

## SCHEDULE

### THE CONSTITUTION OF ST HELENA, ASCENSION AND TRISTAN DA CUNHA

## CHAPTER 1

### ST HELENA

#### PART 4

### THE EXECUTIVE

#### **Executive authority**

**34.**—(1) The executive authority of St Helena is vested in Her Majesty.

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

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

#### **Executive Council**

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

(a) five of the Elected Members of the Legislative Council, elected in accordance with section 36 (in this Part called “the elected members”);

(b) three *ex officio* members, namely the Chief Secretary, the Financial Secretary and the Attorney General; and

(c) such temporary members as may be appointed under subsection (2).

(2) The Governor may, by notice published in the *Gazette*, declare that a member of the Executive Council is, by reason of absence or illness, temporarily unable to discharge his or her functions as such member and appoint another person to be a temporary member of the Council; and any member in respect of whom the Governor has made such a declaration shall not take part in the proceedings of the Council until he or she is declared in the same manner to be again able to discharge those functions.

(3) The Governor, in making an appointment under subsection (2), shall appoint—

(a) in place of an elected member, a person who is an Elected Member of the Legislative Council; and

(b) in place of an *ex officio* member, an officer of the St Helena Public Service.

(4) The powers conferred on the Governor by this section shall be exercised by the Governor in his or her discretion.

#### **Election of elected members of Executive Council**

**36.**—(1) At the first meeting of the Legislative Council after every general election the Elected Members of the Legislative Council shall elect five of their number to be members of the Executive Council for a period of two years from the date of their election to the Executive Council.

(2) Thereafter such elections shall be held—

(a) before the expiry of the two-year period referred to in subsection (1), and again before the expiry of the succeeding period of one year, or as soon as possible after the expiry

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of either period, unless at either of those times the Elected Members of the Legislative Council decide, by a majority of their number, not to hold such an election; or

(b) when the Legislative Council first meets after any dissolution of the Council.

(3) If the Elected Members of the Legislative Council decide not to hold an election in accordance with subsection (2)(a), the elected members of the Executive Council then holding office shall, subject to section 37(1), continue in office for a further period of one year.

(4) A person shall be eligible for election to the Executive Council even though he or she is a member of the Executive Council then in being.

(5) If the seat of an elected member of the Executive Council becomes vacant during the period for which he or she has been elected, the Elected Members of the Legislative Council shall as soon as possible meet and elect one of their number to fill the seat for the remainder of that period.

### **Tenure of office of elected and temporary members of Executive Council**

**37.**—(1) The seat of an elected member in the Executive Council shall become vacant—

- (a) if he or she resigns his or her seat in the Executive Council by writing under his or her hand addressed to the Governor;
- (b) when the Legislative Council first meets after any dissolution of the Council;
- (c) if he or she ceases to be a Member of the Legislative Council for any reason other than a dissolution of the Council;
- (d) if he or she is absent from three consecutive meetings of the Executive Council without the permission of the Governor, acting in his or her discretion;
- (e) if at the expiry of the period for which he or she is elected to sit on the Executive Council he or she has not been re-elected for a further period; or
- (f) if his or her election to the Executive Council is revoked by a resolution of the Legislative Council.

(2) The seat of a temporary member in the Executive Council shall become vacant—

- (a) when he or she is informed by the Governor, acting in his or her discretion, that the member on account of whose incapacity he or she was appointed is again able to discharge his or her functions; or
- (b) when the seat of the latter member in the Council becomes vacant,

whichever is the earlier.

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

**38.** Any question whether a person has been validly elected as an elected member or appointed as a temporary member of the Executive Council, or whether the seat of any such member in the Council has become vacant, shall be determined by the Governor, acting in his or her discretion.

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

**39.**—(1) The Executive Council shall be summoned by the Governor, acting in his or her discretion; but the Governor shall summon the Council if requested to do so by any two elected members of the Council.

(2) The Governor shall include on the agenda of a meeting of the Executive Council any item requested by an elected member as well as any item the Governor, acting in his or her discretion, thinks fit; and other business that is not on the agenda may be discussed at the meeting at the request of the person presiding or any elected member.

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

(4) The requirements of subsection (3) shall be deemed to be satisfied if three members of the Executive Council, at least two of whom are elected members, are present at the meeting, and they and the members absent from but participating in the meeting and the person presiding are able to communicate with each other in a manner that all agree is appropriate in the circumstances; but no decision of the Council shall be taken unless the person presiding is satisfied that the manner of communication allows all those taking part to hear and be heard and that all have seen any documents relevant to the proposed decision.

