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STATUTORY INSTRUMENTS

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**1988 No. 1842**

**SOUTH ATLANTIC TERRITORIES**

**The St. Helena Constitution Order 1988**

*Made - - - - 26th October 1988*

*Laid before Parliament 3rd November 1988*

*Coming into force in accordance with section 1(2)*

At the Court at Buckingham Palace, the 26th day of October 1988

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 112 of the Government of India Act 1833(1), the British Settlements Acts 1887 and 1945(2) or otherwise in Her Majesty vested, 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 St. Helena Constitution Order 1988.

(2) This Order shall come into force on such day as the Governor, acting in his discretion, may appoint by proclamation published in the Gazette:

Provided that section 3 shall come into force on 28th November 1988.

**Interpretation.**

2.—(2) In this Order—

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

“the Constitution” means the Constitution set out in Schedule 1 to this Order;

“the existing Constitution” means the Constitution set out in Schedule 1 to the St. Helena (Constitution) Order 1966(3);

“the Courts Orders” means the St. Helena Court of Appeal Order 1964(4) and the St. Helena Supreme Court Order 1969(5).

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(1) 1833 c. 85.

(2) 1887 c. 54 and 1945 c. 7 (9 & 10 Geo. 6).

(3) S.I. 1966/1458, amended by S.I. 1967/1138, 1987/1268.

(4) S.I. 1964/1845.

(2) Unless the context otherwise requires, expressions used in sections 1 to 10 (inclusive) of this Order shall have the same meaning as in the Constitution and the provisions of section 56 of the Constitution shall apply for the purposes of interpreting those sections as they apply for interpreting the Constitution.

#### **Amendment of existing Constitution.**

3. Section 41 of the existing Constitution is amended by substituting for subsection (2) the following—

“(2) The Governor shall dissolve the Legislative Council not later than 6th March 1989.”.

#### **Revocations.**

4. The instruments specified in Schedule 2 to this Order are revoked with effect from the appointed day.

#### **Establishment of Constitution.**

5. The Constitution shall come into effect in St. Helena and its Dependencies on the appointed day.

#### **Existing laws.**

6.—(1) Subject to the provisions of this section, the existing laws shall have effect on and after the appointed day as if they had been made in pursuance of the Constitution and shall be 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 made at any time within twelve months after the appointed day make such amendments to 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.

(3) The provisions of this section shall be without prejudice to any powers conferred by the Constitution upon any person or authority to make provision for any matter, including the amendment or repeal of any existing law.

(4) For the purposes of this section, the expression “existing laws” means laws and instruments (other than Acts of the Parliament of the United Kingdom and instruments made thereunder) having effect as part of the law of St. Helena or its Dependencies immediately before the appointed day.

#### **Existing offices.**

7.—(1) Any office established by or under the existing Constitution or the Courts Orders and existing immediately before the appointed day shall on and after that day, so far as consistent with the provisions of the Constitution, continue as if it had been established by or under the Constitution.

(2) Any person who immediately before the appointed day holds or is acting in any office referred to in subsection (1) of this section shall, on and after that day, continue to hold or act in that office as if he had been appointed to hold or to act in it in accordance with or under the provisions of the Constitution, and shall be deemed to have taken any oath required by the Constitution or any other law: Provided that any person who under or by virtue of the provisions of the existing Constitution or the Courts Orders would have been required to vacate his office at the expiration of any period shall vacate his office at the expiration of that period.

**Standing Orders.**

8. The Standing Orders of the Legislative Council as in force immediately before the appointed day shall, except as may be otherwise provided under section 29 of the Constitution, have effect on and after that day as if they had been made under that section but shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

**Pending legal proceedings.**

9.—(1) Any cause, matter or appeal pending before the Supreme Court or any appeal or application pending before the Court of Appeal (as those courts are respectively constituted by the Courts Orders) immediately before the appointed day may, on or after that day, be continued, determined or appealed against as if such cause, matter or appeal had been instituted or was pending before the Supreme Court, or such appeal or application made to the Court of Appeal, as the case may be, as those courts are respectively constituted by the Constitution.

(2) Any decree or order of the Supreme Court or the Court of Appeal (as those courts are respectively constituted by the Courts Orders) given or made before the appointed day, in so far as it has not been fully executed or enforced, may be executed or enforced on or after that day as if it were a decree or order of the Supreme Court or the Court of Appeal, as the case may be, as those courts are respectively constituted by the Constitution.

**Power reserved to Her Majesty.**

10. There is reserved to Her Majesty full power to make laws from time to time for the peace, order and good government of St. Helena and its Dependencies, including, without prejudice to the generality of the foregoing, laws amending or revoking this Order.

*G. I. de Deney*  
Clerk of the Privy Council

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SCHEDULE 1  
TO THE ORDER

Sections 2(1) and 5

THE CONSTITUTION OF ST. HELENA

ARRANGEMENT OF SECTIONS

PART I

THE GOVERNOR

1. Office of Governor constituted.
2. Succession to Government.
3. Deputy to Governor.

PART II

THE EXECUTIVE

4. Executive authority.
5. Executive Council.
6. Tenure of office of Unofficial and Temporary Members of Executive Council.
7. Determination of questions as to membership of Executive Council.
8. Summoning of and proceedings in Executive Council.
9. Summoning of persons to assist Executive Council.
10. Presiding in Executive Council.
11. Governor to consult Executive Council.
12. Governor's special responsibilities.
13. Oath by members of Executive Council.
14. Powers of the Attorney General.

PART III

LEGISLATIVE COUNCIL

15. Legislative Council.
16. Temporary members of Legislative Council.
17. Qualifications and disqualifications of Elected Members of Legislative Council.
18. Tenure of office of Elected Members of Legislative Council.
19. Vacation of seat on sentence, etc.
20. Determination of questions as to membership of Legislative Council.
21. Law as to elections.

PART IV

COUNCIL COMMITTEES

22. Council Committees.
23. Functions of Council Committees.
24. Rules of procedure, etc., of Council Committees.
25. Tenure of office of members of Council Committees.

26. Governor may confer functions on Council Committees.

#### PART V

##### LEGISLATION AND PROCEDURE IN LEGISLATIVE COUNCIL

27. Power to make laws.
28. Royal Instructions.
29. Standing Orders.
30. Presiding in Legislative Council.
31. Legislative Council may transact business notwithstanding vacancies.
32. Quorum.
33. Voting.
34. Governor's reserved power.
35. Introduction of Bills.
36. Assent to Bills.
37. Disallowance of laws.
38. Oath of Allegiance.
39. Privileges of Legislative Council and members.
40. Sessions.
41. Prorogation and dissolution.
42. General election.

#### PART VI

##### THE JUDICATURE

###### *The Supreme Court*

43. Constitution of Supreme Court.
44. Exercise of jurisdiction of Supreme Court.
45. Appointment of Chief Justice.
46. Persons empowered to hold Supreme Court.

###### *Court of Appeal*

47. Constitution of Court of Appeal.
48. Jurisdiction of Court of Appeal.
49. Practice and procedure on appeals.

#### PART VII

##### MISCELLANEOUS

50. Public seal.
51. Grants of land.
52. Governor's power of pardon.
53. Constitution of offices, appointments, etc.
54. Resignations.
55. Reappointments and concurrent appointments.
56. Interpretation.

