

## SCHEDULE

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

## CHAPTER 3

### TRISTAN DA CUNHA

#### PART 6

#### THE ADMINISTRATION OF JUSTICE

##### **The Courts of Tristan da Cunha**

**218.**—(1) The courts of Tristan da Cunha 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 Tristan da Cunha as is provided by law.

##### **Independence of the judiciary**

**219.** The judges and judicial officers appointed to preside or sit in any court of Tristan da Cunha shall exercise their judicial functions independently from the legislative and executive branches of government.

##### *Supreme Court*

##### **Jurisdiction of Supreme Court**

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

(2) Without prejudice to the generality of subsection (1), the Supreme Court shall possess and may exercise in and in relation to Tristan da Cunha, 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**

**221.**—(1) Subject to subsection (2), the Supreme Court may sit in Tristan da Cunha or outside Tristan da Cunha.

(2) The Chief Justice and any other judge or acting judge of the Supreme Court may hold sittings of the Court when outside Tristan da Cunha, 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.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(3) The Chief Justice when outside Tristan da Cunha 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**

**222.**—(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**

**223.**—(1) The Court of Appeal shall have jurisdiction to hear and determine such appeals from the courts of Tristan da Cunha 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 Tristan da Cunha, 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 Tristan da Cunha shall, subject as aforesaid, be enforced in Tristan da Cunha in the same way as decisions of that court.

### **Practice and procedure on appeals**

**224.**—(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 purpose of determining that matter.
- (2) If, in a circumstance referred to in section 86(6), it is not practicable for the Governor to make any 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 Tristan da Cunha or outside Tristan da Cunha.
- (5) The Court of Appeal may sit outside Tristan da Cunha, 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**

**225.** Rules of Court made under section 89 shall apply in Tristan da Cunha 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 Tristan da Cunha.