

SCHEDULE

THE CONSTITUTION OF ST HELENA, ASCENSION AND TRISTAN DA CUNHA

CHAPTER 1

ST HELENA

PART 5

THE LEGISLATURE

Composition

The Legislature

47. There shall be a Legislature for St Helena consisting of Her Majesty and the Legislative Council.

Composition of Legislative Council

48. The Legislative Council shall consist of—

- (a) a Speaker and a Deputy Speaker, who shall be elected as provided in section 55; and
- (b) the following other Members—
 - (i) twelve Elected Members, who shall be persons qualified for election and elected in accordance with this Constitution; and
 - (ii) three *ex officio* Members, namely the Chief Secretary, the Financial Secretary and the Attorney General.

Qualifications of candidates for election to Legislative Council

49.—(1) Subject to subsections (2) and (3), the qualifications for being a candidate at an election of Members of the Legislative Council shall be as prescribed by Ordinance.

(2) A person shall not be qualified to be a candidate for election to the Legislative Council if that person—

- (a) is, by virtue of his or her own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;
- (b) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any country;
- (c) is mentally ill within the meaning of any law;
- (d) is under a sentence of imprisonment for twelve months or more, other than a sentence in lieu of a fine, but including a suspended sentence, imposed by a court of law in any country or substituted by a competent authority for some other sentence imposed by such a court;
- (e) is disqualified for membership of the Council under any law relating to offences connected with elections;
- (f) subject to subsection (3), holds, or is acting in, any office in the St Helena Public Service;
- (g) holds office as a judge or judicial officer; or

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- (h) holds, or is acting in, any office or is exercising any function involving any responsibility for, or in connection with, the conduct of any election or the compilation or revision of any electoral register.

(3) The Governor, acting in his or her discretion, may by notice published in the *Gazette*, make provision for enabling any officer of the St Helena Public Service or any class of such officer not otherwise disqualified under subsection (2) to be qualified to be a candidate for election to the Legislative Council.

(4) For the purposes of subsection (2)(d), 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.

Law as to elections

50.—(1) The Elected Members of the Legislative Council shall be elected by secret ballot, under a system of universal suffrage, by the persons registered on a single roll of voters for a single constituency for the whole of the island of St Helena; but the Legislature may make provision by Ordinance for the island to be divided into two or more constituencies for the purpose of elections, and for separate rolls of voters for such constituencies.

(2) Subject to subsection (1) and to section 49, the Legislature may make provision by Ordinance for the conduct of elections to the Legislative Council, including for—

- (a) the qualifications and disqualifications of voters;
- (b) the registration of voters;
- (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 for any such offence, including disqualification for membership of the Council, or for registration as a voter, or for voting at elections, of any person concerned in any such offence.

Tenure of office of Elected Members of Legislative Council

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

- (a) upon a dissolution of the Council;
- (b) if the Member is absent from meetings of the Council for a continuous period of three months without the written permission of the Speaker;
- (c) if any circumstance arises that would cause the Member to become disqualified for election to the Council; or
- (d) if the Member resigns his or her seat by writing under his or her hand addressed to the Governor.

Determination of questions as to elected membership of Legislative Council

52.—(1) Any question whether—

- (a) a person has been validly elected as a Member of the Legislative Council; or
- (b) the seat of an Elected Member has become vacant,

shall be determined by the Supreme Court whose decision shall be final and not subject to any appeal.

(2) An application to the Supreme Court for the determination of any question under subsection (1) 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 subsection (1)(b) may also be made by any Elected Member of the Legislative Council.

Register of Interests

53.—(1) There shall be a Register of Interests that—

- (a) shall be open to the public; and
- (b) shall be maintained by a Registrar who shall be an officer of the St Helena Public Service appointed to that office.

(2) All Members of the Legislative Council and the holders of such other offices (except that of Governor) as may be prescribed by Ordinance must—

- (a) declare in the Register such interests, assets, income and liabilities of themselves and their families as may be so prescribed; and
- (b) update the declaration at such intervals, being not more than twelve months, as may be so prescribed.

(3) The Legislature may make further provision by Ordinance for giving effect to this section.

(4) Such an Ordinance may impose sanctions for a failure to comply with subsection (2), including the suspension of the Speaker or any other Member from the Legislative Council for such period as may be prescribed.

(5) The Standing Orders of the Legislative Council shall make provision prohibiting an Elected Member of the Council from voting in the Council, or any committee of the Council, on any question so closely concerned with an interest required to be declared in the Register (whether or not it has been so declared) as to give the Member a direct pecuniary interest in the outcome of the vote on that question.

Oaths or affirmations by Members of Legislative Council

54. No Member of the Legislative Council shall enter upon the functions of his or her office unless he or she has made before the Governor, or some other person authorised for that purpose by the Governor, acting in his or her discretion, oaths or affirmations of allegiance, of confidentiality and for the due execution of his or her office in the forms set out in the Schedule.