##### SCHEDULE TO THE — Forms of Oaths and Affirmations. CONSTITUTION

Signature

Explanatory Note

THE CONSTITUTION OF ST. HELENA

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## PART I

### THE GOVERNOR

#### **Office of Governor constituted.**

1.—(1) There shall be a Governor and Commander-in-Chief of St. Helena and its Dependencies.

(2) Appointments to the office of Governor shall be made by Commission under Her Majesty's Sign Manual and Signet and a person appointed to the office shall hold the office during Her Majesty's pleasure.

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

(4) The Governor shall have such functions as are conferred upon him by or under this Constitution or any other law and such other functions as Her Majesty may from time to time be pleased to assign to him and, subject to the provisions of this Constitution and of any other law by which such functions are conferred, shall perform all such functions (including functions which are expressed by this Constitution to be exercisable in his discretion or in his judgment) according to such instructions as Her Majesty may from time to time see fit to give him:

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

#### **Succession to Government.**

2.—(1) Whenever the office of Governor is vacant or the person holding the office of Governor is absent from St. Helena or is from any other cause prevented from or incapable of discharging the functions of his office those functions shall, during Her Majesty's pleasure, be assumed and performed by such person as Her Majesty may designate by Instructions given under Her Sign Manual and Signet or through a Secretary of State.

(2) Before assuming the functions of the office of Governor, any such person as aforesaid shall make the oaths directed by section 1(3) of this Constitution to be made by a person appointed to the office of Governor.

(3) Any such person as aforesaid shall not continue to perform the functions of the office of Governor after the person holding that office or some other person having a prior right to perform those functions has notified him that he is about to assume, or resume, those functions.

(4) For the purposes of this section a person holding the office of Governor shall not be regarded as absent from St. Helena, or as prevented from or incapable of discharging the functions of the office of Governor, at any time when there is a subsisting appointment of a Deputy under section 3 of this Constitution.

#### **Deputy to Governor.**

3.—(1) Whenever the Governor—

- (a) has occasion to be absent from the seat of government for a period that he has reason to believe will be of short duration;
- (b) has occasion to visit any Dependency of St. Helena; or
- (c) is suffering from an illness that he has reason to believe will be of short duration,

he may, by Instrument under the public seal, appoint any person in St. Helena to be his Deputy during such absence or illness and in that capacity to discharge on his behalf during such absence or illness such of the functions of the office of Governor as may be specified in that Instrument.

(2) The power and authority of the Governor shall not be abridged, altered or in any way affected by the appointment of a Deputy under this section otherwise than as Her Majesty may at any time think proper to direct by instructions to the Governor through a Secretary of State, and every such Deputy shall conform to and observe all instructions that the Governor may from time to time address to him for his guidance.

(3) A person appointed as Deputy under this section shall hold that appointment for such period as may be specified in the Instrument by which he is appointed, and his appointment may be revoked at any time by Her Majesty by instructions given to the Governor through a Secretary of State or by the Governor.

(4) In this section, “the Governor” does not include a Deputy appointed under this section.

(5) The powers conferred upon the Governor by this section shall be exercised by him in his discretion.

## PART II

### THE EXECUTIVE

#### **Executive authority.**

4.—(1) The executive authority of St. Helena and its Dependencies is vested in Her Majesty.

(2) Subject to the provisions of this Constitution, the executive authority of St. Helena and its Dependencies shall be exercised on behalf of Her Majesty by the Governor, either directly or through officers subordinate to him.

(3) Nothing in this section shall preclude persons or authorities other than the Governor from exercising such functions as are or may be conferred upon them by any law.

#### **Executive Council.**

5.—(1) There shall be an Executive Council for St. Helena which shall consist of—

(a) three *Ex-officio* Members, that is to say, the persons for the time being discharging the functions of—

(i) the Chief Secretary of St. Helena;

(ii) the Financial Secretary of St. Helena; and

(iii) the Attorney General of St. Helena;

(b) not less than three nor more than five persons who, not being *Ex-officio* Members of the Legislative Council, are for the time being Chairmen of Council Committees constituted under section 22 of this Constitution (hereinafter in this Part called “the Unofficial Members”); and

(c) such Temporary Members as may be appointed under subsection (2) of this section.

(a) (2) (a) If a member of the Executive Council is incapable of taking part in the proceedings of the Council by reason of a declaration made under paragraph (b) of this subsection the Governor may, by Instrument under the public seal, appoint a person to be a Temporary Member of the Council.

(b) The Governor may, by writing under his hand, declare that a member of the Executive Council is, by reason of absence or illness, temporarily unable to discharge his functions as a member of the Council, and thereupon that member shall not take part in the proceedings of the Council until he is declared in manner aforesaid to be again able to discharge those functions.

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- (c) The Governor, in making an appointment under this subsection, shall appoint—
  - (i) in place of an *Ex-officio* Member, a person who holds a public office; and
  - (ii) in place of an Unofficial Member, a person who is a member of the Legislative Council.
- (d) The Governor shall forthwith report to Her Majesty through a Secretary of State every appointment made under this subsection.
- (e) The powers conferred upon the Governor by this subsection shall be exercised by him in his discretion.

**Tenure of office of Unofficial and Temporary Members of Executive Council.**

6. The Unofficial Members and Temporary Members of the Executive Council shall hold their seats in the Council during Her Majesty's pleasure:

Provided that the seat of any such member shall become vacant—

- (a) in the case of an Unofficial Member, if he ceases to be a Chairman of a Council Committee; or
- (b) in the case of a Temporary Member, when he is informed by the Governor that the member on account of whose incapacity he was appointed is again able to discharge his functions or when the seat of that member in the Council becomes vacant, whichever shall be the earlier.

**Determination of questions as to membership of Executive Council.**

7. Any question whether a person has been validly appointed an Unofficial Member or a Temporary Member of the Executive Council shall be determined by the Governor, acting in his discretion.

**Summoning of and proceedings in Executive Council.**

8. The Executive Council shall not be summoned except with the authority of the Governor.

(2) No business except that of adjournment shall be transacted by the Executive Council if objection is taken by any member present that there are less than five members present (excluding any member presiding in the absence of the Governor).

(3) Subject to subsection (2) of this section, the Executive Council shall not be disqualified for the transaction of business by reason of any vacancy in the membership of the Council, and any proceedings in the Council shall be valid notwithstanding that some person who was not entitled to do so took part in those proceedings.

(4) The Attorney General of St. Helena, and any Temporary Member appointed under section 5(2) of this Constitution on account of the incapacity of the Attorney General, shall not vote in the Executive Council.

**Summoning of persons to assist Executive Council.**

9. The Governor may summon any person to a meeting of the Executive Council notwithstanding that that person is not a member of the Council when, in the opinion of the Governor, the business before the Council renders the presence of that person desirable.

**Presiding in Executive Council.**

10.—(1) The Governor shall, so far as is practicable, preside at meetings of the Executive Council.



