

SCHEDULE 1
TO THE ORDER

THE CONSTITUTION OF ST. HELENA
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PART VI

THE JUDICATURE

Court of Appeal

Constitution of Court of Appeal.

47.—(1) There shall be a Court of Appeal for St. Helena and its Dependencies, styled the St. Helena Court of Appeal, which shall be a superior court of record.

(2) The judges of the Court shall be a President and two or more Justices of Appeal.

(3) The President and the Justices of Appeal shall be appointed by the Governor in accordance with instructions given by Her Majesty through a Secretary of State and shall hold office on such terms and conditions as the Governor shall, in accordance with such instructions, prescribe.

(4) A person shall not be qualified for appointment as the President or a Justice of Appeal of the Court unless—

(a) he is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland, or a court having jurisdiction in appeals from any such court; or

(b) he is entitled to practise as an advocate or a solicitor in such a court and has been entitled for not less than five years to practise as an advocate or a solicitor in such a court.

(5) For the purpose of subsection (4) of this section, a person shall be regarded as entitled to practise as an advocate or a solicitor if he has been called, enrolled or otherwise admitted as such (and has not subsequently been disbarred or removed from the roll of advocates or solicitors) notwithstanding that—

(a) he holds or acts in any office the holder of which is, by reason of his office, precluded from practising in a court; or

(b) he does not hold a practising certificate or has not satisfied any other like condition of his being permitted to practise.

(6) At any time when the office of President of the Court is vacant or the person holding that office is for any reason unable to perform the functions of that office, those functions shall be performed by such one of the Justices of Appeal or such other person qualified for appointment as a Justice of Appeal as may from time to time be appointed in that behalf by the Governor, acting in his discretion.

(7) If the office of a Justice of Appeal is vacant, or if any Justice of Appeal is discharging the functions of the office of President or is for any reason unable to perform the functions of his office, the Governor, acting after consultation with the President, may appoint a person qualified for appointment as a Justice of Appeal to sit as an additional judge of the Court of Appeal.

(8) An appointment under subsection (6) or (7) of this section—

(a) shall expire—

(i) on the assumption, or the resumption, of the functions of his office by the President or Justice of Appeal;

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(ii) at the end of the period, if any, for which it was made,
whichever first occurs; and

(b) if not made for any specific period, may be revoked by the Governor, acting in his discretion.

(9) Any person appointed to act as the President of the Court of Appeal under subsection (6) of this section or appointed under subsection (7) of this section to sit as an additional judge of the Court of Appeal may, notwithstanding that his appointment has expired or been revoked, continue so to act for the purposes of giving judgment or otherwise in relation to any proceeding commenced before him while his appointment was subsisting.

(10) The Court of Appeal shall have and use a seal bearing the style of the Court and a device approved by the President.

(11) Every person appointed to be a judge of the Court of Appeal shall, before entering upon the functions of his office, make the oath of allegiance and the judicial oath in the forms set out in the Schedule to this Constitution.

Jurisdiction of Court of Appeal.

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

(2) In connection with any appeal from a court of St. Helena or its Dependencies the Court of Appeal shall, subject to the provisions of 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 in respect of any appeal from a court of St. Helena or its Dependencies shall, subject as aforesaid, be enforced in St. Helena or its Dependencies in the same way as decisions of that court.

(3) The Court of Appeal may, in accordance with any directions issued from time to time by the President, sit in St. Helena or elsewhere for the purpose of exercising any jurisdiction and powers conferred upon it by or under this section or by any rule made under section 49 of this Constitution.

Practice and procedure on appeals.

49.—(1) Subject to the provisions of this Constitution, the President of the Court of Appeal may make rules for regulating the practice and procedure of the Court of Appeal with respect to appeals from the courts of St. Helena and its Dependencies and, in connection with such appeals, for regulating the practice and procedure in any court of St. Helena and its Dependencies from which such appeals are brought.

(2) Without prejudice to the generality of subsection (1) of this section, rules of court may be made for the following purposes—

- (a) for regulating the sittings of the Court and the selection of judges for any purpose;
- (b) for regulating the right of practising before the Court and the representation of persons concerned in any proceedings in the Court;
- (c) for prescribing cases in which, and conditions upon which, an appellant in a criminal appeal to the Court shall be entitled to be present at the hearing of the appeal;
- (d) for providing for summary determination of any appeal which appears to the Court to be frivolous or vexatious or to be brought for the purposes of delay;
- (e) for prescribing forms and fees in respect of proceedings in the Court and regulating the costs of and incidental to any such proceedings;
- (f) for prescribing and regulating the powers and duties of registrars and officers of the Court;
- (g) for prescribing the time within which any requirement of the rules is to be complied with;

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- (h) for providing for a reference from a decision of a single judge to the Court.
- (3) Rules made under this section may fix the number of judges of the Court who may sit for any purpose: Provided that—
 - (a) an uneven number of judges shall sit, which, for the purposes of any final determination by the Court other than the summary dismissal of an appeal, shall not be less 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.