Speaker and Deputy Speaker

55.—(1) At the first sitting of the Legislative Council after a vacancy occurs in the office of Speaker or Deputy Speaker, or both, and before the transaction of any other business (except the administration of oaths or affirmations under section 54), the Council shall by secret ballot proceed to elect, to fill the vacancy, a Speaker or, as the case may be, a Deputy Speaker from among persons who are not Elected Members of the Council but who are qualified to be elected as Members of the Council and are not disqualified in any way for membership.

(2) To be elected, a candidate must receive the votes of a majority of all the Elected Members of the Legislative Council.

(3) The Standing Orders of the Legislative Council shall make provision for the conduct, consistently with this Constitution, of an election to fill the office of Speaker or Deputy Speaker.

(4) The office of Speaker or Deputy Speaker shall become vacant—

- (a) if any circumstance arises that, if the Speaker or the Deputy Speaker were an Elected Member of the Legislative Council, would cause his or her seat to become vacant;
- (b) if the Speaker or the Deputy Speaker resigns that office by writing under his or her hand addressed to the Clerk of Councils;

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- (c) if the Speaker or the Deputy Speaker becomes a candidate for election to the Council as an Elected Member;
- (d) if the Speaker or the Deputy Speaker becomes a member of a Council Committee;
- (e) on the passing, by the votes of a majority of all the Elected Members of the Council, of a motion expressing no confidence in the Speaker or the Deputy Speaker; or
- (f) if the Council is dissolved.

Council Committees

Council Committees

56.—(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; and
- (b) such number, if any, of persons who are not Members of the Council,

as the Governor, acting after consultation with the Chairman of the Committee, may decide.

(3) There shall be a Chairman of each Council Committee who shall be an Elected 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 published in the *Gazette*.

(5) Subject to subsection (6), the Governor shall appoint as Chairman of a Council Committee such Elected Member of the Legislative Council as shall have been nominated for that office by the votes of a majority of all the Elected Members of the Council.

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

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

Tenure of office of members of Council Committees

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

- (a) if his or her appointment is terminated by the Governor, acting in accordance with subsections (2) to (4), by notice published in the *Gazette*;
- (b) in the case of a person who was an Elected Member of the Legislative Council at the time of his or her appointment—
 - (i) if he or she ceases to be an Elected Member of the Council otherwise than by reason of a dissolution of the Council; or
 - (ii) at the first sitting of the 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 or her appointment, if he or she 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 56(5) if a motion that his or her appointment should be terminated receives in the Legislative Council the affirmative votes of a majority of all the Elected Members of the Council.

(3) The Governor may, acting in his or her discretion, terminate the appointment of a Chairman of a Council Committee appointed under section 56(6).

(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.

Functions of Council Committees

58.—(1) A Council Committee shall be appointed by the Governor for such general or special purposes as would be most suitably regulated or 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 section 44(1)(a), (b), (c), (d) or (e).

Rules of procedure and meetings of Council Committees

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

Powers and Procedure of Legislative Council

Power to make laws

60. Subject to this Constitution, the Legislature may make laws for the peace, order and good government of St Helena.

Meetings of Legislative Council

61.—(1) Meetings of the Legislative Council shall be held at such places and begin at such times as the Council shall determine by resolution or, in the absence of such resolution, as the Speaker shall appoint.

(2) The first meeting of the Legislative Council after a general election shall be held at a time and place appointed by the Governor, acting in his or her discretion.

(3) If—

(a) more than six weeks have elapsed since the last sitting day of the most recent meeting of the Legislative Council, and no time has been appointed for the next meeting, or that time is more than eight weeks after that day; or

(b) a proclamation of a state of emergency is in force under a law, and, after five days from the date on which the emergency was proclaimed, a place and time have not been appointed for a meeting of the Council as soon as practicable,

any four or more Elected Members may request the Speaker to appoint a time and place for the next meeting; and on receiving such a request, the Speaker shall appoint the earliest practicable time, and the place, for the holding of that meeting.

(4) There shall be at least three meetings of the Legislative Council during each calendar year.

Presiding in Legislative Council or otherwise discharging the functions of Speaker

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

(a) at the first meeting of the Council after a general election, until a Speaker has been elected, the Governor;

(b) at any time when there is a person holding the office of Speaker, the Speaker;

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- (c) in the absence of the Speaker, the Deputy Speaker; or
 - (d) except at the first meeting of the Council after a general election, in the absence of both the Speaker and the Deputy Speaker, such Member of the Council as may be elected by the Elected Members then present to preside until the Speaker or Deputy Speaker is again present.
- (2) The Deputy Speaker may attend any sitting of the Legislative Council at which the Speaker presides but may not take part in the proceedings of the Council at that sitting.
- (3) At any time after the election of the Speaker and the Deputy Speaker, other than a time when the Legislative Council is sitting, the other functions of the Speaker shall be discharged by—
- (a) the Speaker;
 - (b) if the Speaker is not available, the Deputy Speaker; or
 - (c) if neither the Speaker nor the Deputy Speaker is available, the Clerk of Councils.