(2) In the absence of the Governor there shall preside at any meeting of the Executive Council—

- (a) such member of the Council as the Governor, acting in his discretion, may appoint;
- (b) in the absence of a member so appointed, the senior *Ex-officio* Member present.

(3) For the purpose of subsection (2) of this section, the *Ex-officio* Members of the Executive Council shall have seniority in the order in which their offices are mentioned in section 5(1)(a) of this Constitution.

### **Governor to consult Executive Council.**

**11.**—(1) Subject to the provisions of this section, the Governor shall consult the Executive Council in the formulation of policy and the exercise of all functions conferred upon him by this Constitution or any other law, and shall act in accordance with the advice given to him by the Council.

(2) The Governor shall not be obliged to consult nor act in accordance with the advice given to him by the Executive Council with respect to the following—

- (a) when acting under instructions given to him by Her Majesty through a Secretary of State;
- (b) any function conferred upon him by this Constitution or any other law which is expressed to be exercisable by him in his discretion or in his judgment or in accordance with the advice of, or after consultation with, any person or authority other than the Executive Council;
- (c) any matter referred to in section 12(1)(a) of this Constitution;
- (d) any matter in which, in his judgment, the service of Her Majesty would sustain material prejudice thereby;
- (e) any matter concerning the exercise of the executive authority of the Dependencies;
- (f) where the matter to be decided is, in his judgment, too unimportant to require the advice of the Council;
- (g) where the matter to be decided is, in his judgment, too urgent to admit of the giving of the Council's advice by the time within which it may be necessary for him to act:

Provided that, in every case falling within paragraph (g) of this subsection, the Governor shall as soon as practicable communicate to the Executive Council the measures which he shall have adopted, with the reasons therefor.

(3) In any case where the Governor is required by this section to consult the Executive Council, he may act otherwise than in accordance with the advice given to him by the Council if in his judgment it would be inexpedient in the interests of public order, public faith or good government to act in accordance with that advice:

Provided that—

- (a) the Governor shall not under this subsection act contrary to the advice given to him by the Council without the prior approval of a Secretary of State, unless, in his judgment, the matter is of such urgency that it is necessary for him to act before obtaining such approval; and if he does so act he shall, as soon as practicable, report his action and the reasons therefor to a Secretary of State;
- (b) whenever the Governor proposes under this subsection to act contrary to the advice given to him by the Council he shall inform the Council in writing of his reasons; and any member who wishes to do so may, within thirty days, submit his comments in writing to the Governor who shall forward them to a Secretary of State as soon as practicable.

(4) The Governor shall not be obliged to act in accordance with the advice given to him by the Executive Council in any case which, in his judgment, involves a matter for which he is responsible under section 12 of this Constitution.

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(5) 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 Executive Council he shall not be obliged to exercise that function in accordance with the advice of that person or authority.

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

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

**12.**—(1) The Governor shall be responsible for the conduct (subject to the provisions of this Constitution and any other law) of any business of the Government of St. Helena, including the administration of any department of Government, with respect to the following matters—

- (a) the appointment of any person to any public office, the suspension, termination of employment, dismissal, or retirement of any public officer or the taking of disciplinary action in respect of such an officer, the application to any public officer of the terms or conditions of employment of the public service (including salary scales, allowances, leave, passages or pensions) for which financial provision has been made;
- (b) defence;
- (c) external affairs;
- (d) internal security, including the Police;
- (e) the administration of justice;
- (f) finance; and
- (g) shipping.

(2) The Governor, acting in his discretion, may assign to any member of the Executive Council responsibility for the conduct on behalf of the Governor of any business in the Legislative Council with respect to any of the matters mentioned in subsection (1) of this section.

(3) Where the Governor, acting in his discretion, determines that the exercise of any function conferred upon any other person or authority (other than the Legislative Council) would involve or affect any matter mentioned in subsection (1) of this section, he may, acting in his discretion, give directions as to the exercise of that function, and the person or authority concerned shall exercise the function in accordance with those directions.

#### **Oath by members of Executive Council.**

**13.** Before assuming the functions of his office a member of the Executive Council shall make before the Governor, or some other person authorised in that behalf by the Governor, an oath for the due execution of his office in the form set out in the Schedule to this Constitution.

#### **Powers of the Attorney General.**

**14.**—(1) The Attorney General of St. Helena 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 in respect of any offence against any law in force in St. Helena and its Dependencies;
- (b) to take over and continue any such criminal proceedings that 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.

(2) The powers of the Attorney General under subsection (1) 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.

(3) The powers conferred upon the Attorney General by subsection (1)(b) and (c) of this section 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 subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

(4) 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.

(5) In the exercise of the powers conferred upon him by this section and section 20(3) of this Constitution the Attorney General shall not be subject to the direction or control of any other person or authority.

## PART III

### LEGISLATIVE COUNCIL

#### **Legislative Council.**

15.—(1) There shall be a Legislative Council for St. Helena which shall consist of—

- (a) the Speaker;
- (b) three *Ex-officio* Members, that is to say, the persons for the time being discharging the functions of—
  - (i) the Chief Secretary of St. Helena;
  - (ii) the Financial Secretary of St. Helena; and
  - (iii) the Attorney General of St. Helena;
- (c) twelve Elected Members, who shall be persons qualified for election in accordance with the provisions of this Constitution; and
- (d) such Temporary Members as may be appointed under section 16(2) of this Constitution.

(2) The Elected Members of the Legislative Council shall be elected in the manner provided by any law in force in St. Helena.

(3) For the purpose of electing the Elected Members of the Legislative Council the Governor by regulations published in the Gazette shall provide for dividing St. Helena into electoral areas, and shall prescribe the names and boundaries of the electoral areas so established.

#### **Temporary Members of Legislative Council.**

16.—(1) The Governor may, by writing under his hand, declare that an *Ex-officio* Member of the Legislative Council is, by reason of absence or illness, temporarily unable to discharge his functions as a member of the Council, and thereupon that member shall not take part in the proceedings of the Council until he is declared in manner aforesaid to be again able to discharge those functions.

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(2) If an *Ex-officio* Member of the Legislative Council is incapable of taking part in the proceedings of the Council by reason of a declaration made under subsection (1) of this section, the Governor may appoint to be a Temporary Member of the Council a person who holds a public office.

(3) The Governor shall forthwith report to Her Majesty through a Secretary of State any appointment made under this section.

(4) A person appointed under this section to be a Temporary Member of the Legislative Council—

- (a) shall hold his seat in the Council during Her Majesty's pleasure;
- (b) shall vacate his seat in the Council when he is informed by the Governor that the member on account of whose incapacity he was appointed is again able to discharge his functions as a member of the Council, or when the vacancy has otherwise ceased to exist.

(5) The powers conferred upon the Governor by this section shall be exercised by him in his discretion.

