

SCHEDULE

THE CONSTITUTION OF ST HELENA, ASCENSION AND TRISTAN DA CUNHA

CHAPTER 2

ASCENSION

PART 6

THE ADMINISTRATION OF JUSTICE

The Courts of Ascension

153.—(1) The courts of Ascension shall be the Supreme Court of St Helena, the Court of Appeal of St Helena, and such courts subordinate to the Supreme Court as may be established by law.

(2) Her Majesty in Council continues to have such jurisdiction in respect of Ascension as is provided by law.

Independence of the judiciary

154. The judges and judicial officers appointed to preside or sit in any court of Ascension shall exercise their judicial functions independently from the legislative and executive branches of government.

Supreme Court

Jurisdiction of Supreme Court

155.—(1) Subject to this Constitution, the Supreme Court shall have and may exercise all such jurisdiction in and in relation to Ascension as is necessary to administer the law of Ascension.

(2) Without prejudice to the generality of subsection (1), the Supreme Court shall possess and may exercise in and in relation to Ascension, subject to this Constitution and to any other law, all the jurisdiction which is vested in, or is capable of being exercised by, Her Majesty's High Court of Justice in and in relation to England.

Sittings of Supreme Court

156.—(1) Subject to subsection (2), the Supreme Court may sit in Ascension or outside Ascension.

(2) The Chief Justice and any other judge or acting judge of the Supreme Court may hold sittings of the Court when outside Ascension, if satisfied that—

- (a) a matter arising in a proceeding before the Court needs to be dealt with promptly;
- (b) every party to the proceeding is able to participate, in person or through a legal representative, by teleconference or other means of electronic, oral or written communication;
- (c) no injustice will result; and
- (d) the course proposed is in the public interest.

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(3) The Chief Justice when outside Ascension may exercise such powers of revision, variation, confirmation or setting aside of any sentence or order made by a subordinate court as are conferred on him or her by any law.

Exercise of jurisdiction of Supreme Court

157.—(1) The Chief Justice or any other judge or acting judge of the Supreme Court may hold the Supreme Court.

(2) A judge holding the Supreme Court has, in exercise of the jurisdiction of that Court, all the powers and authority of the Court, and, if not the Chief Justice, has the jurisdiction, powers, authority, privileges and immunities conferred on the Chief Justice.

(3) If, at any time, there are two or more judges who may hold the Supreme Court, each of them may hold sittings of the Court simultaneously.

(4) In this section, “Chief Justice” means the person holding the office of Chief Justice.

Court of Appeal

Jurisdiction of Court of Appeal

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

(2) Except as otherwise provided by this Constitution, an appeal shall lie to the Court of Appeal from the Supreme Court—

- (a) as of right, if the Supreme Court certifies that the case involves a substantial question of law as to the interpretation or effect of any provision of this Constitution;
- (b) as of right, or, as the case may be, with the leave of the Supreme Court, in such other cases involving the exercise of the criminal, civil or appellate jurisdiction of the Supreme Court as may be provided by this Constitution or any other law;
- (c) with the leave of the Supreme Court in any other case, if in the opinion of that Court the question involved in the appeal is one which by reason of its general or public importance, or of the magnitude of the interests affected, or for any other reason, ought to be submitted to the Court of Appeal for decision; and
- (d) subject to such limitations as may be provided by law, if the Court of Appeal, in any case in which it thinks fit, and at any time, grants special leave to appeal to that Court from a judgment of the Supreme Court, subject to such conditions as to security for costs or otherwise as the Court of Appeal thinks fit.

(3) In connection with any appeal from a court of Ascension, the Court of Appeal shall, subject to 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 of Appeal in respect of any appeal from a court of Ascension shall, subject as aforesaid, be enforced in Ascension in the same way as decisions of that court.

Practice and procedure on appeals

159.—(1) Rules made under section 89 may fix the number of judges of the Court of Appeal who may sit for any purpose; but, subject to subsection (2)—

- (a) an uneven number shall sit, which for the purposes of any final determination by the Court other than the summary dismissal of an appeal, shall not be fewer 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 purposes of determining that matter.
- (2) If, in a circumstance referred to in section 86(6), it is not practicable for the Governor to make an appointment under section 90(3), two judges of the Court of Appeal may hear, or continue to hear, and may determine, an appeal that has been set down for hearing; but—
 - (a) if those judges are not in agreement about the determination of any matter arising in the course of the proceedings, the presiding judge shall decide; and
 - (b) if those judges are not in agreement as to whether the appeal should be allowed, the presiding judge shall discontinue the appeal, and the matter shall be required to be reheard before the Court of Appeal consisting of three or a greater uneven number of judges of the Court.
- (3) Subject to subsections (1) and (2), rules made under section 89 may provide for a reference from a decision of a single judge to the Court of Appeal.
- (4) Subject to subsection (5), the Court of Appeal may sit in Ascension or outside Ascension.
- (5) The Court of Appeal may sit outside Ascension, if satisfied that—
 - (a) every party to the proceeding is able to participate, in person or through a legal representative, by teleconference or other means of electronic, oral or written communication;
 - (b) no injustice will result; and
 - (c) the course proposed is in the public interest.

