

## SCHEDULE

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

## CHAPTER 3

### TRISTAN DA CUNHA

#### PART 9

#### MISCELLANEOUS

#### **Interpretation**

**229.** In this Chapter, unless it is otherwise provided or required by the context—

“Ascension” means Ascension Island;

“breach”, in relation to any provision of this Chapter, includes a failure to comply with that provision, and cognate expressions shall be construed accordingly;

“court” means any subordinate court, the Supreme Court or the Court of Appeal, and includes Her Majesty in Council;

“disciplinary law”, in relation to a disciplined force, means the law regulating the discipline of that force;

“disciplinary offence” means an offence against the disciplinary law;

“disciplined force” means any police force of Tristan da Cunha, any prison service of Tristan da Cunha, any fire service of Tristan da Cunha, any naval, military or air force raised in Tristan da Cunha under the law of Tristan da Cunha, or any visiting force;

“functions” includes powers and duties;

“*Gazette*” means the St Helena Government Gazette;

“Island Council” means the Island Council of Tristan da Cunha established by section 214;

“judge” means the Chief Justice or another judge of the Supreme Court, the President of the Court of Appeal, a Justice of Appeal, an acting judge of the Supreme Court, or an Acting Justice of Appeal;

“judicial officer” means a justice of the peace, a judge of a subordinate court, a Coroner or other person who is authorised to exercise the powers of a judge of a subordinate court;

“law” means law in force in Tristan da Cunha, and “lawful” and “lawfully” shall be construed accordingly;

“legal representative” means a person who—

- (a) is entitled to practise before the court or other tribunal or authority at the hearing of the proceeding or the process through which it is exercising that jurisdiction or power, in Tristan da Cunha or in any place outside Tristan da Cunha where it may lawfully sit; or
- (b) in the case of a proceeding in the Supreme Court or the Court of Appeal when sitting in a place outside Tristan da Cunha, by participating in that proceeding by teleconference or other means of electronic, oral or written communication;

“member”, in relation to a disciplined force, includes any person who, under the disciplinary law, is subject to that discipline;

“minor” means a person who has not attained the age of eighteen years or such other age as may be prescribed for the purposes of this Chapter by any other law;

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

“officer of the Tristan da Cunha Public Service” means the holder of any office in the Tristan da Cunha Public Service and any other employee of the Public Service (except a casual worker), and includes a person appointed to act as an officer of the Tristan da Cunha Public Service;

“Ordinance” means a law made by the Governor in respect of Tristan da Cunha;

“period of public emergency” means any period during which—

- (a) there is, in or affecting Tristan da Cunha, a war or other public emergency threatening the life of the nation; and
- (b) a proclamation of a state of emergency is in force under a law;

“subordinate court” means a court of Tristan da Cunha subordinate to the Supreme Court that has been established by Ordinance, and includes the exercise of any power or jurisdiction in relation to an inquiry conferred on a Coroner by the Coroners Ordinance or any Ordinance replacing or amending that Ordinance;

“Tristan da Cunha” means the Island of Tristan da Cunha, Gough Island, Nightingale Island and Inaccessible Island;

“Tristan da Cunha Public Service” means the service of the Crown in a civil capacity in respect of the government of Tristan da Cunha, and includes service as a member of any police force, prison service or fire service of Tristan da Cunha; but does not include service as a judge or judicial officer or service as a member of the Island Council, any committee of the Council or, unless otherwise provided by a law, of any other public authority;

“visiting force” means any naval, military or air force raised in, or under the law of, a country other than Tristan da Cunha, one or more members of which are lawfully in Tristan da Cunha while on service in that capacity;

“wrongfully removed or retained child” means a child under the age of sixteen years who has been wrongfully removed to or retained in the territory of a state that is a contracting party to the Convention on the Civil Aspects of International Child Abduction, signed at The Hague on 25 October 1980.

### **References to the holder of an office to include a person acting in the office**

**230.** In this Chapter, unless it is otherwise provided or required by the context, a reference to the holder of an office by the term designating his or her office shall be construed as including a reference to any person acting in that office or, to the extent of his or her authority, otherwise performing the functions of that office.

### **Power to amend and revoke instruments, etc**

**231.—**(1) Any power conferred by this Chapter to make any subsidiary instrument or to give any instructions or directions shall be construed as including a power exercisable in like manner to amend or revoke any such instrument, instructions or directions.

(2) For the purposes of this section, “subsidiary instrument” means any proclamation, regulation, order, rule or other like instrument having the force of law.

### **Appointments**

**232.—**(1) Where any person has vacated any office established by this Chapter, he or she may, if qualified, again be appointed or elected or otherwise selected to hold that office in accordance with this Chapter.

(2) Where a power is conferred by this Chapter on any person to make any appointment to any office, a person may be appointed to that office even though some other person may be holding that office, when that other person is on leave of absence pending relinquishment of that office;

and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred on the holder of that office, the person last appointed to that office shall be deemed to be the sole holder of the office.

(3) In this Chapter, unless it is otherwise provided or required by the context, any reference to power to make appointments to an office shall be construed as including reference to power to make appointments on promotion and transfer to that office and power to appoint a person to act in that office during any period when it is vacant or the holder of it is unable (whether by reason of absence or infirmity of body or mind or any other cause) to perform the functions of that office.

(4) Where by this Chapter any person is directed, or power is conferred on any person or authority to appoint a person, to act in an office if the holder of it is unable to perform the functions of that office, the validity of any performance of those functions by the person so directed or of any appointment made in exercise of that power shall not be called into question in any court on the grounds that the holder of the office is not unable to perform the functions of the office.

### **Removal from office**

**233.** References in this Chapter to the power to remove an officer of the Tristan da Cunha Public Service from his or her office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the Public Service and to any power or right to terminate a contract on which a person is employed in the Public Service and to determine whether any such contract shall or shall not be renewed.

### **Resignations**

**234.—(1)** Any person who is appointed to any office established by or under this Chapter may resign from that office by writing under his or her hand addressed to the person or authority by whom he or she was appointed.

(2) The resignation of any person from any office established by or under this Chapter takes effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or by any other person authorised by that person or authority to receive it.