### **Qualifications and disqualifications of Elected Members of Legislative Council.**

17.—(1) A person elected an Elected Member of the Legislative Council shall be a British citizen or British Dependent Territories citizen who has attained the age of twenty-one years and shall be a person who is registered as a voter, and no person shall be qualified to be so elected who—

- (a) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;
- (b) subject to subsection (2) of this section, holds, or is acting in, any public office;
- (c) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth;
- (d) is mentally ill within the meaning of any law in force in St. Helena;
- (e) is under sentence of death imposed on him by a court of law in any country, or is under a sentence of imprisonment (by whatever name called) for a term of or exceeding twelve months, other than a sentence in lieu of a fine, but including a suspended sentence, imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court;
- (f) is disqualified for membership of the Council under any law in force in St. Helena relating to offences connected with elections; or
- (g) holds, or is acting in, any office the functions of which involve any responsibility for, or in connection with, the conduct of any election or the compilation or revision of any electoral register.

(2) The Governor, acting in his discretion, may by notice published in the Gazette make provision for enabling any public officer or class of public officer not otherwise disqualified under subsection (1) of this section to be qualified to be elected as an Elected Member of the Legislative Council.

(3) For the purpose of subsection (1)(e) of this section, two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms.

### **Tenure of office of Elected Members of Legislative Council**

18. The seat of an Elected Member of the Legislative Council shall become vacant—

- (a) upon a dissolution of the Council;
- (b) if for a consecutive period of six months he is absent from meetings of the Council without the prior written permission of the Speaker;

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- (c) if any circumstance arises that, if he were not a member of the Council, would cause him to be disqualified for election thereto by virtue of paragraph (a), (b), (c), (d), (f) or (g) of section 17(1) of this Constitution; or
- (d) in the circumstances mentioned in section 19 of this Constitution.

#### **Vacation of seat on sentence, etc.**

**19.**—(1) Subject to the provisions of this section, if an Elected Member of the Legislative Council is sentenced by a court of law in any country to death or to imprisonment (by whatever name called) for a term of or exceeding twelve months, he shall forthwith cease to discharge his functions as a member of the Council, and his seat in the Council shall become vacant at the expiration of a period of thirty days thereafter:

Provided that the Speaker may, at the request of the member, from time to time extend that period for thirty days to enable the member to pursue any appeal in respect of his conviction or sentence, save that extensions of time exceeding in the aggregate three hundred and thirty days shall not be granted without the approval of the Council signified by resolution.

(2) If at any time before the member vacates his seat he receives a free pardon or his conviction is set aside or his sentence is reduced to a term of imprisonment of less than twelve months or a punishment other than imprisonment is substituted, his seat in the Legislative Council shall not become vacant under this section, and he may again discharge his functions as a member of the Council.

(3) For the purpose of this section, two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms.

#### **Determination of questions as to membership of Legislative Council.**

**20.**—(1) Any question whether—

- (a) a person has been validly appointed a Temporary Member of the Legislative Council; or
- (b) a person has vacated his seat therein as such a member, shall be determined by the Governor, acting in his discretion.

(2) Any question whether—

- (a) a person has been validly elected an Elected Member of the Legislative Council; or
- (b) an Elected Member of the Legislative Council has vacated his seat therein or is required under section 19 of this Constitution to cease to discharge his functions as a member,

shall be determined by the Supreme Court in accordance with any law in force in St. Helena. The decision of the Supreme Court shall be final and not subject to any appeal.

(3) An application to the Supreme Court for the determination of any question under subsection (2) of this section may be made by the Attorney General or by any person who is a registered voter; and an application for the determination of any question under paragraph (b) of that subsection may also be made by any member of the Legislative Council.

#### **Law as to elections.**

**21.** Subject to the provisions of this Constitution, a law enacted under this Constitution may provide for the election of members of the Legislative Council, and in particular, and without prejudice to the generality of the foregoing power, may provide for—

- (a) the qualifications and disqualifications of voters;
- (b) the registration of voters;

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- (c) the ascertainment of the qualifications of candidates for election and of voters;
- (d) the holding of elections; and
- (e) the definition and trial of offences connected with elections and the imposition of penalties therefor, including disqualification for membership of the Legislative Council, or for registration as a voter, or for voting at elections, of any person concerned in any such offence.

## PART IV

### COUNCIL COMMITTEES

#### **Council Committees.**

**22.**—(1) There shall be such number of Council Committees as the Governor may from time to time determine.

(2) A Council Committee shall consist of—

- (a) such number of persons who are members of the Legislative Council as the Governor, acting after consultation with the Chairman of the Committee, may decide;
- (b) such number, if any, of persons who are not members of the Legislative Council as the Governor, acting after consultation with the Chairman of the Committee, may decide:

Provided that at any one time the majority of the members of a Council Committee shall be persons who are members of the Legislative Council.

(3) There shall be a Chairman of each Council Committee who shall be a member of the Legislative Council.

(4) The Chairman and the other members of a Council Committee shall be appointed by the Governor, acting in accordance with the following provisions of this section, by notice in the Gazette.

(5) Subject to subsections (6) and (7) of this section, the Governor shall appoint as Chairman of a Council Committee such member of the Legislative Council as shall have been nominated for that office by the votes of a majority of the Elected Members of the Legislative Council:

Provided that if in the judgment of the Governor it would be in the public interest to appoint as Chairman of a Council Committee a member of the Legislative Council other than the nominee the Governor may appoint that other member.

(6) If, within such period as the Governor in his discretion considers reasonable, no person has been nominated in accordance with subsection (5) of this section for the office of Chairman of a Council Committee, the Governor shall, acting in his discretion, forthwith appoint a member of the Legislative Council as Chairman of that Committee.

(7) The Governor may, acting in his discretion, appoint an *Ex-officio* Member of the Legislative Council as Chairman of any Council Committee.

(8) The Governor shall appoint the members of a Council Committee other than the Chairman after consultation with the Chairman of that Committee.

#### **Functions of Council Committees.**

**23.**—(1) A Council Committee shall be appointed by the Governor for such general or special purposes as in his judgment would be most suitably regulated and managed by means of a committee.

(2) The Governor may, by directions in writing, charge any Council Committee with responsibility for any subject or department of Government, except for any matter referred to in paragraph (a), (b), (c), (d) or (e) of section 12(1) of this Constitution.

#### **Rules of procedure, etc., of Council Committees.**

**24.** The Governor may by order make the rules of procedure of each Council Committee and may likewise determine the quorum and place of meeting of each Committee.

#### **Tenure of office of members of Council Committees.**

**25.—**(1) The office of a member of a Council Committee shall become vacant—

- (a) if his appointment is terminated by the Governor, acting in accordance with subsections (2) to (4) of this section, by notice in the Gazette;
- (b) in the case of a person who was an Elected Member of the Legislative Council at the time of his appointment—
  - (i) if he ceases to be an Elected Member of the Legislative Council otherwise than by reason of a dissolution of the Council; or
  - (ii) at the first sitting of the Legislative Council after any dissolution of the Council; and
- (c) in the case of a member who was not an Elected Member of the Legislative Council at the time of his appointment, if he is elected to be a member of the Council.

(2) The Governor shall terminate the appointment of a Chairman of a Council Committee appointed under section 22(5) of this Constitution if a motion that his appointment should be terminated receives in the Legislative Council the affirmative votes of a majority of the Elected Members of the Council.

(3) The Governor may, acting in his discretion, terminate the appointment of a Chairman of a Council Committee appointed under subsection (6) or (7) of section 22 of this Constitution.