General

Rules of Court

160. Rules of Court made under section 89 shall apply in Ascension with such modifications as the President of the Court of Appeal or, as the case may be, the Chief Justice may prescribe, and in particular such Rules may regulate the practice and procedure of the Court of Appeal or the Supreme Court with respect to proceedings held outside Ascension.

Judicial officers

161.—(1) The Governor, acting in accordance with the recommendation of the Ascension Judicial Service Commission, shall appoint any judicial officers.

(2) Before entering upon the duties of his or her office, every judicial officer shall make an oath or affirmation of allegiance and the judicial oath or affirmation in the forms sets out in the Schedule.

(3) A judicial officer shall be appointed for life, or until the appointee reaches such an age as may be prescribed by Ordinance.

(4) A judicial officer may, when his or her appointment expires, continue so to act for the purposes of giving judgment or otherwise in relation to any proceeding commenced before him or her while his or her appointment was subsisting.

(5) A judicial officer—

(a) may resign from office by writing under his or her hand addressed to the presiding member of the Ascension Judicial Service Commission;

(b) shall be deemed to have resigned from office if he or she—

(i) is elected as a member of the Island Council; or

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(ii) continues to hold, or accepts, an appointment as an officer of the Ascension Public Service, unless, under a law, such an officer is entitled to serve as a judicial officer on a basis that is consistent with the independence of the judiciary and with the efficiency of the Public Service.

- (6) A judicial officer may be removed from office only on the ground of—
- (a) inability to discharge the functions of the office (whether arising from infirmity of body or mind or from any other cause); or
 - (b) misbehaviour,

and shall not be removed except in accordance with subsection (7).

- (7) The Governor shall remove a judicial officer from office if—
- (a) the question of doing so has been considered by the Ascension Judicial Service Commission; and
 - (b) the Commission has recommended to the Governor that the judicial officer concerned should be removed from office on a ground referred to in subsection (6).

(8) A person who has been removed from office as a judicial officer by the Governor on the recommendation of the Ascension Judicial Service Commission may apply to the Supreme Court for redress on the ground that any finding of fact or law on which the Commission based its recommendation for removal was unjustified or wrong; and, for the purpose of affording such redress, the Supreme Court may make such declarations and orders, issue such writs and give such directions as it considers appropriate.

(9) A judicial officer shall receive such remuneration as is determined by the Governor, acting in his or her discretion, and that remuneration shall be charged on and paid out of the Consolidated Fund.

(10) The remuneration of a judicial officer shall not be diminished during his or her continuance in office.

Ascension Judicial Service Commission

162.—(1) There shall be an Ascension Judicial Service Commission (“the Commission”), which shall consist of—

- (a) the Chief Justice, who shall preside;
- (b) the Attorney General;
- (c) the Public Solicitor, if a person for the time being holds that office; and
- (d) a person who is neither a member of the Island Council, an officer of the Ascension Public Service, a judge or a judicial officer, appointed by the Governor for a term of one year.

(2) The office of the member of the Commission appointed under subsection (1)(d) shall become vacant if—

- (a) he or she becomes an officer of the Ascension Public Service, accepts appointment as a judge or a judicial officer, or becomes a member of the Island Council;
- (b) he or she resigns from office by writing under his or her hand addressed to the Governor; or
- (c) the Governor, being satisfied that the member should be removed from office on the ground of inability to discharge the functions of the office (whether arising from infirmity of body or mind or from any other cause) or misbehaviour, removes that member from office.

(3) The Governor may suspend the member from office while his or her removal from office on a ground referred to in subsection (2)(c) is under investigation.

- (4) No business shall be transacted by the Commission unless—

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- (a) all members are present at a meeting in Ascension or elsewhere; or
 - (b) if they are in different places, all members are able to communicate with one another about that business in ways that they agree are appropriate in the circumstances.
- (5) All questions before the Commission shall be decided by a majority of the votes of its members; and if, on any question, the votes are equally divided, the Chief Justice shall have and exercise a casting vote.
- (6) The Commission may, of its own motion or at the request of the Island Council or of an organisation that is representative of judicial officers—
- (a) make recommendations to the Governor on the appointment of judicial officers;
 - (b) consider and, if it so decides, make recommendations to the Governor on, the removal from office of a judicial officer on a ground referred to in section 161(6); and
 - (c) exercise such other functions as may be conferred on it by law.
- (7) In the exercise of its functions the Commission shall act independently and shall not be subject to the direction or control of the Governor, the Island Council or any other person or authority.
- (8) No member of the Commission shall be personally liable for the consequences of any act done or omitted by the Commission in good faith in pursuance or intended pursuance of the Commission's functions; and if any such liability is established, it shall be that of the Crown.