

## SCHEDULE 2

### THE CONSTITUTION OF PITCAIRN

#### PART 6

#### THE ADMINISTRATION OF JUSTICE

##### GENERAL

##### **Appointment of judges and judicial officers**

**52.**—(1) The Governor, on instructions from Her Majesty given through a Secretary of State, shall appoint—

- (a) the Chief Justice and any other judges of the Supreme Court; and
- (b) the President of the Court of Appeal and the Justices of Appeal.

(2) The Governor, acting in accordance with the advice of the Chief Justice, shall appoint any acting judge of the Supreme Court.

(3) The Governor shall appoint any judicial officers.

(4) Every person appointed under this section shall, subject to this Constitution, hold office on such terms and conditions as the Governor may prescribe.

(5) Before entering upon the functions of the office, every holder of a judicial office referred to in this section shall make an oath or affirmation of allegiance and the judicial oath or affirmation in the forms set out in the Schedule.

##### **Remuneration**

**53.**—(1) There shall be paid to every judge or judicial officer such remuneration as may be agreed between the Governor and the judge or judicial officer immediately before his or her appointment, and such remuneration shall be charged on the public funds of Pitcairn.

(2) The remuneration and allowances and other terms and conditions of a judge or a judicial officer shall not be altered to the disadvantage of the judge or judicial officer during his or her continuance in office.

##### **Tenure of office of judges**

**54.**—(1) Subject to the following provisions of this section, the Chief Justice, any other judge of the Supreme Court, the President of the Court of Appeal and any Justice of Appeal shall hold office until he or she attains the age of 75 years; but the Governor may permit any such person who has attained the age of 75 years to remain in office for such fixed period, not exceeding two years, as may have been agreed between that person and the Governor.

(2) An acting judge of the Supreme Court shall be appointed either—

- (a) for a term specified in the instrument of appointment; or
- (b) if the appointee is acting in the place of a Chief Justice or other judge whose office is vacant, or who has not assumed, or is for any reason unable to perform the functions of, that office, for a term expiring on the assumption or resumption by the Chief Justice or other judge of the functions of the office.

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(3) A judge 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.

(4) A judge may at any time resign from office by writing under his or her hand addressed to the Governor.

(5) Nothing done by a judge shall be invalid by reason only that the judge has attained the age at which he or she is required by or under this section to retire from office.

(6) The office of a judge shall not be abolished during the continuance in office of the judge without his or her consent.

(7) A judge may be removed from office only for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be removed except in accordance with subsection (8).

(8) A judge shall be removed from office by the Governor by instrument stamped with the Official Stamp if the question of the removal of that judge from office has, at the request of the Governor made in pursuance of subsection (9), been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833<sup>(1)</sup> or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge should be removed from office for inability as aforesaid or for misbehaviour.

(9) If the Governor considers that the question of removing a judge 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 convenor and two other members, selected by the Governor from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in one or more Commonwealth countries or in Ireland or a court having jurisdiction in appeals from any such court;
- (b) the tribunal shall inquire into the matter and report on the facts thereof to the Governor and advise the Governor whether he or she should request that the question of the removal of that judge should be referred by Her Majesty to the Judicial Committee; and
- (c) if the tribunal so advises, the Governor shall request that the question should be referred accordingly.

(10) The Commissions of Inquiry Ordinance shall apply *mutatis mutandis* in relation to a tribunal appointed under subsection (9) and the expenses of any such inquiry shall be charged on the public funds of Pitcairn.

(11) If the question of removing a judge from office has been referred to a tribunal under subsection (9), the Governor may suspend the judge from performing the functions of that office, and any such suspension may at any time be revoked by the Governor and shall in any case cease to have effect—

- (a) if the tribunal advises the Governor that he or she should not request that the question of the removal of the judge from office should be referred by Her Majesty to the Judicial Committee; or
- (b) if the Judicial Committee advises Her Majesty that the judge should not be removed from office.

### **Tenure of office of judicial officers**

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

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(1) 1833 c. 41.

(2) 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.

(3) A judicial officer may at any time resign from office by writing under his or her hand addressed to the Governor.

(4) A judicial officer may be removed from office only for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be removed except in accordance with subsection (5).

(5) The Governor may remove a judicial officer from office if the Governor, after such enquiries as he or she considers appropriate, determines that the judicial officer concerned should be removed from office for inability as aforesaid or for misbehaviour.

(6) A person who has been removed from office as a judicial officer by the Governor may apply to the Supreme Court for redress on the ground that any finding of fact or law on which the Governor based his or her decision 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.