(4) The Governor may terminate the appointment of a member of a Council Committee other than the Chairman after consultation with the Chairman of that Committee.

#### **Governor may confer functions on Council Committees.**

**26.—**(1) The Governor may by order published in the Gazette declare that, subject to such limitations and conditions as may be specified in the order, any of the powers conferred or duties imposed on the Governor or on any authority, as the case may be, under the provisions of any local enactment, may be exercised or shall be performed by a Council Committee.

(2) Where, by virtue of a declaration made under subsection (1) of this section, any power may be exercised or any duty is to be performed by a Council Committee, then—

- (a) the Governor or, as the case may be, the authority, shall not exercise such power or perform such duty; and
- (b) in the exercise of such power or the performance of such duty, the Committee may rescind or vary anything previously done by the Governor or, as the case may be, by the authority, to the same extent as such thing could, but for paragraph (a) of this subsection, have been rescinded or varied by the Governor or, as the case may be, by the authority.

(a) (3) (a) The Governor may by a further order published in like manner revoke or vary any order made under subsection (1) of this section.

(b) Where, by reason that any such order has been so revoked or varied, any power or duty ceases to be exercisable or is no longer to be performed by a Council Committee, anything done by the Committee in the exercise or performance of such power or duty shall, if

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continuing to be of effect immediately before such revocation or variation, continue to have effect, but may be rescinded or varied by the Governor or, as the case may be, by the authority, as if it had been done by the Governor or by that authority.

(4) Any order made by the Governor under subsection (1) or (3) of this section may contain such modifications of or adaptations to the local enactment to which the order refers as appears to the Governor to be necessary, and accordingly any local enactment to which an order refers shall be read and construed subject to the provisions of that order.

(5) For the purposes of this section—

- (a) “authority” means any statutory authority, board or committee;
- (b) “local enactment” means any law enacted by the legislature of St. Helena, and includes any subsidiary instrument;
- (c) “power” does not include power to make any subsidiary instrument;
- (d) “subsidiary instrument” means any proclamation, order in council, order, rule, regulation or byelaw made under any law enacted by the legislature of St. Helena.

## PART V

### LEGISLATION AND PROCEDURE IN LEGISLATIVE COUNCIL

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

27. Subject to the provisions of this Constitution—

- (a) the Governor, with the advice and consent of the Legislative Council, may make laws for the peace, order and good government of St. Helena;
- (b) the Governor in his discretion may make laws for the peace, order and good government of Ascension and Tristan da Cunha, respectively.

#### **Royal Instructions.**

28. Subject to the provisions of this Constitution, the Governor and the Legislative Council shall, in the transaction of business and the making of laws, conform as nearly as may be to the directions contained in any Instructions under Her Majesty’s Sign Manual and Signet which may from time to time be addressed to the Governor in that behalf.

#### **Standing Orders.**

29. Subject to the provisions of this Constitution and of any Instructions under Her Majesty’s Sign Manual and Signet, the Legislative Council may from time to time make, amend and revoke Standing Orders for the regulation and orderly conduct of its own proceedings and the despatch of business, and for the passing, intituling and numbering of Bills and for the presentation thereof to the Governor for assent; but no such Standing Orders or amendment or revocation thereof shall have effect unless they have been approved by the Governor.

#### **Presiding in Legislative Council.**

30.—(1) At sittings of the Legislative Council there shall preside—

- (a) the Governor; or
- (b) at any time when there is a person holding the office of Speaker, the Speaker; or
- (c) in the absence of the Governor or, as the case may be, of the Speaker—



(i) such member of the Council as may be elected for that purpose by the Elected Members of the Council;

(ii) in the absence of a member so elected, the senior *Ex-officio* Member present.

(2) For the purpose of subsection (2) of this section, the *Ex-officio* Members of the Legislative Council shall have seniority in the order in which their offices are mentioned in section 15(1)(b) of this Constitution.

(3) The Speaker shall be elected by the votes of a majority of the Elected Members of the Legislative Council, but he need not be a member of the Council.

(4) A person shall vacate the office of Speaker—

(a) on dissolution of the Legislative Council;

(b) on any circumstance arising which, if he were an Elected Member of the Legislative Council, would cause him to vacate his seat;

(c) on becoming a member of the Executive Council or any Council Committee;

(d) on the passing, by the votes of a majority of the Elected Members of the Legislative Council, of a motion expressing no confidence in him as Speaker.

#### **Legislative Council may transact business notwithstanding vacancies.**

**31.** The Legislative Council 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 Council is first constituted or is reconstituted at any time) and any proceedings therein shall be valid notwithstanding that some person who was not entitled to do so sat or voted in the Council or otherwise took part in those proceedings.

#### **Quorum.**

**32.** If at any sitting of the Legislative Council a quorum is not present and any member of the Legislative Council who is present objects on that account to the transaction of business and, after such interval as may be prescribed in the Standing Orders of the Legislative Council, the person presiding at the sitting ascertains that a quorum is still not present, he shall adjourn the Legislative Council.

(2) For the purpose of this section a quorum shall consist of six members of the Legislative Council in addition to the person presiding.

#### **Voting.**

**33.—**(1) Save as otherwise provided in this Constitution, all questions proposed for decision in the Legislative Council shall be determined by a majority of votes of the members present and voting.

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

(3) The Attorney General of St. Helena, and any Temporary Member appointed under section 16(2) of this Constitution on account of the incapacity of the Attorney General, shall not vote in the Legislative Council.

#### **Governor's reserved power.**

**34.—**(1) If the Governor considers that it is expedient—

(a) in the interests of public order, public faith or good government (which expressions shall, without prejudice to their generality, include the responsibility of St. Helena as a territory

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within the Commonwealth and all matters pertaining to the creation or abolition of any public office or to the salary or other conditions of service of any public officer), or

- (b) in order to secure detailed control of the finances of St. Helena during such time as, by virtue of the receipt of financial assistance by St. Helena from Her Majesty's Exchequer in the United Kingdom for the purpose of balancing the annual budget or otherwise, such control rests with Her Majesty's Government in the United Kingdom,

that any Bill introduced, or any motion proposed, in the Legislative Council should have effect, then, if the Legislative Council fail to pass the Bill or to carry the motion within such time and in such form as the Governor thinks reasonable and expedient, the Governor may, at any time that he thinks fit, and notwithstanding any provisions of this Constitution or of any other law in force in St. Helena or of any Standing Orders of the Council, declare that the Bill or motion shall have effect as if it had been passed or carried by the Council either in the form in which it was introduced or proposed or with such amendments as the Governor thinks fit which have been moved or proposed in the Council or any committee thereof; and the Bill or the motion shall be deemed thereupon to have been so passed or carried, and the provisions of this Constitution, and in particular the provisions relating to assent to Bills and disallowance of laws, shall have effect accordingly.

(2) The Governor shall forthwith report to a Secretary of State every case in which he makes any such declaration and the reasons therefor.

(3) If any member of the Legislative Council objects to any declaration made under this section, he may, within fourteen days of the making thereof, submit to the Governor a statement in writing of his reasons for so objecting, and a copy of the statement shall, if furnished by the member, be forwarded by the Governor as soon as practicable to a Secretary of State.