(5) The references in subsections (3) and (4) to elected members include temporary members appointed under section 35(2) in place of elected members.

(6) Subject to subsections (3) and (4), the Executive Council shall not be disqualified for the transaction of business by reason of any vacancy in its membership, and any proceedings in the Council shall be valid even though some person who was not entitled to do so took part in the proceedings.

(7) No *ex officio* member, and no temporary member appointed under section 35(2) in place of an *ex officio* member, shall vote in the Executive Council.

(8) Subject to this Constitution, the Executive Council shall be free to regulate its own procedure.

(9) Members of the Executive Council shall be free to meet together informally to consider what advice on any matter they wish to give the Governor at a meeting of the Executive Council.

### **Invitation of persons to assist Executive Council**

**40.** The Governor, acting in his or her discretion, may invite any person to a meeting of the Executive Council even though 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**

**41.—**(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 or her 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)(b), the *ex officio* members of the Executive Council have seniority in the order in which their offices are mentioned in section 35(1)(b).

### **The Clerk of Councils**

**42.—**(1) The Clerk of Councils shall be responsible, in accordance with such instructions as may be given to him or her by the Governor, acting in his or her discretion, for arranging the business for, and keeping the minutes of, the meetings of the Executive Council or any committee of the Council, and for conveying decisions reached at the meetings to the appropriate person or authority.

(2) The Clerk of Councils shall also be responsible for the performance, with respect to the Executive Council, of such secretarial and other functions as the Governor, acting in his or her discretion, may from time to time direct.

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

**43.**—(1) Except as otherwise provided in this section, the Governor, in the exercise of all functions conferred on him or her by this Constitution and any other law, shall obtain, and act in accordance with, the advice of the Executive Council.

(2) Subsection (1) does not apply to—

- (a) any function in respect of which the Governor is acting under instructions given to him or her by Her Majesty through a Secretary of State;
- (b) any function conferred by this Constitution which is expressed to be exercisable by the Governor—
  - (i) in his or her discretion or judgement, or
  - (ii) in accordance with the advice of, or after consultation with, any person or authority other than the Executive Council;
- (c) any function conferred on the Governor by any other law in terms which authorise the Governor to exercise that function without obtaining the advice of the Executive Council or by acting otherwise than in accordance with that advice;
- (d) any matter referred to in section 44(1)(d);
- (e) any function conferred on the Governor in respect of Ascension by a provision of this Constitution that applies to Ascension, or of a law that is in force in Ascension; or
- (f) any function conferred on the Governor in respect of Tristan da Cunha by a provision of this Constitution that applies to Tristan da Cunha, or of a law that is in force in Tristan da Cunha.

(3) The Governor shall not be obliged to act in accordance with the advice given to him or her by the Executive Council in any case which, in his or her judgement, involves a matter for which he or she is responsible under section 44.

(4) The Governor shall not be required to obtain the advice of the Executive Council in any case in which, in his or her judgement, the matter is too urgent to obtain the advice of the Council, or too unimportant to require the Council's advice; but in any case of urgency the Governor shall as soon as practicable communicate to the Council the measures adopted and the reasons for those measures.

(5) The Governor shall not be obliged to act in accordance with the advice of the Executive Council on any matter if, in his or her judgement, that advice involves an inconsistency with one or more of the partnership values declared in section 2.

(6) In any case where the Governor proposes not to act in accordance with the advice of the Executive Council on the ground specified in subsection (5), he or she shall inform the Council in writing of his or her reasons for not so acting, including the partnership value or values with which, in the Governor's judgement, the advice is inconsistent, and the respects in which the advice is inconsistent with them.

(7) The Governor may decide not to act in accordance with the advice of the Executive Council on the ground specified in subsection (5) only with the prior approval of a Secretary of State, unless, in his or her judgement, the matter is so urgent that it is necessary to do so without such approval; and in that case the Governor shall, as soon as practicable, report his or her action and the reasons for it to a Secretary of State.

(8) Any member of the Executive Council shall have the right, within thirty days, to submit to a Secretary of State his or her comments in writing on the Governor's reasons for not acting in accordance with the advice of the Executive Council.

(9) 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 or she shall not be obliged to exercise that function in accordance with the advice of that person or authority.

(10) 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 or she has so exercised that function shall not be enquired into in any court.

