahamas.

Clause 3 seeks to insert a new Chapter VIA in the Constitution to create the office of the Director of Public Prosecutions.

The creation of the constitutional office of the Director of Public Prosecutions is one, and an important one, of Government responses to the increasing volume of criminal cases with which the system of criminal justice is presently being overwhelmed. It is the conviction of Government that the creation of such an office under the governance of a Director which is devoted entirely and exclusively to instituting and undertaking of criminal cases will provide the climate for the growth, development and display of professionalism in the preparation for and conduct of criminal cases which will promote the more speedy processing of cases through the

court system. The Director who must be qualified for appointment as a Judge of the Supreme Court in order to hold the office shall have power in any case in which he considers it desirable to do so to institute and undertake criminal proceedings against any person before any court in respect of any offence against the law of The Bahamas.