(4) Any declaration made under this section other than a declaration relating to a Bill may be revoked by a Secretary of State and the Governor shall forthwith cause notice of the revocation to be published in the Gazette; and from the date of such publication any motion that is deemed to have been carried by virtue of the declaration shall cease to have effect and section 16(1) of the Interpretation Act 1978<sup>(6)</sup> shall apply to the revocation as it applies to the repeal of an Act of Parliament.

(5) The powers conferred upon the Governor by subsection (1) of this section shall be exercised by him in his discretion.

### **Introduction of Bills.**

**35.—**(1) Subject to the provisions of this Constitution and of the Standing Orders of the Legislative Council, any member may introduce any Bill or propose any motion for debate in, or may present any petition to, the Council and the same shall be debated and disposed of according to the Standing Orders of the Council.

(2) Except on the recommendation of the Governor the Legislative Council shall not—

- (a) proceed upon any Bill (including any amendment to a Bill) which, in the opinion of the person presiding in the Council, makes provision for imposing or increasing any tax, for imposing or increasing any charge on the revenues or other funds of St. Helena or for altering any such charge otherwise than by reducing it or for compounding or remitting any debt due to St. Helena;
- (b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding in the Council, is that provision would be made for any of the purposes aforesaid; or
- (c) receive any petition which, in the opinion of the person presiding in the Council, requests that provision be made for any of the purposes aforesaid.

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<sup>(6)</sup> 1978 c. 30.

### **Assent to Bills.**

**36.**—(1) A Bill shall not become a law until—

- (a) the Governor has assented to it in Her Majesty's name and on Her Majesty's behalf and has signed it in token of his assent; or
- (b) Her Majesty has given Her assent to it through a Secretary of State and the Governor has signified Her assent by proclamation published in the Gazette.

(2) When a Bill is presented to the Governor for his assent, he shall, subject to the provisions of this Constitution and of any Instructions addressed to him under Her Majesty's Sign Manual and Signet or through a Secretary of State, declare that he assents, or refuses to assent, to it, or that he reserves the Bill for the signification of Her Majesty's pleasure:

Provided that the Governor shall reserve for the signification of Her Majesty's pleasure—

- (a) any Bill which appears to him to be in any way repugnant to, or inconsistent with, the provisions of this Constitution; and
- (b) any Bill which determines or regulates the privileges, immunities or powers of the Legislative Council or of its members,

unless he has been authorised by a Secretary of State to assent to it.

### **Disallowance of laws.**

**37.**—(1) Any law made by the Governor or to which the Governor has given his assent may be disallowed by Her Majesty through a Secretary of State.

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

(3) Section 16(1) of the Interpretation Act 1978 shall apply to the annulment of any law under this section as it applies to the repeal of an Act of Parliament, save that 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.

### **Oath of Allegiance.**

**38.** Except for the purpose of enabling this section to be complied with, no member of the Legislative Council shall be permitted to take part in its proceedings until he has made before the Governor, or some other person authorised in that behalf by the Governor, an oath of allegiance in the form set out in the Schedule to this Constitution.

### **Privileges of Legislative Council and members.**

**39.** A law enacted under this Constitution may determine and regulate the privileges, immunities and powers of the Legislative Council and its members, 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.

### **Sessions.**

**40.**—(1) Subject to the provisions of this section, the sessions of the Legislative Council shall be held at such places and begin at such times as the Governor may from time to time appoint by proclamation published in the Gazette.

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(2) There shall be at least one session of the Legislative Council in every year so however that there shall be an interval of less than twelve months between the last sitting in one session and the first sitting in the next session.

(3) A session shall be held within one month after any general election.

#### **Prorogation and dissolution.**

**41.**—(1) The Governor, acting in his discretion, may at any time, by proclamation published in the Gazette, prorogue or dissolve the Legislative Council.

(2) The Governor shall dissolve the Legislative Council at the expiration of four years from the date when the Legislative Council first meets after any dissolution unless it has been sooner dissolved.

#### **General election.**

**42.** There shall be a general election at such time within three months after every dissolution of the Legislative Council as the Governor shall appoint by proclamation published in the Gazette.

## PART VI

### THE JUDICATURE

#### *The Supreme Court*

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

**43.**—(1) There shall be a Supreme Court in and for St. Helena and its Dependencies which shall be styled the St. Helena Supreme Court and shall be a superior court of record.

(2) The Supreme Court shall have such jurisdiction in and in relation to St. Helena and its Dependencies as may be prescribed by this Constitution or any other law.

(3) Subject to the provisions of this Constitution and any other law, the Supreme Court shall possess and may exercise all the jurisdiction which is vested in, or is capable of being exercised by, Her Majesty's High Court of Justice in England.

(4) The Court may, in accordance with any directions issued from time to time by the Chief Justice, sit in St. Helena, or in its Dependencies.

(a) (5) (a) Subject to paragraph (b) of this subsection, the Court may sit in the United Kingdom for the purpose of hearing and determining any application or appeal, civil or criminal, or to take evidence in any civil proceeding, including any commercial matter, which has been instituted in St. Helena or any of its Dependencies.

(b) The Court shall not sit in the United Kingdom unless every party to the proceeding consents and the Chief Justice is satisfied that in the circumstances of the particular case no injustice will result and the course proposed is in the public interest.

(6) The Chief Justice may make rules of court, including rules for the purpose of regulating the practice and procedure of the Court with respect to proceedings held in the United Kingdom.

(7) The Chief Justice when absent from St. Helena may exercise the powers conferred upon him by any Ordinance of St. Helena or any of its Dependencies of revision, variation, confirmation or setting aside of any sentence or order made by a court in St. Helena or any of its Dependencies.

(8) The Supreme Court shall have and use a seal bearing a device and impression of the Royal Arms within a border bearing the words “Seal of the St. Helena Supreme Court”.

#### **Exercise of jurisdiction of Supreme Court.**

44.—(1) It shall be lawful for the Supreme Court to be held by and before—

- (a) the Chief Justice;
- (b) a person appointed under section 45(3) of this Constitution to act as Judge of the Supreme Court;
- (c) a person empowered by, or appointed under, section 46 of this Constitution to hold the Court; or
- (d) for the purposes mentioned in subsection (2) of this section, a person empowered by that subsection to continue to sit and hold the Court.

(2) Any person appointed to act as Judge of the Supreme Court under section 45(3) of this Constitution or empowered by or appointed under section 46 of this Constitution to hold the Court may, notwithstanding that his appointment has expired or been revoked or, as the case may be, that the circumstances in which he is empowered to hold the Court cease to obtain, continue to sit and hold the Court for the purposes of giving judgment or otherwise in relation to any proceeding commenced before him while his appointment was subsisting or, as the case may be, such circumstances obtained.

(3) Subject, in the case of a person appointed under section 46(2) of this Constitution, to any restriction contained in the instrument of appointment, a person by and before whom the Supreme Court may be held shall, in the exercise of the jurisdiction of the Supreme Court, have all the powers and authority of the Court and, save as provided in subsection (5) of this section, the jurisdiction, powers, authority, privileges and immunities conferred on the Chief Justice.