Legislative Council may transact business notwithstanding vacancies

63. The Legislative Council shall not be disqualified for the transaction of business by reason of any vacancy in its membership (including any vacancy not filled when the Council first meets after a general election or an election to fill a vacancy among the Elected Members of the Council), and any proceedings in the Council shall be valid even though some person who was not entitled to do so sat or voted in the Council or otherwise took part in those proceedings.

Quorum

64.—(1) A quorum shall consist of seven Elected Members of the Legislative Council (including any Member presiding).

(2) If at any sitting of the Legislative Council a quorum is not present and any Member of the 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 Council, the person presiding at the sitting ascertains that a quorum is still not present, he or she shall adjourn the Council.

Governor's right to address Legislative Council

65. The Governor, acting in his or her discretion, shall have the right to address the Legislative Council at a time during a meeting of the Council fixed by the Speaker at the Governor's request.

Power to require officers of the St Helena Public Service to attend meetings

66. The Speaker or other person presiding, acting in his or her discretion, may require any officer of the St Helena Public Service to attend a meeting of the Legislative Council when, in the opinion of the Speaker or other person presiding, the business before the Council makes the presence of that officer desirable.

Voting

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

- (2) The Speaker and the Deputy Speaker shall not have a deliberative vote nor a casting vote.
- (3) Any Elected Member presiding shall have a deliberative vote but not a casting vote.
- (4) If, on any question, the votes are evenly divided, the motion shall be lost.

- (5) The *ex officio* Members of the Legislative Council shall not vote in the Council.

Standing Orders

68. The Legislative Council may make, amend and revoke Standing Orders consistent with this Constitution for the regulation and orderly conduct of its proceedings and the despatch of business and for the passing of Bills and for their presentation to the Governor for assent.

Public Accounts Committee

69.—(1) There shall be a Public Accounts Committee which shall consist of—

- (a) a chairman and one other member appointed by the Governor, acting after consultation with the Elected Members of the Legislative Council, from among persons who are not Members of the Council; and
- (b) three Elected Members of the Legislative Council, who shall be elected by the Council by a majority of the votes of all its Elected Members.

(2) A person may be appointed or elected under subsection (1) for any period not exceeding four years.

(3) A member of the Public Accounts Committee shall vacate his or her seat on the Committee—

- (a) at the expiration of the period for which he or she was appointed or elected;
- (b) if he or she resigns office by writing under his or her hand addressed to the Governor;
- (c) in the case of an appointed member, if he or she becomes a Member of the Legislative Council or if he or she is removed by the Governor, acting after consultation with the Elected Members of the Council; or
- (d) in the case of an elected member, if he or she ceases to be a Member of the Legislative Council or if he or she is removed by resolution of the Council.

(4) If in respect of any item of business before the Public Accounts Committee the Governor, acting after consultation with the chairman of the Committee, considers that a member of the Committee has a conflict of interests, the Governor, acting after consultation with the Elected Members of the Legislative Council, may appoint another person temporarily to replace that member of the Committee for the purpose of dealing with the business in question; and a member so replaced shall not sit on the Committee when the Committee is dealing with that business.

(5) The Public Accounts Committee may invite any person to assist it in its work and to participate in its proceedings.

(6) The Public Accounts Committee shall examine and report to the Legislative Council on—

- (a) the annual statement of accounts as audited by the Chief Auditor and laid before the Council; and
- (b) such management letters and reports of the Chief Auditor as have been laid before the Council or as the Chief Auditor has brought to the attention of the Council;

and shall have such other functions, and shall operate under such procedures, as may be prescribed by Ordinance or by Standing Orders of the Council.

(7) The Public Accounts Committee shall have power—

- (a) to summon any person to appear before it; and
- (b) subject to the provisions of any law, to require any person so summoned to answer questions and to provide information to the Committee.

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(8) The Public Accounts Committee shall report to the Legislative Council by the date set by the Council or by its terms of reference, whichever is the earlier; and except as otherwise provided in the Committee's terms of reference, such a report may be with or without recommendations.

(9) If the Legislative Council adopts a report of the Public Accounts Committee, and requests the responsible member of the Executive Council to advise the Legislative Council of the action proposed to be taken by the Government of St Helena in respect of the report, the member concerned shall convey the Government's response to the Council not later than the first sitting day following the expiration of six weeks after the date of the Council's request, unless the Council extends the time for the response.

(10) In the exercise of its functions, the Public Accounts Committee 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.