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

**44.**—(1) The Governor shall be responsible for the conduct (subject to this Constitution and any other law) of any business of the Government of St Helena, including the general direction and policy control of any department of government, with respect to the following matters—

- (a) defence;
- (b) external affairs;
- (c) internal security, including the Police;
- (d) the appointment of any person to any office in the St Helena Public Service, the suspension, termination of employment, dismissal, or retirement of any officer of the St Helena Public Service or the taking of disciplinary action in respect of such an officer, and the application to any such 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;
- (e) the administration of justice;
- (f) finance; and
- (g) shipping.

(2) The Governor, acting in his or her 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 matter mentioned in subsection (1).

(3) Where the Governor, acting in his or her discretion, determines that the exercise of any function conferred on any other person or authority (other than the Legislative Council) would involve or affect any matter mentioned in subsection (1), the Governor may, acting in his or her 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.

### **Governor to be kept informed**

**45.** The members of the Executive Council shall, at meetings of the Executive Council or otherwise, keep the Governor fully informed concerning the general conduct of the government of St Helena, and furnish the Governor with such information as he or she may request with respect to any particular matter arising in the conduct of that government.

### **The Attorney General**

**46.**—(1) There shall be an Attorney General of St Helena who shall be the principal legal adviser to the Government of St Helena.

(2) The Attorney General shall be an officer of the St Helena Public Service appointed by the Governor, acting in his or her discretion and with the approval of a Secretary of State.

(3) The Attorney General shall be appointed—

- (a) for a term ending when the appointee reaches any retiring age fixed by law; or
- (b) whether or not the appointee has attained that age or will attain it during his or her term of office, for a term specified in the instrument of appointment.

(4) The Attorney General may, in any case in which he or she considers it desirable to do so—

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- (a) institute and undertake criminal proceedings against any person before any court in respect of an offence against any law;
  - (b) take over and continue any such criminal proceedings that have been instituted by any other person or authority; and
  - (c) discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or herself or any other person or authority.
- (5) The powers of the Attorney General under subsection (4) may be exercised by him or her in person or by officers subordinate to him or her acting under and in accordance with his or her general or special instructions.
- (6) The powers conferred on the Attorney General by subsection (4)(b) and (c) shall be vested in him or her to the exclusion of any other person or authority; but 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.
- (7) 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, shall be deemed to be part of those proceedings.
- (8) In the exercise of the powers conferred on him or her by this section and section 52(2), the Attorney General, and any person acting under his or her authority, shall act independently and shall not be subject to the direction or control of the Governor, the Executive Council or any other person or authority.
- (9) The remuneration of the Attorney General shall be determined by the Governor, acting in his or her discretion, and shall be charged on and paid out of the Consolidated Fund.
- (10) The remuneration of the Attorney General shall not be diminished during the Attorney General's continuance in office.
- (11) The Attorney General may be removed from office only for inability to discharge the functions of the office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour, and shall not be so removed except in accordance with subsection (12).
- (12) The Attorney General shall be removed from office by the Governor if the question of his or her removal from office has been referred to a tribunal appointed under subsection (13) and the tribunal has advised the Governor that he or she should be removed from office for inability as aforesaid or for misbehaviour.
- (13) If the Governor, acting in his or her discretion, considers that the question of removing the Attorney General from office for inability as aforesaid or for misbehaviour ought to be investigated, then—
- (a) the Governor shall appoint a tribunal, which shall consist of a chairman and two other members; but the chairman and at least one of the other members shall be a serving or former judge of a superior court in some part of the Commonwealth or in Ireland; and
  - (b) the tribunal shall inquire into the matter and report on the facts thereof to the Governor and advise the Governor whether the Attorney General should be removed from office for inability as aforesaid or for misbehaviour.
- (14) If the question of removing the Attorney General from office has been referred to a tribunal under subsection (12), the Governor, acting in his or her discretion, may suspend the Attorney General from performing the functions of his or her office, and any such suspension may at any time be revoked by the Governor, acting in his or her discretion, and shall in any case cease to have effect if the tribunal advises the Governor that the Attorney General should not be removed from office.
- (15) References in subsections (11) to (14) to the Attorney General do not include references to a person appointed to act in the office of Attorney General during any period when it is vacant or

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the holder of that office is unable to perform the functions of that office; and the appointment of such a person may be revoked by the Governor, acting in his or her discretion, at any time before the expiration of that period.