(4) Where, at any time, there are two or more persons by and before whom the Supreme Court may be held, sittings of the Court may be held simultaneously by each person.

(5) A person appointed under section 46(2) of this Constitution shall not exercise—

- (a) any power to make rules of court;
- (b) any other power which by any law he is specifically excluded from exercising.

#### **Appointment of Chief Justice.**

45.—(1) The Governor shall, on instructions given by Her Majesty through a Secretary of State, appoint a judge of the Supreme Court who shall be styled the Chief Justice of St. Helena.

(2) An appointment under subsection (1) of this section shall be made by letters patent under the public seal and a person so appointed shall hold office on such terms and conditions as the Governor shall, in accordance with such instructions aforesaid, prescribe.

(3) If—

- (a) there is no subsisting appointment under subsection (1) of this section; or
- (b) the Chief Justice has not assumed, or is, for any reason, unable to perform the functions of, his office; or
- (c) the Chief Justice is absent from St. Helena and its Dependencies,

the Governor may, acting in his discretion, appoint a fit and proper person to act as Judge of the Supreme Court.

(4) An appointment under subsection (3) of this section—

- (a) shall expire—

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- (i) on the assumption, or the resumption, of the functions of his office by the Chief Justice, or on the return of the Chief Justice to St. Helena and its Dependencies, as the case may be;
  - (ii) at the end of the period, if any, for which it was made, whichever first occurs; and
- (b) if not made for any specific period, may be revoked by the Governor, acting in his discretion.

(5) Every person appointed to the office of Chief Justice or to act as Judge of the Supreme Court shall, before entering upon the functions of his office, make the oath of allegiance and the judicial oath in the forms set out in the Schedule to this Constitution.

### **Persons empowered to hold Supreme Court.**

**46.**—(1) If—

- (a) at a time when an appointment may be made under section 45(3) of this Constitution of a person to act as Judge of the Supreme Court, there is no subsisting appointment under that subsection, the Governor may himself hold the Supreme Court;
- (b) the Chief Justice or, if there is a subsisting appointment under section 45(3) of this Constitution, the person appointed to act as Judge of the Supreme Court, is absent from St. Helena, the Governor may himself hold the Supreme Court in St. Helena.

(2) If, at any time, the Governor considers that the state or distribution of business of the Supreme Court makes it desirable that an additional person be appointed by and before whom the Supreme Court may be held, he may, acting in his discretion, appoint a fit and proper person to hold the Court, either generally or for any special purpose.

(3) An appointment under subsection (2) of this section shall expire at the end of the period, if any, for which it was made and, if not made for any specific period, may be revoked by the Governor, acting in his discretion.

### *Court of Appeal*

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

**47.**—(1) There shall be a Court of Appeal for St. Helena and its Dependencies, styled the St. Helena Court of Appeal, which shall be a superior court of record.

(2) The judges of the Court shall be a President and two or more Justices of Appeal.

(3) The President and the Justices of Appeal shall be appointed by the Governor in accordance with instructions given by Her Majesty through a Secretary of State and shall hold office on such terms and conditions as the Governor shall, in accordance with such instructions, prescribe.

(4) A person shall not be qualified for appointment as the President or a Justice of Appeal of the Court unless—

- (a) he is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland, or a court having jurisdiction in appeals from any such court; or
- (b) he is entitled to practise as an advocate or a solicitor in such a court and has been entitled for not less than five years to practise as an advocate or a solicitor in such a court.

(5) For the purpose of subsection (4) of this section, a person shall be regarded as entitled to practise as an advocate or a solicitor if he has been called, enrolled or otherwise admitted as such (and has not subsequently been disbarred or removed from the roll of advocates or solicitors) notwithstanding that—

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- (a) he holds or acts in any office the holder of which is, by reason of his office, precluded from practising in a court; or
- (b) he does not hold a practising certificate or has not satisfied any other like condition of his being permitted to practise.

(6) At any time when the office of President of the Court is vacant or the person holding that office is for any reason unable to perform the functions of that office, those functions shall be performed by such one of the Justices of Appeal or such other person qualified for appointment as a Justice of Appeal as may from time to time be appointed in that behalf by the Governor, acting in his discretion.

(7) If the office of a Justice of Appeal is vacant, or if any Justice of Appeal is discharging the functions of the office of President or is for any reason unable to perform the functions of his office, the Governor, acting after consultation with the President, may appoint a person qualified for appointment as a Justice of Appeal to sit as an additional judge of the Court of Appeal.

(8) An appointment under subsection (6) or (7) of this section—

- (a) shall expire—
  - (i) on the assumption, or the resumption, of the functions of his office by the President or Justice of Appeal;
  - (ii) at the end of the period, if any, for which it was made, whichever first occurs; and
- (b) if not made for any specific period, may be revoked by the Governor, acting in his discretion.

(9) Any person appointed to act as the President of the Court of Appeal under subsection (6) of this section or appointed under subsection (7) of this section to sit as an additional judge of the Court of Appeal may, notwithstanding that his appointment has expired or been revoked, continue so to act for the purposes of giving judgment or otherwise in relation to any proceeding commenced before him while his appointment was subsisting.

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

(11) Every person appointed to be a judge of the Court of Appeal shall, before entering upon the functions of his office, make the oath of allegiance and the judicial oath in the forms set out in the Schedule to this Constitution.

### **Jurisdiction of Court of Appeal.**

**48.**—(1) The Court of Appeal shall have jurisdiction to hear and determine such appeals from the courts of St. Helena and its Dependencies as may be prescribed by this Constitution or any other law.

(2) In connection with any appeal from a court of St. Helena or its Dependencies the Court of Appeal shall, subject to the provisions of this Constitution and any other law, have all the powers and jurisdiction that are possessed by that court under any law; and decisions of the Court in respect of any appeal from a court of St. Helena or its Dependencies shall, subject as aforesaid, be enforced in St. Helena or its Dependencies in the same way as decisions of that court.

(3) The Court of Appeal may, in accordance with any directions issued from time to time by the President, sit in St. Helena or elsewhere for the purpose of exercising any jurisdiction and powers conferred upon it by or under this section or by any rule made under section 49 of this Constitution.

### **Practice and procedure on appeals.**

**49.**—(1) Subject to the provisions of this Constitution, the President of the Court of Appeal may make rules for regulating the practice and procedure of the Court of Appeal with respect to

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appeals from the courts of St. Helena and its Dependencies and, in connection with such appeals, for regulating the practice and procedure in any court of St. Helena and its Dependencies from which such appeals are brought.

(2) Without prejudice to the generality of subsection (1) of this section, rules of court may be made for the following purposes—

- (a) for regulating the sittings of the Court and the selection of judges for any purpose;
- (b) for regulating the right of practising before the Court and the representation of persons concerned in any proceedings in the Court;
- (c) for prescribing cases in which, and conditions upon which, an appellant in a criminal appeal to the Court shall be entitled to be present at the hearing of the appeal;
- (d) for providing for summary determination of any appeal which appears to the Court to be frivolous or vexatious or to be brought for the purposes of delay;
- (e) for prescribing forms and fees in respect of proceedings in the Court and regulating the costs of and incidental to any such proceedings;
- (f) for prescribing and regulating the powers and duties of registrars and officers of the Court;
- (g) for prescribing the time within which any requirement of the rules is to be complied with;
- (h) for providing for a reference from a decision of a single judge to the Court.