Privileges

70. The privileges, immunities and powers of the Legislative Council, the Speaker and its other Members may be determined and regulated by Ordinance but shall not exceed the corresponding privileges, immunities and powers of the House of Commons of the United Kingdom or of its members.

Code of Conduct

71. Subject to this Constitution and to any other law, and to the Standing Orders of the Legislative Council, a Code of Conduct, approved by the Legislative Council, shall detail the behaviour expected of members of the Executive Council and of the Speaker and other Members of the Legislative Council, and shall regulate their relationship with officers of the St Helena Public Service.

Remuneration of elected members of Executive Council, other Elected Members of Legislative Council, Speaker and Deputy Speaker

72.—(1) Subject to subsection (2), the elected members of the Executive Council, the other Elected Members of the Legislative Council, the Speaker and the Deputy Speaker shall receive such remuneration and allowances and other benefits as are provided by Ordinance.

(2) The Legislative Council shall not proceed on any Bill for an Ordinance referred to in subsection (1) unless the report of an independent body appointed by the Governor, acting in his or her discretion, recommending the appropriate levels of such remuneration and other allowances and benefits (if any) has been laid before the Council and has been published; and no Ordinance shall provide for levels of remuneration, allowances or benefits that exceed the levels recommended in such report.

(3) Neither subsection (1) nor the provision made by an Ordinance referred to in that subsection is authority for the payment of that remuneration or any other monetary allowances or benefits, and such remuneration and such allowances and benefits (if any) shall be paid only under the authority of the Appropriation Ordinance or a Supplementary Appropriation Ordinance, or, in the absence of such an Ordinance for the financial year in respect of which they are due, under the authority otherwise conferred by this Constitution.

Introduction of Bills

73.—(1) Subject to this Constitution and to 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 on 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 on 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.

Assent to Bills

74.—(1) A Bill shall not become 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 that assent; or
- (b) Her Majesty has given Her assent to it through a Secretary of State and the Governor has signified that assent by a proclamation published in the *Gazette*.

(2) When a Bill is presented for assent, the Governor, acting in his or her discretion, shall either assent to it or reserve the Bill for the signification of Her Majesty's pleasure.

(3) Unless he or she has been authorised by a Secretary of State to assent to it, the Governor shall reserve for the signification of Her Majesty's pleasure any Bill which appears to him or her, acting in his or her discretion—

- (a) to be inconsistent with one or more of the partnership values declared in section 2;
- (b) to be repugnant to or inconsistent with this Constitution; or
- (c) to determine or regulate the privileges, immunities or powers of the Legislative Council or its Members.

(4) A Bill assented to by the Governor shall become law on the date of assent.

(5) A Bill reserved for the signification of Her Majesty's pleasure shall become law on the date on which the Governor's proclamation signifying the giving of that assent is published in the *Gazette*.

Disallowance of laws

75.—(1) Any law to which the Governor has given his or her 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⁽¹⁾ 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.

(1) 1978 c.30.

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Dissolution of Legislative Council

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

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

Recalling dissolved Legislative Council in case of emergency

77.—(1) If, after a dissolution of the Legislative Council and before the holding of the ensuing general election, an emergency arises of such a nature that the Governor considers it necessary for the Council to be recalled, the Governor, acting in his or her discretion, may summon the Council that has been dissolved; and that Council shall thereupon be deemed (except for the purposes of section 78) not to have been dissolved.

(2) Except for the purposes of section 78, a Legislative Council so recalled shall be deemed to be dissolved on the date on which the next ensuing general election is held.

General elections and bye-elections

78.—(1) There shall be a general election of the Elected Members of the Legislative Council at such time, being not less than six weeks nor more than three months after the date of every dissolution of the Council, as the Governor shall appoint by proclamation published in the *Gazette*.

(2) Subject to subsection (3), whenever any Elected Member vacates his or her seat as a Member of the Legislative Council for any reason other than a dissolution thereof, an election to fill the vacancy shall be held at such time, being not less than six weeks nor more than three months after the date of the vacancy, as the Governor shall appoint by proclamation published in the *Gazette*.

(3) An election to fill a vacancy shall not be held under subsection (2) if the Legislative Council is sooner dissolved or the date on which the Council must be dissolved under section 76(2) is less than four months after the date of the vacancy.

(4) For the purposes of this section, the date of a vacancy in the seat of an Elected Member is the date on which the vacancy occurred, or, if the existence of a vacancy is determined by the Supreme Court under section 52, the date of that determination.

The Clerk of Councils

79. The Clerk of Councils shall have charge of the Legislative Council Office and shall be responsible to the Speaker for arranging the business and keeping the records of the Legislative Council, and for the performance, with respect to the Speaker, the Deputy Speaker, the Elected Members and any committee of the Council, of such secretarial and other functions as may be required.