

SCHEDULE

THE CONSTITUTION OF ST HELENA, ASCENSION AND TRISTAN DA CUNHA

CHAPTER 1

ST HELENA

PART 6

THE ADMINISTRATION OF JUSTICE

The Courts of St Helena

80.—(1) The courts of St Helena shall be the Supreme Court and the Court of Appeal and such subordinate courts as may be established by Ordinance.

(2) Her Majesty in Council continues to have such jurisdiction in respect of St Helena as is provided by law.

Independence of the judiciary

81. The judges and judicial officers appointed to preside or sit in any court of St Helena shall exercise their judicial functions independently from the legislative and executive branches of government.

Supreme Court

Constitution of Supreme Court

82.—(1) There shall be a Supreme Court for St Helena which shall be a superior court of record.

(2) Subject to this Constitution, the Supreme Court shall have and may exercise all such jurisdiction in and in relation to St Helena as is necessary to administer the law of St Helena.

(3) Without prejudice to the generality of subsection (2), the Supreme Court shall possess and may exercise in and in relation to St Helena, 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.

(4) 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".

Sittings of Supreme Court

83.—(1) Subject to subsection (2), the Supreme Court may sit in St Helena or outside St Helena.

(2) The Chief Justice and any other judge or acting judge of the Supreme Court may hold sittings of the Court when outside St Helena, 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Status: This is the original version (as it was originally made).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 St Helena 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.

Judges of Supreme Court

84.—(1) The judges of the Supreme Court shall be a Chief Justice and such number of other judges (if any) as may be prescribed by law; but the office of any judge shall not, without his or her consent, be abolished during his or her continuance in office.

(2) If the office of Chief Justice is vacant, or the Chief Justice has not assumed, or is for any reason unable to perform the functions of, that office, those functions may be performed by—

- (a) the next most senior judge of the Supreme Court in terms of the date of his or her appointment; or
- (b) if there is no such judge, or if for any reason no such judge is able to perform the functions of the office of Chief Justice, then, unless this Constitution otherwise provides, those functions may be performed by an acting judge of the Supreme Court authorised to perform those functions by the Governor, acting in his or her discretion.

(3) If—

- (a) in the circumstances described in subsection (2), there is no other judge who can perform the functions of the Chief Justice; or
- (b) the state of the business of the Supreme Court makes it desirable that an additional person should be appointed by whom the Supreme Court may be held,

the Governor, acting in his or her discretion, may decide that an acting judge should be appointed to hold the Supreme Court.

(4) The Chief Justice and any other judge or acting judge of the Supreme Court shall have such legal qualifications, experience and personal qualities—

- (a) as may be prescribed by a law in force at the time of his or her appointment; or
- (b) in the absence of such a law, as make him or her a fit and proper person for appointment to the office concerned.

Exercise of jurisdiction of Supreme Court

85.—(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

Constitution of Court of Appeal

86.—(1) There shall be a Court of Appeal for St Helena which shall be a superior court of record.

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

(3) A person shall be qualified for appointment as the President or a Justice of Appeal of the Court if—

- (a) he or she is, or has been, a judge of a superior court in some part of the Commonwealth or in Ireland; or
- (b) he or she is entitled to practise as a legally qualified advocate or a solicitor in such a court and has been so entitled for not less than five years.

(4) For the purposes of subsection (3), a person shall be regarded as entitled to practise as such an advocate or a solicitor if he or she has been called, enrolled or otherwise admitted in that capacity (and has not subsequently been disbarred or removed from the roll of advocates or solicitors) even if, during any relevant period—

- (a) the person was holding or acting in any office that precluded him or her from practising in a court; or
- (b) the person did not hold a practising certificate or had not satisfied any other like condition of being permitted to practise.

(5) If the office of President of the Court of Appeal is vacant or the President has not assumed, or is for any reason unable to perform the functions of, that office, those functions shall be performed by the next most senior Justice of Appeal in terms of the date of his or her appointment.

(6) If the office of a Justice of Appeal is vacant, or any Justice of Appeal is discharging the functions of President or is for any other reason unable to perform the functions of the office, the Governor, acting in his or her discretion, may decide that a person qualified for appointment as a Justice of Appeal should be appointed to sit as an Acting Justice of Appeal.

(7) The Court of Appeal 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 Court of Appeal”.

Jurisdiction of Court of Appeal

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

Practice and procedure on appeals

88.—(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 an 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 St Helena or outside St Helena.

(5) The Court of Appeal may sit outside St Helena, 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

89.—(1) The President of the Court of Appeal may make Rules of Court consistent with this Constitution and with any law for regulating the practice and procedure of the Court of Appeal.