(3) Rules made under this section may fix the number of judges of the Court who may sit for any purpose: Provided that—

- (a) an uneven number of judges shall sit, which, for the purposes of any final determination by the Court other than the summary dismissal of an appeal, shall not be less than three; and
- (b) any determination by the Court on any matter (whether final or otherwise) shall, where more than one judge sits, be according to the opinion of a majority of the judges who sit for the purpose of determining that matter.

## PART VII

### MISCELLANEOUS

#### **Public seal.**

**50.** The Governor shall keep and use the public seal for sealing all things that should pass that seal.

#### **Grants of land.**

**51.** Subject to the provisions of any law in force in St. Helena and its Dependencies, the Governor or any person duly authorised by him in writing under his hand may, in Her Majesty's name and on Her Majesty's behalf, make and execute grants and dispositions of land or other immovable property within St. Helena and its Dependencies which may be lawfully granted or disposed of by Her Majesty.

#### **Governor's power of pardon.**

**52.—(1)** Subject to any Instructions given to him by Her Majesty under Her Sign Manual and Signet, the Governor may, in Her Majesty's name and on Her Majesty's behalf—

- (a) grant to any person concerned in or convicted of any offence a pardon, either free or subject to lawful conditions;



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- (b) grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for any offence;
- (c) substitute a less severe form of punishment for any punishment imposed on any person for any offence; and
- (d) remit the whole or part of any punishment imposed on any person for an offence or of any penalty or forfeiture otherwise due to the Crown on account of any offence.

(2) In the exercise of his powers under this section the Governor shall act in his discretion but shall first consult the Executive Council.

#### **Constitution of offices, appointments, etc.**

**53.**—(1) The Governor, in Her Majesty’s name and on Her Majesty’s behalf, may constitute such offices for St. Helena and its Dependencies as may lawfully be constituted by Her Majesty.

(2) Subject to the provisions of any law in force in St. Helena and its Dependencies the Governor may, acting in his discretion, make appointments to any office in the public service, exercise disciplinary control over any person holding or acting in such office, or remove such person from office.

(3) Any person appointed to such an office shall, unless it is otherwise provided by any such law, hold that office during Her Majesty’s pleasure.

#### **Resignations.**

**54.**—(1) Any person who is appointed or elected to any office established by this Constitution may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed or elected: Provided that in the case of a member of the Legislative Council his resignation shall be addressed to the Governor.

(2) The resignation of any person from any office established by this Constitution shall take effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or by any other person authorised by that person or authority to receive it.

#### **Reappointments and concurrent appointments.**

**55.**—(1) Where any person has vacated any office established by this Constitution, he may, if qualified, again be appointed or elected 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 the relinquishment of the 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 shall be deemed to be the sole holder of the office.

#### **Interpretation.**

**56.**—(1) In this Constitution, unless the context otherwise requires—

“Court of Appeal” means the Court of Appeal established by section 47 of this Constitution;

“Dependencies” means the Islands of Ascension and Tristan da Cunha;

“functions” includes powers and duties;

“Gazette” means the St. Helena Government Gazette;

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“Governor” means the Governor and Commander-in-Chief of St. Helena and its Dependencies;

“law” includes any subsidiary instrument;

“Legislative Council” means the Legislative Council for the time being established for St. Helena;

“public office” means, subject to subsection (2) of this section, an office of emolument in the public service;

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

“public seal” means the public seal of St. Helena;

“the public service” means the service of the Crown in a civil capacity in respect of the government of St. Helena and its Dependencies;

“session”, in relation to the Legislative Council, means the sittings of the Council commencing when the Council first meets after its prorogation or dissolution at any time, and terminating when the Council is next prorogued or is dissolved without having been prorogued;

“sitting”, in relation to the Legislative Council, means a period during which the Council is sitting continuously without adjournment and includes any period during which the Council is in committee;

“subsidiary instrument” means any proclamation, regulation, order, rule or other like instrument having the force of law;

“Supreme Court” means the Supreme Court established by section 43 of this Constitution;

“Tristan da Cunha” means the Island of Tristan da Cunha, Gough Island, Nightingale Island and Inaccessible Island.

(2) For the purposes of this Constitution, a person shall not be considered to hold a public office by reason only that he—

(a) is in receipt of any remuneration or allowance as a member of the Executive Council, a Council Committee or the Legislative Council; or

(b) is in receipt of a pension or other like allowance in respect of service under the Crown.

(3) In this Constitution, unless it is otherwise provided or the context otherwise requires—

(a) any reference to power to make appointments to any public office shall be construed as including a reference to power to make appointments on promotion and transfer, appointments on contract and appointments to act in an office during any period when it is vacant or the holder thereof is absent from St. Helena or its Dependencies or is for any other reason unable to perform the functions thereof;

(b) any reference to power to remove a public officer from office shall be construed as including a reference 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.

(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) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including a reference to any person for the time being lawfully acting in or performing the functions of that office.

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(6) Any power conferred by this Constitution to make any subsidiary instrument or to give any instructions or directions shall be construed as including a power exercisable in like manner to amend or revoke any such instrument, instructions or directions.

(7) Where a person is required by this Constitution to make an oath he shall, if he so desires, be permitted to comply with that requirement by making an affirmation in the form provided for in the Schedule to this Constitution.

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## SCHEDULE TO THE CONSTITUTION

### FORMS OF OATHS AND AFFIRMATIONS

Sections 1(3), 2(2), 13, 38, 45(5), 47(11) and 56(7).

#### *Oath of Allegiance*

1. 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.

#### *Oath for due execution of office*

2. I do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office of (*here insert the description of the office*). So help me God.

#### *Judicial Oath*

3. I ... .. do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, 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.

#### *Affirmations*

4. In the forms above respectively set forth, for the word “swear” there shall be substituted the words “solemnly and sincerely affirm and declare”, and the words “So help me God” shall be omitted.

## SCHEDULE 2 TO THE ORDER

Section 4

### REVOCATIONS

(1) Instrument revoked	(2) Reference
The St. Helena Court of Appeal Order 1964	S.I. <a href="#">1964/1845</a>
The St. Helena (Constitution) Order 1966	S.I. <a href="#">1966/1458</a>
The St. Helena (Constitution) (Amendment) Order 1967	S.I. <a href="#">1967/1138</a>
The St. Helena Supreme Court Order 1969	S.I. <a href="#">1969/857</a>
The St. Helena Supreme Court (Amendment) Order 1975	S.I. <a href="#">1975/1211</a>
The St. Helena Supreme Court (Amendment) Order 1983	S.I. <a href="#">1983/1113</a>
The St. Helena (Constitution) (Amendment) Order 1987	S.I. <a href="#">1987/1268</a>

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order confers a new Constitution on St. Helena and its Dependencies. In particular it provides for a Governor appointed by Her Majesty, and for St. Helena an Executive Council, a Legislative Council, and Council Committees. Provision is also made regarding a Supreme Court and Court of Appeal for the territories.