

SCHEDULE 1
TO THE ORDER

THE CONSTITUTION OF ST. HELENA
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PART VI

THE JUDICATURE

The Supreme Court

Constitution of Supreme Court.

43.—(1) There shall be a Supreme Court in and for St. Helena and its Dependencies which shall be styled the St. Helena Supreme Court and shall be a superior court of record.

(2) The Supreme Court shall have such jurisdiction in and in relation to St. Helena and its Dependencies as may be prescribed by this Constitution or any other law.

(3) Subject to the provisions of this Constitution and any other law, the Supreme Court shall possess and may exercise all the jurisdiction which is vested in, or is capable of being exercised by, Her Majesty's High Court of Justice in England.

(4) The Court may, in accordance with any directions issued from time to time by the Chief Justice, sit in St. Helena, or in its Dependencies.

(a) (5) (a) Subject to paragraph (b) of this subsection, the Court may sit in the United Kingdom for the purpose of hearing and determining any application or appeal, civil or criminal, or to take evidence in any civil proceeding, including any commercial matter, which has been instituted in St. Helena or any of its Dependencies.

(b) The Court shall not sit in the United Kingdom unless every party to the proceeding consents and the Chief Justice is satisfied that in the circumstances of the particular case no injustice will result and the course proposed is in the public interest.

(6) The Chief Justice may make rules of court, including rules for the purpose of regulating the practice and procedure of the Court with respect to proceedings held in the United Kingdom.

(7) The Chief Justice when absent from St. Helena may exercise the powers conferred upon him by any Ordinance of St. Helena or any of its Dependencies of revision, variation, confirmation or setting aside of any sentence or order made by a court in St. Helena or any of its Dependencies.

(8) The Supreme Court shall have and use a seal bearing a device and impression of the Royal Arms within a border bearing the words "Seal of the St. Helena Supreme Court".

Exercise of jurisdiction of Supreme Court.

44.—(1) It shall be lawful for the Supreme Court to be held by and before—

(a) the Chief Justice;

(b) a person appointed under section 45(3) of this Constitution to act as Judge of the Supreme Court;

(c) a person empowered by, or appointed under, section 46 of this Constitution to hold the Court; or

(d) for the purposes mentioned in subsection (2) of this section, a person empowered by that subsection to continue to sit and hold the Court.

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(2) Any person appointed to act as Judge of the Supreme Court under section 45(3) of this Constitution or empowered by or appointed under section 46 of this Constitution to hold the Court may, notwithstanding that his appointment has expired or been revoked or, as the case may be, that the circumstances in which he is empowered to hold the Court cease to obtain, continue to sit and hold the Court for the purposes of giving judgment or otherwise in relation to any proceeding commenced before him while his appointment was subsisting or, as the case may be, such circumstances obtained.

(3) Subject, in the case of a person appointed under section 46(2) of this Constitution, to any restriction contained in the instrument of appointment, a person by and before whom the Supreme Court may be held shall, in the exercise of the jurisdiction of the Supreme Court, have all the powers and authority of the Court and, save as provided in subsection (5) of this section, the jurisdiction, powers, authority, privileges and immunities conferred on the Chief Justice.

(4) Where, at any time, there are two or more persons by and before whom the Supreme Court may be held, sittings of the Court may be held simultaneously by each person.

(5) A person appointed under section 46(2) of this Constitution shall not exercise—

- (a) any power to make rules of court;
- (b) any other power which by any law he is specifically excluded from exercising.

Appointment of Chief Justice.

45.—(1) The Governor shall, on instructions given by Her Majesty through a Secretary of State, appoint a judge of the Supreme Court who shall be styled the Chief Justice of St. Helena.

(2) An appointment under subsection (1) of this section shall be made by letters patent under the public seal and a person so appointed shall hold office on such terms and conditions as the Governor shall, in accordance with such instructions aforesaid, prescribe.

(3) If—

- (a) there is no subsisting appointment under subsection (1) of this section; or
- (b) the Chief Justice has not assumed, or is, for any reason, unable to perform the functions of, his office; or
- (c) the Chief Justice is absent from St. Helena and its Dependencies,

the Governor may, acting in his discretion, appoint a fit and proper person to act as Judge of the Supreme Court.

(4) An appointment under subsection (3) of this section—

- (a) shall expire—
 - (i) on the assumption, or the resumption, of the functions of his office by the Chief Justice, or on the return of the Chief Justice to St. Helena and its Dependencies, as the case may be;
 - (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.

(5) Every person appointed to the office of Chief Justice or to act as Judge of the Supreme Court 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.

Persons empowered to hold Supreme Court.

46.—(1) If—

- (a) at a time when an appointment may be made under section 45(3) of this Constitution of a person to act as Judge of the Supreme Court, there is no subsisting appointment under that subsection, the Governor may himself hold the Supreme Court;
 - (b) the Chief Justice or, if there is a subsisting appointment under section 45(3) of this Constitution, the person appointed to act as Judge of the Supreme Court, is absent from St. Helena, the Governor may himself hold the Supreme Court in St. Helena.
- (2) If, at any time, the Governor considers that the state or distribution of business of the Supreme Court makes it desirable that an additional person be appointed by and before whom the Supreme Court may be held, he may, acting in his discretion, appoint a fit and proper person to hold the Court, either generally or for any special purpose.
- (3) An appointment under subsection (2) of this section shall expire at the end of the period, if any, for which it was made and, if not made for any specific period, may be revoked by the Governor, acting in his discretion.

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—

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- (a) shall expire—
 - (i) on the assumption, or the resumption, of the functions of his office by the President or Justice of Appeal;
 - (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;

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- (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;
 - (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.