(2) The Chief Justice may make Rules of Court consistent with this Constitution and with any law for regulating the practice and procedure of the Supreme Court and any subordinate court.

(3) Without prejudice to the generality of subsections (1) and (2), Rules of Court may be made for the following purposes—

- (a) regulating the practice and procedure of the Court of Appeal or the Supreme Court with respect to appeals from the Supreme Court or a subordinate court, and, in connection with such appeals, for regulating the practice and procedure of any court from which such appeals may be brought;
- (b) regulating the practice and procedure of the Court of Appeal or the Supreme Court with respect to proceedings held outside St Helena;
- (c) regulating the sittings of the Court of Appeal, the Supreme Court or a subordinate court and the selection of judges of any of those courts for the purpose of exercising any jurisdiction of that court;

- (d) regulating the right of practising before the Court of Appeal, the Supreme Court or a subordinate court and the representation of persons concerned in any proceedings in those courts;
- (e) prescribing the cases in which, and conditions on which, an appellant in a criminal appeal to any court shall be entitled to be present at the hearing of the appeal;
- (f) providing for summary determination of any appeal to the Court of Appeal or the Supreme Court which appears to the court concerned to be frivolous or vexatious or to be brought for the purposes of delay;
- (g) prescribing forms and fees in respect of proceedings in the Court of Appeal, the Supreme Court or a subordinate court and regulating the costs of and incidental to any such proceedings;
- (h) prescribing and regulating the powers and duties of registrars and officers of the Court of Appeal, the Supreme Court or a subordinate court; and
- (i) prescribing the time within which any requirement of the rules of the Court of Appeal, the Supreme Court or a subordinate court is to be complied with.

Appointment of judges and judicial officers

90.—(1) The Governor, on instructions from Her Majesty given through a Secretary of State, shall appoint—

- (a) the Chief Justice and any other judges of the Supreme Court; and
- (b) the President of the Court of Appeal and the Justices of Appeal.

(2) The Governor, acting in accordance with the recommendation of the Chief Justice, if the person holding that office is available, shall appoint any acting judge of the Supreme Court.

(3) The Governor, acting in accordance with the recommendation of the President of the Court of Appeal, if the person holding that office is available, shall appoint any Acting Justice of Appeal.

(4) The Governor, acting in accordance with the recommendation of the Judicial Service Commission, shall appoint any judicial officers.

(5) Before entering upon the duties of the office, every holder of a judicial office referred to in this section shall make an oath or affirmation of allegiance and the judicial oath or affirmation in the forms set out in the Schedule.

Tenure of office of judges and judicial officers

91.—(1) The Chief Justice and any other judge of the Supreme Court shall be appointed for a term ending when the appointee attains the age of 70 or such later age as may be agreed at the time of appointment between that judge and the Governor, acting with the approval of a Secretary of State.

(2) The President of the Court of Appeal and the Justices of Appeal shall be appointed for a term ending when the appointee attains the age of 70 or such later age as may be agreed at the time of appointment between that judge and the Governor, acting with the approval of a Secretary of State.

(3) An acting judge of the Supreme Court shall be appointed either—

- (a) for a term specified in the instrument of appointment; or
- (b) if the appointee is acting in the place of a Chief Justice or other judge whose office is vacant, or who has not assumed, or is for any reason unable to perform the functions of, that office, for a term expiring on the assumption or resumption by the Chief Justice or other judge of the functions of the office.

(4) An Acting Justice of Appeal shall be appointed for a term expiring when the vacant office of Justice of Appeal has been filled, when a Justice of Appeal is no longer discharging the functions

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

of President, or when a Justice of Appeal is again able to perform the functions of the office, as the case may be.

(5) A judge or judicial officer may, when his or her appointment expires, continue so to act for the purposes of giving judgment or otherwise in relation to any proceeding commenced before him or her while his or her appointment was subsisting.

(6) A judge may resign from office by writing under his or her hand addressed to the Governor.

(7) A judicial officer shall be appointed for life, or until the appointee reaches such an age as may be prescribed by Ordinance.

(8) A judicial officer—

(a) may resign from office by writing under his or her hand addressed to the presiding member of the Judicial Service Commission;

(b) shall be deemed to have resigned from office if he or she—

(i) is elected as a Member or as the Speaker or Deputy Speaker of the Legislative Council; or

(ii) continues to hold, or accepts, an appointment as an officer of the St Helena Public Service, unless, under a law, such an officer is entitled to serve as a judicial officer on a basis that is consistent with the independence of the judiciary and with the efficiency of the Public Service.

Remuneration

92.—(1) A judge or a judicial officer shall receive such remuneration as is determined by the Governor, acting in his or her discretion, and that remuneration shall be charged on and paid out of the Consolidated Fund.

