

SCHEDULE 1
TO THE ORDER

THE CONSTITUTION OF ST. HELENA
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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.

(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.

(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.

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- (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.

(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.

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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.