(2) The remuneration of a judge or a judicial officer shall not be diminished during his or her continuance in office.

Removal from office

93.—(1) A judge or judicial officer may be removed from office only on the ground of—

(a) inability to discharge the functions of the office (whether arising from infirmity of body or mind or from any other cause); or

(b) misbehaviour,

and shall not be removed except in accordance with this section.

(2) A judge shall be removed from office by the Governor by instrument under the public seal if the question of the removal of that judge from office has, at the request of the Governor made in pursuance of subsection (3), been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833⁽¹⁾ or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge should be removed from office on a ground referred to in subsection (1).

(3) If the Governor, acting in his or her discretion, considers that the question of removing a judge from office on a ground referred to in subsection (1) ought to be investigated, then—

(a) the Governor shall appoint a tribunal, which shall consist of a chairman and two other members; but the chairman and at least one of the other members shall be a serving or former judge of a superior court in some part of the Commonwealth or in Ireland;

(1) 1833 c.41.

- (b) the tribunal shall inquire into the matter and report on the facts thereof to the Governor and advise the Governor whether he or she should request that the question of the removal of that judge should be referred by Her Majesty to the Judicial Committee; and
 - (c) if the tribunal so advises, the Governor shall request that the question should be referred accordingly.
- (4) If the question of removing a judge from office has been referred to a tribunal under subsection (3) the Governor, acting in his or her discretion, may suspend the judge from performing the functions of his or her office.
- (5) Any suspension made under subsection (4) may at any time be revoked by the Governor, acting in his or her discretion, and shall in any case cease to have effect—
- (a) if the tribunal advises the Governor that he or she should not request that the question of the removal of the judge from office should be referred by Her Majesty to the Judicial Committee; or
 - (b) if the Judicial Committee advises Her Majesty that the judge should not be removed from office.
- (6) The Governor shall remove a judicial officer from office if—
- (a) the question of doing so has been considered by the Judicial Service Commission; and
 - (b) the Commission has recommended to the Governor that the judicial officer concerned should be removed from office on a ground referred to in subsection (1).
- (7) A person who has been removed from office as a judicial officer by the Governor on the recommendation of the Judicial Service Commission may apply to the Supreme Court for redress on the ground that any finding of fact or law on which the Commission based its recommendation for removal was unjustified or wrong; and, for the purpose of affording such redress, the Supreme Court may make such declarations and orders, issue such writs and give such directions as it considers appropriate.

Judicial Service Commission

- 94.**—(1) There shall be a Judicial Service Commission for St Helena (“the Commission”) which shall consist of—
- (a) the Chief Justice, who shall preside;
 - (b) the Attorney General;
 - (c) the Public Solicitor, if a person for the time being holds that office; and
 - (d) a person who has St Helenian status who is neither a Member of the Legislative Council, an officer of the St Helena Public Service, a judge or a judicial officer, appointed by the Governor, acting in his or her discretion, for a term of three years.
- (2) The office of the member of the Commission appointed under subsection (1)(d) shall become vacant if—
- (a) he or she becomes an officer of the St Helena Public Service, accepts appointment as a judge or a judicial officer, or becomes a Member of the Legislative Council;
 - (b) he or she resigns from office by writing under his or her hand addressed to the Governor; or
 - (c) the Governor, acting in his or her discretion, and being satisfied that the member should be removed from office on the ground of inability to discharge the functions of the office (whether arising from infirmity of body or mind or from any other cause) or misbehaviour, removes that member from office.
- (3) The Governor, acting in his or her discretion, may suspend the member from office while his or her removal from office on a ground referred to in subsection (2)(c) is under investigation.

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

- (4) No business shall be transacted by the Commission unless—
 - (a) all members are present at a meeting in St Helena or elsewhere; or
 - (b) if they are in different places, all members are able to communicate with one another about that business in ways that they agree are appropriate in the circumstances.
- (5) All questions before the Commission shall be decided by a majority of the votes of its members; and if, on any question, the votes are equally divided, the Chief Justice shall have and exercise a casting vote.
- (6) The Commission may, of its own motion or at the request of the Executive Council or of an organisation that is representative of judicial officers—
 - (a) make recommendations to the Governor on the appointment of judicial officers;
 - (b) consider and, if it so decides, make recommendations to the Governor on, the removal from office of a judicial officer on a ground referred to in section 93(1); and
 - (c) exercise such other functions as may be conferred on it by law.
- (7) In the exercise of its functions the Commission 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.
- (8) No member of the Commission shall be personally liable for the consequences of any act done or omitted by the Commission in good faith in pursuance or intended pursuance of the Commission's functions; and if any such liability is established, it shall be that of the Crown.